

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: 2008-27045

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 14, 2009

Jackson 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, an in-person hearing was held on Wednesday, January 14, 2009. The claimant personally appeared and testified with his authorized representative, [REDACTED]

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA-P), retroactive 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 November 15, 2007, the claimant applied for MA-P and SDA with a retroactive MA-P application to August 2007.

(2) On April 30, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive 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 May 5, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On July 29, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On August 14, 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 alleging disability due to depression and hearing voices. He is a 36 year old and has a very limited education with a history of unskilled work. The claimant did not meet applicable Social Security listing 12.04, 12.03, and 12.06. The claimant is capable of performing other work that is unskilled under 20 CFR 426.968(a) under Vocational Rule 204.00 where drug and alcohol abuse is material per 20 CFR 416.935.

(6) During the hearing on January 14, 2009, 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 February 2, 2009 and forwarded to SHRT for review on February 6, 2009.

(7) On February 20, 2009, 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 depression and hearing voices. He is a 36 year old and has a very limited education with a

history of unskilled work. The claimant did not meet applicable Social Security listing 12.04, 12.03, and 12.06. The claimant is capable of performing other work that is unskilled under 20 CFR 426.968(a) under Vocational Rule 204.00 where drug and alcohol abuse is material per 20 CFR 416.935.

(8) The claimant is a 36 year-old man whose date of birth is [REDACTED]. The claimant is 5' 5" tall and weighs 234 pounds. The claimant stated that he has gained some weight but didn't know how much because of depression and eating and not wanting to go out. The claimant completed the 6th grade of school where he was special education. The claimant stated that he can read and write and can add and subtract, but not divide and multiply. The claimant has no pertinent work history.

(9) The claimant's alleged impairments are depression, mood disorder, and closed head injury.

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 no pertinent work history. 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’s treating psychiatrist submitted a mental residual functional capacity assessment for the claimant. The claimant was not markedly limited in any of the concentration areas. The treating psychiatrist’s remarks and comments were that the claimant had a long history of not working of about 17 years long with a history of substance abuse though he denies current use. The claimant also had a long history of aggressive behavior when drinking. The claimant would benefit from MRS occupational type training. (Claimant Exhibit 14-3 to 14-4)

On [REDACTED], the claimant’s treating psychiatrist completed a psychiatric/psychological examination report for the claimant. The claimant has not worked for 17 years. The claimant appears to do well independently in his daily functioning. The treating psychiatrist felt that the claimant could manage his benefit funds and that he would be treating the patient. (Claimant Exhibit 14-1 and 14-2)

On [REDACTED] the claimant’s treating physician completed an initial medical evaluation on the claimant. The claimant’s diagnosis was deferred until hospital records were received. The claimant was monitored for mood, thought, and adverse affect disorder. The claimant was encouraged to remain abstinent from street drugs and alcohol where he was encouraged to go to NA, AA, and MIDAA and to possibly have one-on-one therapy at

[REDACTED] The claimant was referred from [REDACTED] after being hospitalized two

times last month. The first hospitalization was where the claimant was not using medicine prior where he was hearing voices and wanting to hurt his girlfriend. The second hospitalization a week later was where the claimant was again hearing voices and stressed by his girlfriend who was causing trouble by using crack cocaine, which was something he was trying to give up. His medication was increased from his first hospitalization. The claimant dropped out of school in the 7th and 9th grade where he hasn't worked for 17 years and has supported himself through drugs. The claimant stated that he stopped using cocaine approximately eight months ago. The claimant denies ever using IV drugs. He denies using cannabis at this point in time where he states that he is a recovering alcoholic. The claimant last had a drink approximately five months ago. The claimant's mental status at this point in time was within normal limits. The claimant appeared in no distress. The claimant was nicely dressed and groomed with good eye contact, tone, and volume, as well as a good disposition. The claimant answered all questions without evidence of confusion and there was no abnormal theme content. The claimant reports auditory hallucinations, which he rates at approximately a two. The auditory hallucinations are not command in nature and do not cause any sense of agitation. (Claimant Exhibit B1-2)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's discharge diagnosis was alcohol dependence, alcohol withdrawal, major depressive disorder with psychotic symptoms. He was given a GAF of 35 to 40 which shows some impairment in reality testing or communications or major impairment in several areas such as work, school, or family relations, judgment, thinking, or mood. The claimant was calmer and pleasant after he got sober. He denied any suicidal or homicidal ideation. He stated that what he said was because of the alcohol, but he does not have any thought to harm himself or other people. He stated that he does not have anything to do with his girlfriend. The claimant

was pleasant and cooperative at discharge, alert and awake and oriented x3. His mood was good and affect was congruent with the mood. His thought processes were coherent where he denied hallucinations, delusions, suicidal or homicidal ideation. Speech was at normal rate and tone. Psychomotor was calm. Judgment and insight were fair. Cognition was intact. The claimant was advised to take medication as prescribed. The claimant was advised to stay sober and attend Alcoholics Anonymous and Narcotics Anonymous to get a sponsor. The claimant was to follow-up with his psychiatrist at [REDACTED] in one or two weeks. (Claimant Exhibit A1-2)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant was given a discharge diagnosis of major depressive disorder, recurrent, moderate, without psychotic features and personality disorder, not otherwise specified, with antisocial traits. The claimant was given a GAF of 45 which showed serious symptoms or any serious impairment in social, occupational, or school functioning. The claimant was admitted stating he was feeling depressed and having auditory and visual hallucinations where he was feeling upset because his girlfriend was relapsing and substance abuse. The claimant had some homicidal thoughts towards his girlfriend and having some command hallucinations to hurt her where he felt he needed to get help. The claimant was started on medication, which he tolerated well and showed improved symptoms during his stay. He experienced a decrease in the frequency of voices and was not distressed by them. The voices were no longer command hallucinations anymore. (Department Exhibit 57-59)

On [REDACTED], the claimant's treating psychiatrist at [REDACTED] submitted a psychiatric evaluation where the claimant was admitted to [REDACTED] on [REDACTED] and discharged on [REDACTED]. The claimant was given a diagnosis of mood disorder, NOS, cocaine dependence, history of alcohol and cannabis dependence, and substance induced mood

disorder. The claimant was alert and oriented x3 with appropriate affect and pleasant mood. The claimant denied depression and any desire to hurt self or others. The claimant's speech was normal in tone and content with logical thought processes and goal directed. The claimant denied any auditory or visual hallucinations or desire to hurt himself or others. The claimant was not delusional with judgment and insight not impaired. The claimant's abstraction and general knowledge are lower because of not much education. The claimant was given a GAF of 50 which showed serious symptoms or any serious impairment in social, occupational, or school functioning. (Department Exhibit 54-56)

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 a history of drug and alcohol abuse where he has been trying to get clean with limited success requiring several hospitalizations and psychiatric treatment. 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 not have a driver's license and does not drive as the result of a DUI. The claimant does not cook because he forgets and burns things and there is an issue with his wrist, but he felt he was physically able to cook. The claimant grocery shops once a month with his mom and girlfriend where he leans on the cart for support. The claimant cleans his own home even though he has to sit when he washes dishes. The claimant doesn't do any outside work and his hobby is watching TV. The claimant felt that his condition has worsened in the past year because of his medication switch. The claimant stated that he is currently taking medication for his mental impairment and in therapy.

The claimant wakes up between 6:00 a.m. and 7:30 a.m. He talks to his girlfriend. He watches TV. He helps fix the meals. The claimant takes his meds. His mom visits or he visits his mom. He does errands with his mother. He goes to bed between 1:00 a.m. to 2:00 a.m.

The claimant felt that he could walk equal to one block. He did not know how long he could stand. He didn't have a problem sitting. The heaviest weight he felt he could carry was 5 pounds. His level of pain on a scale of 1 to 10 without medication was an 8 to 10 that decreases to a 6 with medication. The claimant does not smoke, where he stopped. The claimant does not drink, where he is a recovering alcoholic. He stopped drinking [REDACTED]. The claimant stopped doing drugs according to his testimony 20 years ago where before he did marijuana and LSD. The claimant didn't think that there was any work that he could do.

This Administrative Law Judge finds that the claimant has not established that he cannot perform any work. The claimant has no pertinent employment history during the past 17 years.

The claimant has drug and alcohol substance abuse issues that he is currently receiving mental health treatment for. 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 your 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 testified that he has depression, mood disorder, and closed head injury. The claimant is currently being tested for drug and alcohol abuse where his GAF ranged from 35 to 50. The claimant had a long history of alcohol and drug abuse where he is currently being treated for his mental impairments where he was hearing voices and needed to have several hospitalizations as discussed and analyzed in Step 2. Once the claimant was sober,

the claimant was no longer mentally impaired, but seemed to have a hard time staying off alcohol and illegal substances. Based upon the claimant's medical report, it has been documented that the claimant's use of alcohol and illegal substances has contributed to his problems and affects his ability to work.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

The claimant does not meet the statutory disability decision under the authority of the DA&A legislation. The claimant's past substance abuse is material to his not being eligible for MA. The claimant is currently being treated for his mental impairment and substance and alcohol abuse. Therefore, the claimant does not meet the standard for disability for MA-P or retroactive MA-P.

At Step 5, the claimant should be able to meet the physical requirements of medium work, based upon his physical abilities. Under the Medical-Vocational guidelines, a younger

individual, with a limited or less education, who is limited to medium work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 203.25. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as alcohol dependence, alcohol withdrawal, or major depressive disorder with psychotic symptoms. 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 mental impairments, the Administrative Law Judge finds that the claimant does not meet the standard of disability because his past substance abuse is material to his not being eligible for MA.

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's past substance and alcohol abuse are material to his not being eligible. 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: April 8, 2009

Date Mailed: April 8, 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:

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