

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: 2008-27841

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 30, 2008

St. Clair 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 Tuesday, September 30, 2008. The claimant personally appeared and testified with her authorized representative, [REDACTED].

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 March 6, 2008, the claimant applied for MA-P and SDA with retroactive MA-P to December 2007.

(2) On June 14, 2008, 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 per 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 July 3, 2008, the department caseworker sent the claimant a notice that her application was denied.

(4) On July 30, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On August 21, 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:

There is no evidence of a brain tumor, but the claimant did have stenting and coiling of a brain aneurysm. She also had a cerebral artery infarct with occlusion of the right carotid artery and stenting of the carotid. On exam in [REDACTED] her gait was steady. The claimant had some weakness of the right grip and right upper extremity, but her exam was basically otherwise unremarkable. The claimant would be able to do simple, unskilled, light work.

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 light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile (closely approaching advanced age at 51, limited education, and an unskilled work history), MA-P is denied using Vocational Rule 202.10 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(6) During the hearing on September 30, 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 and March 25, 2009 forwarded to SHRT for review on March 30, 2009.

(7) On April 15, 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 a 52 year old with 11 years of education and an unskilled work history. The claimant is alleging disability due to a brain tumor. The claimant did not meet applicable Social Security Listings 11.01, 12.01, and 13.01. The claimant is capable of performing other work that is light per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a). The claimant retains the residual functional capacity to perform at least light work.

(8) The claimant is a 52 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 1" tall and weighs 129 pounds. The claimant has gained 10 pounds in the past year because she stopped smoking. The claimant completed the 11th grade of high school. The claimant can read and write, but cannot do basic math. The claimant was last employed as a babysitter in April 2008. The claimant has also been a maintenance worker and bagger.

(9) The claimant's alleged impairments are brain aneurysm and right-sided stroke in March 2008.

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 April 2008. 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 neurologist submitted a Medical Examination Report, DHS-49, for the claimant. The claimant’s current diagnosis was a brain aneurysm S/P only, carotid stent and S/P stent-stile. The claimant had a normal physical examination except neurologically the treating neurologist cited see above. (Department Exhibit C)

The claimant’s treating neurologist’s clinical impression was the claimant was stable with limitations that were expected to last more than 90 days. The claimant could occasionally lift less than 10 pounds, but never 10 pounds. The claimant could stand and/or walk less than two hours of an eight hour workday. There were no assistive devices medically required or needed for ambulation. The claimant could use both hands/arms and feet/legs for repetitive action. The

claimant had no mental limitations. In addition, she could meet her needs in the home.

(Department Exhibit D)

On [REDACTED], the claimant was seen by an independent medical examiner for an internist evaluation at the [REDACTED]. The independent medical examiner's diagnosis and impression was weakness of the right side secondary to an old CVS involving the right side. The claimant had a carotid artery occlusion bilateral, left more than right, status post stent placement of the left carotid artery, and history of a cerebro aneurysm's x2 status post capping. The claimant was also diagnosed with hypertension, anemia, dyslipidemia, and constipation. The claimant's main problem appears to be some weakness of her right-sided extremity. CT and MRI scans have revealed that the claimant had two cerebro aneurysms around the brainstem area as well as evidence of an old infarct. In the course of capping these aneurysms, it would found that the claimant had a 70% occlusion of her right carotid artery and a 100% occlusion of her left carotid artery. From history, it appears that the claimant has had angioplasty with stent placement of the left carotid artery where the stent had slipped and the claimant ended up with what appears to be a cerebrovascular accident involving her upper right extremity and her right face. The stent had to be removed and reapplied. Since then, the claimant has regained most of the power in her right upper extremity. She does not have any more facial deformity at this time except minimally. The claimant still has some appreciable mild weakness of her right upper extremity. The claimant is right-handed, but has fairly good grip strength and is able to hold things without difficulty, but her handwriting still seemed to be disheveled which apparently it was not before. The claimant also has anemia for which she is taking iron supplements. The claimant also has hypertension for which she is on medication and her blood pressure which seems to be fairly well controlled with the present regimen. The claimant also has dyslipidemia. During the

physical examination, the claimant was alert and awake being oriented to time, place, and person. The claimant appeared in be in acute distress. The claimant was pleasant and cooperative during the examination. The claimant ambulated into the examination room with a steady gait and did not use any walking aid for ambulation. The claimant was able to get off and on the examination table without difficulty. While filling out the questionnaire form, it was noted that the claimant's handwriting was very erratic. There was no shortness of breath or audible wheeze. (Department Exhibit 33-35)

On [REDACTED], the claimant was admitted to [REDACTED] for internal carotid artery stenosis with a discharge date of [REDACTED]. The claimant's secondary diagnosis was hypertension, left middle cerebral artery infarct, left internal carotid artery stenosis, and basilar artery aneurysm status post coiling. The claimant had a left ICA stent retrieval and left ICA stenting on [REDACTED]. The right stent had migrated proximally and she was scheduled for a placement of stent and retrieval of old stent. The claimant went to ICU after the procedure where she had no neurological deficits, was hemodynamically stable, and remained monitored in the ICU. The claimant's hypertension and pain were well controlled. The claimant's groin incision remained clean, dry, and intact without hematoma. (Department Exhibit 4-6)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED] with a diagnosis of acute stroke in the left middle cerebral artery with a secondary diagnosis of basilar aneurysm post status coiling and post status stenting of the left side internal carotid artery and hypertension. The claimant's discharge diagnosis was acute stroke in the left middle cerebral artery. The claimant was admitted to [REDACTED] with new onset aphasic and right-sided weakness. On admit to neuro ICU, the claimant had a

MRI done which showed a new onset left-sided MCA and acute stroke. An angiogram test showed left internal carotid stenosis and also with proximal migration of the stenting device with a mild to moderate degree of stenosis of the left MCA territory and ACA and the internal carotid artery. After being treated, the claimant's symptoms significantly improved and she was transferred to the regular floor. The claimant's condition on discharge was stable. (Claimant Exhibit 1-3)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's principal diagnosis was severe left cervical ICA stenosis of 95% and h/o rMCA CVA s/p rICA occlusion with right basilar fenestration aneurysm (2x2 mm) and right AICXA-PICA aneurysm (6x5 mm). The claimant's secondary diagnosis was status post cerebrovascular accident and hypertension. The claimant had left carotid stenosis with four vessel cerebral angiogram with stenting of the left internal carotid artery on [REDACTED]. On [REDACTED], right AICA-PICA and basilar fenestration aneurysm neuroform stent coiling posterior, tobacco use, and substance abuse. The MRI noted a brain basilar aneurysm where the claimant complained of left upper extremity weakness and did suffer a stroke in the remote past. The claimant does have underlying hypertension. The claimant underwent the procedures without complications. The claimant's condition on discharge was good. (Department Exhibit 24-25)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant had two brain aneurysms that required stenting in [REDACTED]. In [REDACTED], the claimant underwent a left stent retrieval and stent replacement because her stent moved. The claimant's treating neurologist said she has no mental impairments and can use her extremities for repetitive action, but limited her

to less than 10 pounds in weight. The independent medical examiner on [REDACTED] stated that the claimant does still have some weakness of her right upper extremities, but has fairly good grip strength and is able to hold things without difficulty. However, her handwriting still seems to be disheveled. 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. The claimant does not cook because she forgets and burns things twice a week. The claimant grocery shops with her mom, but gets tired easy. The claimant does not clean her own home, do any outside work, or have any hobbies. The claimant felt that her condition has worsened in the past year because her right side has gotten weaker and she still

has headaches. The claimant stated that she has depression where she is taking medication, but not in therapy.

The claimant wakes up at 8:00 a.m. She watches TV. She washes the dishes. She listens to the radio. She takes a 30-minute nap. She eats and gets ready for bed at 10:00 p.m.

The claimant felt that she could walk a half a block. The longest she felt she could stand was 5 minutes. The claimant did not have a problem sitting. The heaviest weight she felt she could carry was 1 pound. The claimant stated that her level of pain on a scale of 1 to 10 without medication was a 20, but does not change with medication.

The claimant stopped smoking in April 2008 where before she would smoke one and a half pack a day. The claimant socially drinks alcohol. The claimant does not or has ever taken any illegal or illicit drugs. The claimant stated that there was no work that she thought she could do.

This Administrative Law Judge finds that the claimant has not established that she cannot perform any of her prior work. The claimant could still be a maintenance worker at the light level as performed in the national economy. The claimant does have some right-sided weakness, but she does have good grip strength and her gait was steady. The claimant would be unable to be a babysitter taking care of younger children and a bagger because of having to lift heavy bags. 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.

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

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

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

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

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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

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

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

The claimant has submitted insufficient evidence that 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 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 has depression where she is taking medication, but not in therapy. The claimant's treating neurologist stated that she had no mental limitations on [REDACTED]. The independent medical examination on [REDACTED] stated that she was oriented to time, place, and person with good memory. 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. As a result of the claimant's stroke and aneurysms, she still has slight right-sided weakness and her handwriting is still disheveled, which would result in the claimant being capable of performing simple, unskilled work.

At Step 5, the claimant should be able to meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a closely approaching advanced age individual, with a limited or less education and an unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P,

Appendix 2, Rule 202.10. 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 simple, unskilled, 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 simple, unskilled, light 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 29, 2009

Date Mailed: July 29, 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:

