

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: 2008-6488

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 1, 2008

Shiawassee 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, July 1, 2008. 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) and retroactive Medical Assistance?

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 25, 2007, the claimant applied for MA-P and retroactive MA-P to April 2007.

(2) On October 2, 2007, 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.

(3) On October 4, 2007, the department caseworker sent the claimant a notice that his application was denied.

(4) On October 9, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On January 31, 2008, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P eligibility for the claimant. The SHRT report reads in part:

Additional medical information is needed for current functioning capacity. The level of functional restrictions from the depression, heart, breathing, and back problems need to be evaluated.

MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P was reviewed and denied. Additional medical information was requested to assess the severity of the claimant's impairments with an independent consultative psychiatric examination, not by the treating doctor and an independent consultative physical examination, not by the treating doctor, and pulmonary function study.

(6) During the hearing on July 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 September 2, 2008 and forwarded to SHRT for review on September 25, 2008.

(7) On October 1, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and retroactive MA-P. The SHRT report reads in part:

The claimant is 49 years old with 12 years or more of education and a skilled/semi-skilled work history. The claimant is alleging disability due to sleep apnea, asthma, chest pain, coronary artery disease, back pain, and depression. The claimant did not meet applicable Social Security Listings 12.02, 3.01, 4.02, 4.04, 1.02, and 1.04. The denial is based on insufficient evidence where the department is required to obtain an independent physical consultative examination in narrative form by an internist that is not the treating physician and a pulmonary function study.

(8) Subsequently, additional medical information was received from the local office on October 31, 2008 and forwarded to SHRT for review on November 21, 2008.

(9) On December 2, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and retroactive MA-P. The SHRT report reads in part:

The claimant is alleging disability due to back pain, coronary artery disease, asthma, sleep apnea, and depression. The claimant is 49 years old with 13 years of education and a history of semi-skilled/skilled work. The claimant did not meet applicable Social Security Listings 1.02, 1.04, 4.04, 3.03, 12.04, 12.06, 12.08, and 12.09. The claimant is capable of performing other work that is sedentary work per 20 CFR 416.967(a), light work per 20 CFR 416.967(b), medium work per 20 CFR 416.967(c), and unskilled work per 20 CFR 416.968(a), under Vocational Rules 203.29, 202.21, and 201.28. This may be consistent with past relevant work. However, there is no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work as a denial to other work based on a Vocational Rule will be used.

(10) The claimant is a 49 year-old man whose date of birth is [REDACTED]. The claimant is 5' 10-1/2" tall and weighs 212 pounds. The claimant has gained 25 pounds in the past year. The claimant has a high school diploma and one year of college. The claimant stated that he can read and write and do basic math. The claimant was last employed as a computer repairman in 2001 which was performed at the sedentary level. The claimant has previously been employed as a plumber at the heavy level of work and a welder also at the heavy level of work.

(11) The claimant's alleged impairments are depression, anxiety, sleep apnea, asthma, GERD, coronary artery disease, chest pain, back pain, COPD, and degenerative disc disease.

CONCLUSIONS OF LAW

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 2001. 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 examination by an independent medical consultant at [REDACTED]. The independent medical examiner’s assessment was history of atherosclerotic heart disease, myocardial infarction, stents times two, episodic angina, along with cardiac risk factors which include hyperlipidemia, hypertension, a 30-pack per year history of smoking, and a family history of early heart disease. The claimant has a long history of lumbar degenerative disc disease, chronic

pain issues, which are being managed with TENS, non-steroidals, and muscle relaxants. The claimant has chronic obstructive pulmonary disease. The claimant is being treated for restless leg syndrome, GERD, sleep apnea with a CPAP machine, and chronic depression where he denies any suicidal or psychotic ideation. The claimant had a normal physical examination. The independent medical consultant did note that musculoskeletally that the claimant had central mid lumbar tenderness. The claimant had forward flexion to roughly 50 degrees, backward extension to 10 degrees, right and left rotation to 15 degrees, all of which was done with discomfort. The claimant advised that he could not heel-toe and tandem. The claimant was able to get in and out of a chair and on and off the exam table without assistance. The claimant preferred to sit with his legs folded under him as he stated it gives him some relieve from back pain. The claimant's gait was slow, but not antalgic. It does not appear necessary that the claimant use an assistive ambulatory device although the claimant does walk quite slowly. (Department Exhibit E-H)

On [REDACTED], the claimant was given an independent medical psychological evaluation by an independent medical consultant licensed psychologist at [REDACTED]. The claimant was diagnosed with major depressive disorder, recurrent, alcohol dependence in full remission, polysubstance dependence in full remission, and personality disorder, with mixed features. The claimant was given a GAF of 55. The claimant would be able to manage his own funds, but his prognosis was guarded. The claimant did not exhibit evidence of hallucinations, delusions, or obsessions. The claimant did state he had severe suicidal thoughts and impulses in the past, but currently he has fleeting suicidal thoughts, but no suicidal intent. The claimant did not exhibit evidence of illogical, bizarre, or circumstantial ideation. There was no evidence of a thought disorder. The claimant was oriented to time, place, and person. The claimant had appropriate memory, information, calculation, and average abstract

reasoning. The claimant had normal similarities and differences and average capabilities for social judgment and comprehension. (Department Exhibit A-D)

On [REDACTED], the claimant was seen at [REDACTED] for low back pain of 12 years duration. The claimant was oriented to time, place, and person. The claimant was pleasant. The claimant's pain was a 3 over 10 pain score. Tenderness was noted over the middle of the back over the L4-L5 and S1 intraspinous processes. The emergency room physician's impression was chronic low back pain of 12 years duration, myofascial pain disorder, lumbar degenerative disc disease, and facet arthropathy. There were no radicular symptoms and no neuropathic components of the pain. As a result, the pain appeared mostly to be either facet arthropathy or myofascial in nature. (Department Exhibit B1-B4)

On [REDACTED], the claimant was given a CT of the head without contrast at [REDACTED] with a comparison to a prior exam dated [REDACTED]. The claimant had a clinical history of slurred speech, confusion, and weakness. The radiologist's conclusion was tiny region of decreased attenuation in the inferior aspect of right lentiform nucleus of the basal ganglia, which could represent a tiny lacunar infarct. This was definitely not identified on prior exam. There was no acute intra or extra-axial hemorrhage or space occupying mass lesion identified. (Department Exhibit A3-A4)

On [REDACTED], the claimant was given an EKG at [REDACTED] that showed normal sinus rhythm and early transition with normal tracing. (Department Exhibit A5)

On [REDACTED], the claimant was given an Adenosine cardiovascular stress test at the [REDACTED]. The radiologist's impression was a negative response to IV Adenosine with no remarkable ECG changes. (Department Exhibit 8-9)

On [REDACTED], the claimant was given a myocardial perfusion scintigraphy at the [REDACTED]. The radiologist's impression was a normal first pass RNA without wall motion abnormalities. The left ventricular ejection fraction was calculated at 51% with normal wall motion. The radiologist's impression was normal perfusion imaging and normal functional imaging. (Department Exhibit 10-11)

On [REDACTED], the claimant's treating sleep specialist submitted a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined in [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment and chief complaint of fatigue, snoring, asthma, hypopnea, leg jerking, shortness of breath, wheezing, and cough. The claimant's current diagnosis was asthma, mild obstructive sleep apnea, insomnia, and PLMD. The claimant had a normal physical examination. Respiratorally, the treating specialist noted that the claimant had shortness of breath, chest tightness, wheezing, and a dry cough. (Department Exhibit 26)

The claimant's treating specialist's clinical impression was that the claimant was stable with limitations that were expected to last more than 90 days. The claimant was limited with lifting and carrying due to asthma of frequently less than 10 pounds, occasionally 10 pounds, but never 20 pounds. There 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 limitation and could meet his needs in the home. (Department Exhibit 27)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. 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 because of it was suspended license for drunk driving 11 years ago. The claimant cooks once a week. The claimant grocery shops once a week with no problem, where he leans against the cart. The claimant does clean his own home by doing minor chores and he cleans his bedroom and picks up. The claimant doesn't do any outside work because of his back and shortness of breath. His hobbies are playing music on the guitar and pool occasionally. The claimant felt that his condition has worsened in the past year because everything is less doable. The claimant stated that for his depression he is taking medication and in therapy with [REDACTED]. The claimant stated he is taking no medications for pain because he is a recovering addict.

The claimant wakes up at 10:00 a.m. He lies in bed for a half an hour to get it together. He reads and watches TV. He plays with the kids to keep occupied. He tinkers on the computer. He fixes dinner in the slow cooker. He plays his guitar and pool part-time. He uses the computer to surf and read the news and plays computer games. He attends [REDACTED] three times a week. He goes to bed between 9:00 to 10:00 p.m.

The claimant stated that he could walk three blocks. The longest he felt he could stand was 30-45 minutes. The longest he felt he could sit was 60 minutes. The claimant stated he could lift less than 10 pounds. The claimant stated that his level of pain on a scale of 1 to 10 without medication was a 4/6, where the claimant is not taking any medications because he is a recovering addict. The claimant stopped smoking in 2003 where before he would smoke one to two packs of cigarettes a day. The claimant stopped drinking alcohol two years ago where before he would drink a lot. The claimant stopped doing marijuana, cocaine, and speed in November 2007. The claimant did not think that there was any work that he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant was employed as a plumber and welder at the heavy level, which the claimant may have a hard time performing with his degenerative disc disease. The claimant was also employed as a computer repairman, which is a sedentary job, which the claimant may be able to perform if it is a sedentary job. However, if he has to bend and lift and tote the computers, the claimant would not be able to perform that job. 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).

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

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

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

In the instant case, the claimant stated that he has depression and anxiety. The claimant stated he is taking medication and in therapy with [REDACTED]. The claimant underwent an independent psychological examination on [REDACTED] where the claimant was diagnosed with major depressive disorder and personality disorder with mixed features with alcohol and polysubstance dependence in full remission. The claimant was given a GAF of 55. As a result, there is sufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from performing 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 light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual, with a high school education and more, and a skilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.20. The

Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression and anxiety. 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P. 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 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.

2008-6488/CGF

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:

