

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: 2008-24522

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 1, 2008

Ontonagon 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, October 1, 2008. The claimant personally appeared and testified on his own behalf with his friend, [REDACTED] as a witness.

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA-P) 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 July 16, 2007, the claimant applied for MA-P and SDA without filing an application for retroactive MA-P.

(2) On December 5, 2007, the Medical Review Team (MRT) denied the claimant's application for MA-P stating that the claimant had a non-exertional impairment and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On December 10, 2007, the department caseworker sent the claimant a notice that his application was denied.

(4) On January 8, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On July 17, 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 50 years old with 12 or more years of education and a history of working as a cook. The claimant did not meet applicable Social Security Listings 12.02, 12.04, 12.06, 12.08, and 12.09. There was insufficient evidence where the medical records were not timely of less than six months of objective medical records submitted for review. A psychiatric exam was requested.

(6) During the hearing on October 1, 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 November 3, 2008 and forwarded to SHRT for review on November 21, 2008.

(7) On December 3, 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 would have difficulty with work requiring extensive contact with the public. He should be capable of performing unskilled work otherwise. Medical opinion was considered in light of CFR 416.927. 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 unskilled work. Therefore, based on the claimant's vocational profile (closely approaching advanced age, high school graduate, and a history of skilled work as a cook), MA-P is denied using Vocational Rule 204.00 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.

(8) The claimant is a 51 year-old man whose date of birth is [REDACTED]. The claimant is 5' 8" tall and weighs 140 pounds. The claimant has lost 25 pounds in the past year because of his mental condition and he doesn't eat or sleep well. The claimant has a high school diploma and one and a half years of college. The claimant can read and write and do basic math. The claimant was last employed as a cook in February 2007, which is his pertinent work history.

(9) The claimant's alleged impairments are depression, panic attacks, anxiety, and agoraphobia.

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 February 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 given an independent medical psychiatric/psychological exam from [REDACTED]. The independent licensed psychologist’s diagnosis was panic disorder with agoraphobia, depressive disorder, alcohol dependence in full remission one year by self report, cannabis dependence in full remission by self report, one year, personality disorder, NOS, with strong avoidant traits. The claimant was given a GAF of 50 with a guarded prognosis. The claimant would be able to manage his own funds based on an

examination on [REDACTED]. The claimant was in contact with reality with low self-esteem. His motor activity was high where he interacted in an anxious, shy, but appropriate manner. The claimant was somewhat fearful and hyperactive, but pleasant with him evidencing more comfort as rapport developed over the interview. Motivation to participate was good. Symptoms did not appear to be exaggerated or minimized. Insight appeared somewhat low. The claimant was spontaneous, logical, and relevant. At times, he lost his train of thought and this appeared to be secondary to anxiety. The claimant was otherwise goal-directed. The claimant admitted hallucinations in the past and recently he saw pictures that were flashing that were about his childhood. The claimant denied auditory hallucinations. The claimant acknowledged that he was a paranoid person where he feels that people are talking about him and has felt this way all his life. The claimant stated he feels he's being listened to and that people are talking about him being mentally disabled. The claimant denied thoughts controlled by others or unusual powers. The claimant endorsed feelings of worthlessness. He endorsed suicidal ideation, but denied attempt or plan with his most recent thoughts several months ago. The claimant complained of sleep disturbance, constant rumination, worry, and panic attacks. The claimant presented with anxiety, dysthymia, as well as avoidant traits developing into panic attacks with agoraphobia such that he is afraid to leave his apartment and left his last employment after one month. The claimant's affect was appropriate. He was oriented to time, place, and person. The claimant had appropriate memory, information, calculations, abstract thinking, similarities and differences, and limited judgment. (Department Exhibit A1-A8)

On [REDACTED], the claimant was seen by his treating psychologist at [REDACTED] [REDACTED] for an outpatient progress note. The claimant was able to walk here by himself, and then go to the library. The claimant was helped by his son being with him. The claimant is maintaining his sobriety. The interventions were validation and reinforcement. His progress towards goals and objectives was that he has the ability to walk to the library.
(Department Exhibit C-D)

On [REDACTED], the claimant's treating psychiatrist completed a Psychiatric/Psychological Examination Report, DHS-49-D. The claimant was given a diagnosis of panic disorder with agoraphobia, alcohol dependence in early remission of six months, depressive disorder, and avoidant personality disorder. The claimant was given a current GAF of 50 where last year he was at a 59. The claimant came to the interview alone where he said he was dropped off by a friend. The claimant appeared very tentative and suspicious where he worried about his surroundings. The claimant's clothing was casual, culturally consistent, and age appropriate. The claimant's hygiene and grooming were adequate. The claimant was early for his session where upon leaving he seemed disoriented to the area where he had sat only 90 minutes earlier. The claimant was very soft spoken and passive during the session. The claimant has a college degree in commercial arts, but has worked as a cook for the past 30 years. The claimant reported diminished interest in socializing and poor sleep at night. The claimant has a history of anxiety and social avoidance, but stated that his symptoms have become much more severe in the past year since he has quit drinking. The claimant stated that was a heavy drinker for 30 years prior to quitting six months ago. The claimant reported one large and 4-5 moderate panic attacks per day. The claimant stated that he does not leave his house since the restaurant where he was working closed. The claimant stated he does not feel comfortable outside his home. The claimant has seen

a counselor at [REDACTED] four times. The claimant's attitude was shy and cooperative with a fidgety, looking around, nervously behavior. The claimant had a good flow of thought with anxious and depressed emotions. The claimant was oriented to time, person, place, and purpose. The claimant had good immediate, short-term and long-term memory and appeared to be a good historian. The claimant's fund of knowledge appeared to be adequate. The claimant had difficulty interpreting the meaning of proverbs. The claimant was goal-directed, lucid, and coherent. His logic was concrete, yet functional. The claimant had some difficulty abstracting. The claimant was able to meet all his daily needs within the home. However, the claimant has a high level of anxiety/panic attacks with regard to leaving his home. The claimant is likely reliant on others to assist him in getting and maintaining goods in his home to meet his everyday needs. The claimant's social functioning was limited. He rarely interacts with others besides his immediate family. The claimant can manage his own benefit funds. This report was based on an examination on [REDACTED]. (Department Exhibit 5-6)

On [REDACTED], the claimant was given an initial psychosocial assessment by [REDACTED]. The treatment recommendation was non-intensive case management/therapeutic stabilization and support. The claimant was diagnosed with panic disorder with agoraphobia and he was given a GAF of 40 with alcohol dependence. The claimant has not been leaving his home due to fear that he will have a panic attack, increased heart rate, sweatiness, shakiness, derealization, history of alcohol tolerance and withdrawal, inability to cut back, lifestyle centers around drinking. The claimant has a clear history of alcohol dependence, but he is committed to abstinence. In order to lower the likelihood of relapse, it will be recommended that he meets with the co-occurring specialist. For many years, the claimant coped with his anxiety by consuming alcohol, but for the last three months he has been sober.

Maintaining sobriety will take a lot of effort for the claimant and may temporarily increase his anxiety level. The claimant was low risk. He was oriented to time, place, and person. The claimant wore jeans, sneakers, a shirt, and a black leather jacket to his assessment where his long gray hair was pulled into a ponytail. The claimant was cooperative, calm, and appropriate. A few times, the claimant became tearful in talking about how difficult it has been to stop drinking. His speech was normal with intact thought process and normal thought content. He denied hallucinations, bizarre delusions, and delusional beliefs. (Department Exhibit G-K)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant has depression, panic attacks, anxiety, and agoraphobia. These mental conditions have increased since the claimant stopped drinking. The claimant is currently being treated for his mental impairments at [REDACTED]. His GAFs have ranged from 40-50-59 in the past year. 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 has no car and his panic attacks. The claimant does cook two to three times a week, but he does forget ingredients. The claimant does grocery shop with his son once a month, but he does have a problem being in public. The claimant does clean his own home with no problem. The claimant doesn't do any outside work. His hobbies are doing crossword puzzles, sewing, and crocheting. The claimant felt that his condition has worsened in the past year because it more difficult to be in public and to leave the house. The claimant is currently not taking medication, but is in therapy as [REDACTED].

The claimant wakes up at 2:00 a.m. He cleans the house and watches TV or writes. The claimant goes to bed at 9:00 p.m. He has a hard time sleeping and takes no naps during the day.

The claimant did not have a problem walking, standing, sitting, or carrying weight. The claimant stated that his level of functioning on a scale of 1 to 10 without medication was a 2, but the claimant is currently not taking medication for his mental impairments.

The claimant smokes a half a pack of cigarettes a day. The claimant stopped drinking in May 2007 where he would have 15 beers a day. The claimant stopped smoking marijuana in 2006. The claimant stated that there was no work that he thought he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant's prior work was as a cook, which would put him in constant contact with the public and would be stressful as far as performance. With the claimant's current mental impairments, his performing as a cook in the national economy would be very difficult for him with his current level of mental impairment. However, the claimant should be able to perform simple, unskilled work that does not require extensive contact with the public. Therefore, the claimant is not 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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 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 he has depression, panic attacks, anxiety, and agoraphobia. The claimant is currently not taking medication but is in therapy with [REDACTED]

[REDACTED] The objective medical record documents the claimant would have a difficult time performing skilled, detailed work and having a job that would put him in constant contact with the public. (See analysis in Step 2.) However, the claimant should be able to perform simple, unskilled work that does not require extensive contact with the public. As a result, there is sufficient medical evidence of a mental impairment that that claimant is unable to perform skilled, detailed work, but the claimant should be able to perform simple, unskilled work.

At Step 5, the claimant should be able to meet the physical requirements of medium work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a closely approaching advanced individual, with a high school education, and a skilled work history, who is limited to medium work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 203.21. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression, panic attacks, anxiety, and agoraphobia. 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 simple, unskilled, medium 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 simple, unskilled, medium 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: July 22, 2009

Date Mailed: July 22, 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:

