

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: 2008-10503

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 17, 2008

Oakland 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 Thursday, April 17, 2008. The claimant personally appeared and testified on her own behalf with her authorized representative, [REDACTED] and the claimant's friend, [REDACTED] as a witness.

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA-P), retroactive Medical Assistance, and State Disability Assistance (SDA)?

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 May 9, 2007, the claimant applied for MA-P and SDA with retroactive MA-P to February 2007.

(2) On November 1, 2007, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was capable of performing other work under Medical-Vocational Grid Rule 202.17 (20 CFR 416.920(f)) and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On November 5, 2007, the department caseworker sent the claimant a notice that her application was denied.

(4) On November 29, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On March 19, 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's fracture has limited her. However, as of the most recent exam, she should be capable of performing sedentary, if not light work. Her condition should improve even further so that she would be capable of medium work. The evidence in file does not demonstrate any other impairment that would pose a significant limitation.

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 a wide range of sedentary work. Therefore, based on the claimant's vocational profile (younger individual, unknown education, and an unknown work history), MA-P is denied using Vocational Rule 201.24 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 not preclude work activity at the above stated level for 90 days.

(6) During the hearing on April 17, 2008, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was not received from the claimant or her authorized representative, but the claimant's authorized representative asked that the record be closed because no additional medical information had been received on September 24, 2008.

(7) The claimant is a 50 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 4-1/2" tall and weighs 152 pounds. The claimant has lost 26 pounds in the past year, but does not know why. The claimant completed the 9th grade of high school. The claimant stated she can read and write and do basic math. The claimant was last employed as a housekeeper at the light level in March 2007. The claimant's pertinent work history is as a care provider. The claimant has also been a cook and waitress.

(8) The claimant's alleged impairments are back, ribs, and sternum pain and hepatitis C.

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 a 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 March 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 consultant at [REDACTED] for a medical evaluation. The independent medical consultant’s impression was that the claimant’s symptoms were mostly in the bursal area. The claimant’s range of motion was diminished due to pain in her pelvis. The claimant’s tenderness was relatively nondescript other than in the bursal area but there was no evidence of myopathy or neuropathy. The claimant did have some difficulty doing orthopedic maneuvers predominantly because of stiffness and pain. The claimant does not require the use of an assistive device. The claimant’s long-term prognosis was guarded, but stable. The independent medical consultant thought that the claimant’s condition was remediable with aggressive range of motion exercises, posture mechanics, and therapy. Motivation may be playing a role in her recovery. The claimant does have osteoporosis, but this does not appear to be significant today. The claimant was cooperative in answering questions and following commands. The claimant’s immediate, recent,

and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant provided a good effort during the exam. The claimant had a normal physical examination except for the factors noted previously. Musculoskeletally, the claimant had mild difficulty getting on and off the examination table, mild difficulty heel and toe walking, mild difficulty squatting, and moderate difficulty hopping due to pain and stiffness. There was tenderness in both trochanteric bursae. (Department Exhibit 4-8)

On [REDACTED], the claimant was seen by the [REDACTED] for a psychiatric evaluation. The independent medical consultant psychiatrist gave the claimant a diagnosis of adjustment disorder with depressed mood, chronic marijuana abuse, nicotine dependence, history of cocaine and alcohol abuse now in sustained remission. The claimant was given a GAF of 67. The claimant's prognosis would be good if her physical concerns were properly addressed and treated. The claimant was probably competent to handle her benefits funds. The claimant was brought to her appointment by her son-in-law where she arrived on time. The claimant was properly attired. The claimant was pleasant and talkative but rambling at times. The claimant's personal hygiene was excellent. She posture and gait were not unusual. The claimant was not observed to have been using any devices while ambulating. The claimant stated that her self-esteem had not been good. Reality testing was not impaired. Her psychomotor activity was within normal range. The claimant was spontaneous with speech that was rambling and effusive. Her emotional ability was also noted although she seemed to be fragile most of the time. On occasion the claimant appeared to be on the verge of tears. The claimant denied hallucinations and delusions with no indication of suicidal ideation. The claimant complained of insomnia. The claimant stated that emotionally she was feeling sad where she was moved to tears at this point because of the incapacitating pain and her inability to work. The claimant was alert and oriented

to time, place, and person. The claimant seemed to understand the purpose and scope of this examination. The claimant's immediate, recent, and remote memory was appropriate with appropriate insight and judgment. (Department Exhibit 14-16)

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 accidentally fell and sustained a fracture of her pubic bone. The claimant's current diagnosis was fracture of the pubic remi. The claimant had a normal examination. The claimant's treating physician noted that she was overweight with a mild respiratory wheeze. The claimant could not ambulate and needed a walker. She was depressed mentally. (Department Exhibit 17)

The claimant's treating physician's clinical impression was that the claimant was improving with physical limitations. The claimant could frequently and occasionally lift 10 pounds, but never 20 pounds. In addition, the claimant could meet her needs in the home. (Department Exhibit 18)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant was discharged to [REDACTED] with a referral to outpatient physical therapy and occupational therapy. The claimant had a gait disturbance secondary to left pubic ramus fracture. The claimant had comorbidities of severe and inappropriate osteoporosis, history of traumatic subdural hematoma requiring a craniotomy evacuation, gastroesophageal reflux disease, chronic obstructive pulmonary disease, chronic low back pain, and history of migraine headaches. The claimant was ordered a rolling walker. The claimant's progressed to modified independent with bed mobility and with transfers. The claimant ambulated over 150 feet using a rolling walker and with modified independence.

The claimant was able to climb up and down 10 steps with the use of bilateral handrails and was modified independent. The claimant was also modified independent with upper extremity and lower extremity bathing and dressing. Shower transfers required standby assistance. The claimant was ordered to follow-up with her physicians. The claimant was advised not to drive. The claimant fell the evening before her discharge on [REDACTED]. (Department Exhibit 59-62)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant had a final diagnosis of fracture of the pelvic bone on the left, side, left pelvic rami, history of viral hepatitis, intractable pain, osteoporosis, chronic obstructive pulmonary disease, anemia, and gastroesophageal reflux disorder. The claimant had an x-ray during her hospital stay that revealed a comminuted fracture of the left pubic bone and also evidence of generalized osteoporosis. The bone scan revealed cortical irregularity of the medial aspect of the left superior pubic ramus and no evidence of any compression fracture of the spine. The claimant had testing that suggested iron deficiency anemia. The claimant's pelvic fracture has to heal, which will take at least another 6-8 weeks. (Department Exhibit 24-25)

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 had a history of impairment and chief complaint of backache and pelvic pain. The claimant's current diagnosis was a pelvic fracture, degenerative arthritis, osteoporosis, migraines, GERD, and history of hepatitis C. The claimant had a normal physical examination. The claimant's treating physician stated she had a normal appearance with an altered gait. The claimant also had a respiratory wheeze. The claimant had an abnormal liver

function test. The claimant could not ambulate well because of pelvic fracture. The claimant is emotionally depressed because of pain. (Department Exhibit 91)

The treating physician's clinical impression was that the claimant was improving and that she had a temporary disability and was expected to return to work [REDACTED]. The claimant had physical limitations where she could frequently lift less than 10 pounds, but never 10 pounds. Her treating physician didn't feel that the claimant could stand, walk, or sit during an eight hour workday. Assistive devices medically needed or required for ambulation was a walker. The claimant could not meet her needs at home where she needed assistance with a Foley catheter change.

On [REDACTED], the claimant's treating physician completed a Medical Needs, DHS-54A, report for the claimant. The claimant had a diagnosis of pelvic fracture, osteoporosis, migraines, and IBS. The claimant had a chronic ongoing illness that would require one office visit per month for a lifetime. The claimant was ambulatory, but could not operate a vehicle because of pelvic fracture. The claimant did need someone to accompany her for her appointment. The claimant needed assistance in her mobility and housework. The claimant could not work her usual occupation or any occupation for two months. (Department Exhibit 93)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant fell and broke her pubic ramus in [REDACTED]. Her treating physician stated that she would be impaired for at least 6-8 weeks. On [REDACTED], the claimant underwent an independent consultative examination that stated that she still had mild difficulty physically and tenderness in both the trochanteric bursae. The claimant walks with a guarded gait without use of an assistive device. Psychologically, the claimant was given an independent medical consultative examination by an independent medical

consultant psychiatrist where she was diagnosed with adjustment disorder with depressed mood, chronic marijuana abuse, nicotine dependence, and history of cocaine and alcohol abuse now in sustained remission. She was given a GAF of 67. 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 and does not drive because she lost it. She does not cook although she helps and assists. The claimant does not grocery shop because she can't walk long. The claimant does not clean her own home nor do any outside work. The claimant's hobbies are crocheting, drawing, crossword puzzles, and work search. The claimant felt that her condition has worsened in the

past year because she can't sit up straight and bend down. The claimant testified that she did not have any mental impairment.

The claimant wakes between 8:00 to 9:30 a.m. She watches TV. She can't sleep sometimes. She does crossword puzzles, drawing, and plays cards during the day. The claimant goes to bed between 10:00 p.m. to 12:00 a.m.

The claimant felt that she could walk 25 to 30 feet. The longest she felt she could stand was 10 minutes. The longest she felt she could sit was 20 to 25 minutes. The heaviest weight she felt she could carry and walk was 5 to 10 pounds. The claimant stated that her level of pain on a scale of 1 to 10 without medication was a 10 that decreases to a 4 with medication.

The claimant smokes six cigarettes a day. She stopped drinking alcohol after the accident where before she drank occasionally. She stopped doing marijuana and cocaine in her early 20s. This Administrative Law Judge finds that the claimant has established that she cannot perform any of her prior work. The claimant has previously been employed as a housekeeper, care provider, cook, and waitress. These jobs require a certain amount of standing, lifting, bending, and stooping that the claimant would be unable to do on a short-term basis with her fractured tailbone. There was no new information submitted after September 19, 2007 and the record was closed. Based on that information, the claimant's condition was expected to improve. 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 her prior jobs. The claimant's past work history was at the light level where she was expected to recover so the claimant should be able to perform her past relevant work.

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).

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

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the claimant stated that she did not have any mental impairment. However, the claimant underwent an independent psychiatric evaluation on [REDACTED] where she was diagnosed with adjustment disorder with depressed mood, chronic marijuana abuse, nicotine dependence, and history of cocaine and alcohol abuse now in sustained remission. The claimant was given a GAF of 67 which is some mild symptoms or some difficulty in social, occupational, or school functioning, but generally functions pretty well, has some meaningful interpersonal relationships. The claimant's treating physician on [REDACTED] did not list any mental impairment for the claimant. As a result, there is insufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from working at any job.

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 a skilled and unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.11. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. 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 and that the claimant does not meet the definition of disabled under the MA program.

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 SDA.

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, retroactive MA-P, and SDA. The claimant should be able to perform any level of light work. The claimant's past work was performed at the light level. Therefore, the claimant can perform her 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: May 14, 2009

Date Mailed: May 14, 2009

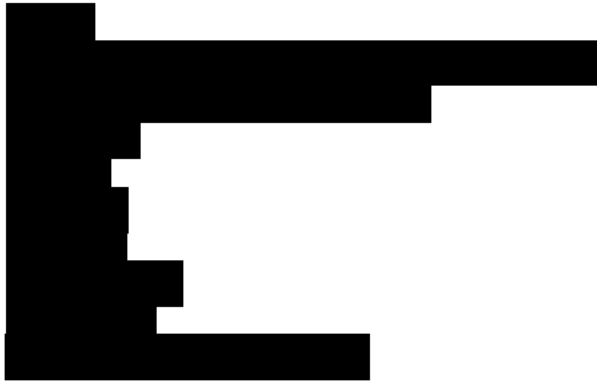
NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final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

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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:

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