

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-10306

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 2, 2008

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on Wednesday, April 2, 2008. The claimant personally appeared and testified on his own behalf.

ISSUES

- (1) Did the department properly deny the claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance?
- (2) Did the department properly determine that the claimant has not established continued eligibility for disability under the State Disability Assistance (SDA) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On March 6, 2007, the claimant applied for State Disability Assistance.
- (2) On April 27, 2007, the Medical Review Team (MRT) approved the claimant for SDA from January 1, 2007 through May 2007 with a medical review required.
- (3) On October 4, 2007, the claimant applied for Medical Assistance and continued eligibility for SDA.
- (4) On November 7, 2007, the Medical Review Team denied the claimant for Medical Assistance stating that the claimant's impairments lack the duration of 12 months per 20 CFR 416.909 and for State Disability Assistance stating that the claimant's physical or mental impairment does not prevent employment for 90 days or more.
- (5) On November 8, 2007, the department caseworker sent the claimant a notice that his application was denied.
- (6) On November 29, 2007, the department received a hearing request from the claimant, contesting the department's negative action.
- (7) On March 13, 2008, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant is 53 years old and alleges disability due to a gunshot wound, shortness of breath, elevated blood pressure, coughing, chest pain, and chest congestion. The claimant has a limited education and a history of janitorial and factory work. This is a review of SDA benefits and a new application for MA-P and retroactive MA-P.

The claimant sustained gunshot wounds to the right forearm and abdomen in [REDACTED]. He also sustained a laceration of the left lobe of the liver, a transverse colon injury, and left diaphragm laceration. On exam in [REDACTED], the claimant had an abdominal scar. He reported back, chest, and arm pain with arm numbness. However, there was no objective evidence showing any neurological abnormalities and any loss of strength. The claimant

would be able to do at least light work avoiding constant fingering and handling with the right hand. There was no evidence to support any limitation in standing and/or walking. The claimant's treating physician has given less than sedentary work restrictions based on the claimant's physical impairment. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d(3)(4)(5), will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing light work avoiding constant fingering and handling with the right hand.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform light work avoiding jobs requiring constant fingering and handling with the right hand. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile (closely approaching advanced age at 53, limited education, and a history of janitorial and factory work), MA-P is denied using Vocational Rule 202.10 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would no longer preclude work activity at the above stated level for 90 days.

(8) During the hearing on April 2, 2008, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on May 9, 2008 and forwarded to SHRT for review on May 21, 2008.

(9) On June 24, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA. The SHRT report reads in part:

The claimant is alleging disability due to high blood pressure, chest pain, and shortness of breath. He is 53 years old and has a limited education with a history of unskilled work. The claimant did not meet applicable Social Security Listings 3.02, 3.03, 4.02, and 4.04. The claimant is capable of performing other work that is light per 20 CFR 416.967(b) under Vocational Rule 202.13.

(10) The claimant is a 54 year-old man whose date of birth is [REDACTED]. The claimant is 5' 9" tall and weighs 177 pounds. The claimant has lost 30-35 pounds in the past year. The claimant completed the 11th grade of high school. The claimant can read and write and do basic math. The claimant was last employed in January 2007 as a janitor. The claimant has also worked as a factory worker.

(11) The claimant's alleged impairments are COPD, high blood pressure, gunshot wounds in [REDACTED], a metal plate in left leg, and sleep disorder.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"Disability" is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);

- (4) **Diagnosis** (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months ... 20 CFR 416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since January 2007. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means, the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant was seen by an independent medical examiner at [REDACTED]. The independent medical consultant's conclusions were that the claimant had hypertension and recurrent lumbar pain which appears to be muscular in nature. The claimant is status post right forearm gunshot injury with numbness of the right hand 3rd, 4th, and 5th fingers. The claimant also had anxiety. There was no evidence of cardiac problems, diabetes, stroke, and hernia or leg ulcers. The claimant was alert and cooperative, but was anxious. The claimant had a normal physical examination. The claimant's gait was normal and he was able to get on and off the examination table. The claimant could raise both arms above head level. The claimant stated that his right leg hurts with walking, but he is able to walk without assistance of a cane. The claimant's chest moves normally on either side. Respiratory movements were normal. The chest was clear to auscultation and percussion. There were no rhonchi or rales noted. The claimant's heart was normal with no audible murmur. JVD was not raised, but air entry was decreased. There were a few rhonchi over both lung fields. There were no adventitious sounds. Trachea was midline. The claimant's abdomen was soft with no masses felt. Bowel sounds were normal with no evidence of a hernia. Spleen was not palpable and there were no ascites. The claimant was able to do straight leg raising equal bilaterally. All peripheral pulses were equal and good bilaterally. There was some tenderness over the lumbar area. Lower back movements were restricted to about 50-60% of normal range. There was no wasting of muscles. Handgrip was equal. There was a scar over the right forearm area. The claimant's grip strength was slightly decreased in the right hand compared to the left hand. The claimant's general health was good. (Department Exhibit 66-68)

On [REDACTED], the claimant's treating physician completed a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant reports gunshot wounds to right arm and chest about a year ago. The claimant's current diagnosis was high blood pressure and back pain. The claimant had a normal physical examination. The treating physician did note that the claimant was well-groomed, but that the claimant used a cane to ambulate and had increased back pain. The claimant's respiratory was negative for wheezing and rhonchi. The claimant had a large scar mid-back from gunshot wound where he was positive for back spasms and negative for abdominal pain. The claimant had low back pain at L5 with radiculopathy down the leg. The claimant had right hand numbness. The claimant was within normal limits mentally.

(Department Exhibit 71)

The treating physician's assessment was that the claimant was stable. The claimant could frequently lift less than 10 pounds and stand for less than two hours in an eight-hour workday. The claimant used a cane to ambulate. The claimant could use both hands/arms for reaching and pushing/ pulling, but neither for simple grasping and fine manipulation. The claimant stated he has difficulty bending and grasping objects with his right hand. The claimant had no mental limitations. (Department Exhibit 72)

On [REDACTED] the claimant's treating physician completed a Medical Needs form for the claimant. The claimant had a diagnosis and treatment plan for high blood pressure, chronic back pain, gunshot wound to the chest/arms. The claimant had a chronic ongoing illness that required one office visit per month for a lifetime. The claimant was ambulatory, did not need special transportation, or anyone to accompany him to his medical appointment. The claimant also did not need any assistance with his personal care activities. The claimant could not work

his usual occupation per the claimant. The claimant could work another job with limitations where the claimant reported an increase in back and leg pain where he also has difficulty grasping objects and was using a cane to ambulate. (Department Exhibit 73)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant had multiple gunshot wounds in [REDACTED] where he was shot in the abdomen and right arm. The claimant's recent medical reports show that he has continued to improve since surgery where in December he could frequently lift less than 10 pounds to March where he had significantly improved. The claimant should be able to perform at least light work where he would be unable to grasp and do fine manipulation with his right arm. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant does have a driver's license but does not drive because he needs glasses. The claimant does not cook because he can't stand long. The claimant does not grocery shop or clean his own home. The claimant doesn't do any outside work or have any hobbies. The claimant felt that his condition has worsened in the past year as a result of an increase of pain with loss of balance. The claimant stated that he has a sleep disorder where he is taking over-the-counter medication, but not in therapy.

The claimant wakes up between 4:30 and 5:00 p.m. The claimant takes his medication for pain. He watches TV. He goes to bed between 6:30 to 7:00 a.m.

The claimant felt that he could walk a distance of 2-3 houses. The longest he felt he could stand or sit was 15 minutes. The claimant did not think he could lift any weight. The claimant stated that he is right-handed, which where he was shot in January 2007 and has numbness and decreased grip and occasionally drops things. The claimant stated that his level of pain on a scale of 1 to 10 without medication was an 8; that decreases to a 6 with medication.

The claimant stopped smoking cigarettes as a teenager, where before he smoked one and a half to two packs a day. The claimant stopped drinking alcohol when he turned 20, where he would drink a fifth a day. The claimant smoked marijuana when he was younger. The claimant stated that there was no doctor that told him that he could not work, but he felt that there was no work that he could do.

This Administrative Law Judge finds that the claimant has not established that he cannot perform any of his prior work. The claimant has improved since his gunshot wound of [REDACTED]. The claimant should be able to perform light work that takes into consideration the numbness in his right hand. The claimant was previously employed as a janitor, which is considered light work in the national economy. The claimant should be able to perform his past work. Therefore, the claimant is disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work.

20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are

sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The claimant has submitted insufficient evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitation indicates his limitations are exertional.

At Step 5, the claimant should be able to meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a closely approaching advanced age individual with a limited or less education, and an unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.13. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can still perform a wide range

of light activities with restrictions around his right arm and that the claimant does not meet the definition of disabled under the MA program.

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the claimant is not substantially gainfully employed and has not worked since January 2007. (See MA analysis in Step 1.) Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii). In this case, the claimant's impairments or combination of impairments do not meet or equal the severity of an impairment listed in Appendix 1. Therefore, the claimant is disqualified from receiving disability at Step 2. (See MA analysis in Step 3.)

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994(b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the claimant was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with claimant's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the claimant's ability to do work). If there has been no decrease in medical severity and thus no medical

improvement, the trier of fact moves to Step 5 in the sequential evaluation process. (See MA analysis in Steps 2, 4, and 5.)

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to claimant's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been medical improvement. (See MA analysis in Steps 2, 4, and 5)

At Step 4, this Administrative Law Judge finds that the claimant has had medical improvement. If there is a finding of medical improvement related to claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the claimant's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a claimant's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. (See analysis in Steps 2, 4, and 5.)

In the seventh step of the sequential evaluation, the trier of fact is to assess a claimant's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the claimant's current residual functional capacity based on all current impairments and consider whether the claimant can still do work he/she has done in the past. (See analysis in Steps 2, 4, and 5.)

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the claimant can do any other work, given the claimant's residual function capacity and claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case,

the claimant does retain the residual functional capacity to perform light work under Medical-Vocational Rule 202.20. (See prior analysis in Steps 1, 2, 3, 4, 6, and 7.) Therefore, the claimant is disqualified from receiving continued State Disability Assistance benefits because he does have medical improvement.

The department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS, INCLUDING 'MA While Appealing Disability Termination,'**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as "special education" as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.

- Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

Because the claimant does not meet the definition of disabled under the MA program and because the evidence in the record does not establish that the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for continued SDA because he has had medical improvement. The claimant can perform light work, which also includes his past work.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P and when it denied the claimant's medical review application for SDA to determine the claimant was no longer eligible for continued disability benefits. The claimant should be able to perform a wide range of light work. Therefore, the claimant is capable of performing his past relevant work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 10, 2009

Date Mailed: November 10, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CGF/vmc

cc:

