

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: 2008-6722

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 26, 2008

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on Tuesday, February 26, 2008. The claimant personally appeared and testified on his own behalf.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) On July 11, 2007, the claimant applied for MA-P and SDA without filing an application for retroactive MA-P.

(2) On August 31, 2007, the Medical Review Team (MRT) denied the claimant's application for MA-P stating that the claimant's impairments lack duration of 12 months per 20 CFR 416.909 and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On September 12, 2007, the department caseworker sent the claimant a notice that his application was denied.

(4) On September 28, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On January 29, 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:

Additional medical information is needed for current functional capacity. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P was reviewed and denied. SDA is denied per PEM 261. A complete independent (not by the treating physician) consultative physical examination in narrative form by an internist and copy of progress notes and test records from the treating hematologist are to be submitted.

(6) During the hearing on February 26, 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 April 2, 2008 and April 3, 2008 and forwarded to SHRT for review on April 14, 2008.

(7) On April 18, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA. The SHRT report reads in part:

A consultative examination was purchased at [REDACTED] on [REDACTED]. Only one page of this exam was submitted to SHRT. The entire examination is necessary for a proper evaluation. Send the complete [REDACTED] consultative examination to SHRT. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the information in file is inadequate to ascertain whether the claimant is or would be disabled for 90 days.

(8) The claimant is a 40 year-old man whose date of birth is [REDACTED]. The claimant is 5' 11" tall and weighs 194 pounds. The claimant has gained 20 pounds in the past year where he "just did". The claimant has a high school diploma where he was special education in Math and English. The claimant can read and write and do basic math. The claimant was last employed November 2006 as a heating and cooling installer at the heavy level. The claimant has also been an inspector at the medium level, armored car driver at the heavy level, deliveryman at the heavy level, carpenter apprentice, and laborer.

(9) The claimant's alleged impairments are a stroke in [REDACTED], seizure disorder, kidney infarction, and protein deficiency.

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 November 2006. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities means, the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;

- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant was seen by an independent medical consultant at [REDACTED]. The independent medical examiner’s diagnosis and impression was hypercoagulability due to deficiency of protein S. The claimant has a past history of myocardial infarction due to thrombosis of left anterior descending, associated with left ventricular dysfunction, due to the fact claimant has a S3 gallop and also gets shortness of breath with exertion. The claimant had high blood pressure where his pressure was 130/94 and was advised to refer to his own physician for follow-up. The claimant has a history of CVA on the right side, right hemisphere, with monoplegia of the left upper limb, which has improved to some degree. The claimant has a history of seizure disorder under good control with Coumadin, where he has been seizure free since 2001. The claimant has hyperlipidemia where he is under treatment at this time with Zocor. The claimant has been dyslexic all his life and also has weakness and loss of dexterity of the left upper limb, which apparently prevents him from working. The claimant’s

pulse was 72 beats per minute where he had regular rhythm in the apex and left sternal border. S3 gallop was heard on both sides, which may be indicative of left ventricular dysfunction. Claimant's respiration was 16 where he has vesicular sounds and percussion of the lungs was normal. Hand grip was remarkably weak on the left upper limb and left hand. In the upper limbs, radial reflexes could not be elicited on both sides. (Department Exhibit A-D)

On [REDACTED], the claimant's treating specialist submitted a letter on his behalf that the claimant had severe thrombophilia. In [REDACTED], the claimant was found to have evidence of acute cerebrovascular accident and an infarction of the left frontal parietal region of his brain. In addition, the claimant has a large left ventricular thrombus in his heart and he has extensive thrombosis through the inferior vena cava. Further workup has indicated that he has thrombosis through his superior mesenteric artery and right common iliac vein. The claimant has a protein S deficiency with extensive known thrombosis throughout his heart, inferior vena cava and superior mesenteric artery. (Claimant Exhibit 1)

On [REDACTED], the claimant's treating specialist submitted a Medical Examination Report, DHS-49, on the claimant's behalf. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment and chief complaint of thrombophilia post CVA, extensive thrombi in the right common iliac vein, left vent, inferior vena cava and superior mesenteric artery. The claimant's current diagnosis is thrombophilia, which is a coagulation defect. The claimant had a normal physical examination except the treating specialist noted left-sided weakness post CVA. Laboratory and x-ray findings showed CT of the brain positive infarction of the right frontal parietal region, carotid Doppler showed 6% stenosis on the right. MRI showed acute infarction involving right middle cerebral artery. (Department Exhibit 23)

The treating specialist's clinical impression was the claimant was stable with limitations that were expected to last more than 90 days of left-sided weakness. 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 needed or required for ambulation. The claimant could use his left hand for pushing/pulling and fine manipulation, but neither for simple grasping and reaching and neither feet/legs for operating foot/leg controls. The medical findings that support the above physical limitation was left-sided weakness post CVA. The claimant had no mental limitations and he could meet his needs in the home. (Department Exhibit 24)

On [REDACTED], the claimant's treating physician completed 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 with a current diagnosis of heart attack, protein S deficiency, seizure disorder, and kidney infarction. The claimant had a normal physical examination except that the treating physician noted that cardiovascularly the claimant had DVT and thrombosis with a seizure in 2003. (Department Exhibit 9)

The treating physician's clinical impression what the claimant was stable with limitations that were expected to last more than 90 days. The claimant could frequently lift less than 10 pounds, could occasionally lift 10 pounds, but never 20 pounds. The claimant could stand and/or walk at least two hours in an eight-hour workday. There were no assistive devices medically needed or required for ambulation. The claimant could use both hands/arms for simple grasping, reaching, pushing/pulling, but neither for fine manipulation. The claimant could use both feet/legs for repetitive action. The medical findings that support the above physical limitation

were that the claimant has had a heart attack, suffers with seizure disorder, and protein S deficiency. The claimant had no mental limitations and he could meet his needs in the home.

(Department Exhibit 9A)

On [REDACTED], the claimant's treating specialist completed a Medical Needs form, DHS-54A, on behalf of the claimant. The claimant had a diagnosis of coagulopathy which was a chronic ongoing illness. The number of clinic visits was three times per month if the condition warrants as needed. Medical treatment will be required for a lifetime. The claimant was ambulatory, did not need special transportation, or anyone to accompany him to his medical appointment. The claimant needed assistance with dressing and meal preparation. The claimant needed complex care services of range of motion. The claimant could not work his usual occupation or any job until June 2008. (Department Exhibit 11)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant was admitted with evidence of left arm weakness where he was found to have evidence of a CVA. The claimant has a known history of left ventricular thrombosis and inferior vena cava thrombosis. The claimant had a prior myocardial infarction at the age of 36. The claimant was discharged with Coumadin to follow-up with his treating physician and was stable at discharge. (Department Exhibit 4-5)

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 has a driver's license and does drive with no problem. The claimant cooks once or twice a week, but has a problem opening cans where his hands don't work to pull the tab. The claimant grocery shops once a week with no problem. The claimant cleans his own home with no problem by vacuuming and dusting. The claimant occasionally does outside work of cutting the grass and shoveling snow. The claimant's hobbies are hunting and fishing. The claimant felt that his condition has worsened in the past year because of the stroke where he lost dexterity in his left hand. The claimant stated that he had no mental impairments.

The claimant wakes up between 9:00 a.m. to 12:00 noon. He showers and shaves. He cooks something to eat. He takes care of the household. He watches TV and reads the newspaper. He goes to bed between 10:00 p.m. to 2:30 a.m.

The claimant felt that he could walk one mile. The longest he felt he could stand was 30 minutes. The claimant didn't have a problem sitting. The heaviest weight he felt he could carry was 25 pounds. The claimant is right-handed because his left hand is impaired from the stroke. The claimant stopped smoking in 2004 where before he smoked a pack of cigarettes a day. The claimant drinks two to three beers on Saturdays. The claimant does not or has ever taken illegal or illicit drugs. The claimant stated that there was no work that he thought he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant was previously employed as a heating and cooling installer, inspector, armored car driver, deliveryman, carpenter apprentice, and laborer, which would require him to have the use of both hands and since the stroke his left hand has diminished dexterity and ability. As a result, the claimant would have difficulty performing those past jobs that were at the heavy to medium level. 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).

The claimant has submitted sufficient 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.

At Step 5, the claimant cannot meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual, a high school education, with a skilled and unskilled work history, who is limited to light work, is considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.22. 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 cannot perform a wide range of light activities and that the claimant does meet the definition of disabled under the MA program. The claimant is eligible for MA based on his application on June 11, 2007 with a medical review in September 2011.

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 meet the definition of disabled under the MA program and because the evidence in the record does establish that the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for SDA with a medical review in September 2011.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not 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 cannot perform any level of light work. The department has not established its case by a preponderance of the evidence.

Accordingly, the department's decision is **REVERSED**. The claimant is eligible for MA and SDA based on his June 11, 2007 application with a medical review required in September 2011.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 14, 2009

Date Mailed: August 14, 2009

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

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:

A large black rectangular redaction box covers the names and contact information of the individuals listed in the 'cc:' field.