

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: 2008-21399

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 24, 2008

Lenawee 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 Thursday, July 24, 2008. The claimant was present with her authorized representative, [REDACTED] and the claimant's daughter, [REDACTED] as a witness.

ISSUE

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

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 February 29, 2008, the claimant applied for MA-P and retroactive MA-P to November 2007.

(2) On April 15, 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 under Medical-Vocational Grid Rule 202.15 per 20 CFR 416.920(f).

(3) On April 18, 2008, the department caseworker sent the claimant a notice that her application was denied.

(4) On May 27, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On June 25, 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:

The claimant is alleging disability due to multiple sclerosis. The claimant is 51 years old and has a high school education with no reported work history. The claimant did not meet applicable Social Security Listing 11.09. The claimant was denied based on insufficient evidence. Additional medical information is suggested to assess the severity of the claimant's impairments. Please obtain a complete physical examination, but a licensed physician (M.D. or D.O.), emeritus format to include the following as listed in the SHRT decision. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P was considered in this case and is also denied.

(6) During the hearing on July 24, 2008, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on November 6, 2008 and December 10, 2008 and forwarded to SHRT for review on December 19, 2008.

(7) On December 23, 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 psychologist indicated the mental residual functional capacity was limited by MS symptoms, lesions in brain, chronic fatigue, numbness, weakness, pain, vertigo, and memory that may be significantly impaired when she is not rested. However, most of these are actually physical limitations which the psychologist would not be qualified to evaluate. The claimant was depressed and had a flat affect, but there was no evidence of a thought disorder. The claimant was hyperreflexic and had some mild weakness in the hip flexors and hamstrings. She walked with a wide base, stiff and somewhat ataxic gait. However, she had a recent leg fracture. Based on the collective objective medical evidence in file, the claimant would be able to do simple, unskilled, light work. It is likely, the claimant could return to her past work as a clerical assistant. However, in lieu of detailed work history, the claimant will be returned to other 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 simple, unskilled, 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, high school education, and history of working as a paramedic and clerical assistant), MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied.

(8) The claimant is a 51 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 3" tall and weighs 186 pounds. The claimant has lost 20 pounds in the past year because she doesn't get angry and she forgets to eat. The claimant has a high school diploma and a Bachelor of Science in English. The claimant can read and write and do basic math. The claimant was last employed as a clerical assistant in March 2007 as the light level. Her pertinent work history is as a paramedic at the heavy level.

(9) The claimant's alleged impairments are multiple sclerosis, degenerative disc disease in the neck, left fractured leg and ankle in [REDACTED].

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 March 2007. Therefore, the claimant is not disqualified from receiving disability at Step 1.

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

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

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

On [REDACTED], the claimant was given a MRI of the brain without and with contrast. The radiologist’s impression was interval development and progression of multiple FLAIR hyperintense lesions within the bilateral hemispheres consistent with the patient’s history of multiple sclerosis. None of these lesions demonstrate restricted diffusion or enhancement. These findings were consistent with disease progression from lesions within the temporal lobes that appear stable whereas there were new lesions within the occipital lobes, left centrum semiovale posteriorly, and subcortical white matter within the right frontal and parietal lobes. In addition, there had been an interval increase in size of lesions within the left frontal and parietal

lobes. None of these lesions demonstrate restricted diffusion or arterial enhancement.

(Department Exhibit 5)

On [REDACTED], the claimant was seen for an independent medical psychological examination at [REDACTED]. The claimant was given a diagnosis of adjustment disorder with depressed mood. Her GAF was 49 with a prognosis of poor. According to the independent medical consultant, limited license psychologist and licensed psychologist, the claimant currently had the adequate capacity to manage her own benefit funds. The claimant arrived punctually for her scheduled appointment. She reported no weight changes. The claimant had good posture, but a slow gait. The claimant walked with the assistance of a walker/cane which she held in her right hand. The claimant was casually groomed and dressed. She stated that her memory was okay if she didn't get tired. She also keeps a lot of Post-It notes. The claimant reported no problems finding the location. The claimant demonstrated adequate contact with reality during the interview. The claimant did appear to be extremely focused on herself and her symptoms. The claimant denied hallucinations, persecutions, obsessions, thoughts controlled by others, and unusual powers. The claimant felt worthless because she can't contribute more to others. The claimant denied current intent or plan for suicidal behaviors. The claimant reported that she wakes up frequently during the night because she is going through menopause since this past year. The claimant stated that she has to go to the bathroom a lot. The claimant was tearful and presented with a flat affect and depressed mood. The claimant was oriented to time, person, and place. The claimant had appropriate memory, calculations, abstract thinking, similarities and differences, and judgment. (Department Exhibit 3-9)

On [REDACTED], the claimant was seen by her treating specialist. On physical examination, the claimant was pleasant, alert, and able to give adequate history with no apparent

stress. The claimant scored a 30/30 on the mini mental. Claimant had a normal physical except that her treating specialist noted bilateral optic disc pallor and right afferent pupillary defect. Strength was 5/5 throughout the bilateral upper extremities. However, in the lower extremity, she does have a mild hip flexor bilaterally, as well as mild hamstring weakness. Dorsiflexion was slightly weak in the left foot, but this may in part be due to the fact that she had a recent leg fracture which limited some of the more thorough examination. The claimant continues to be hyperreflexic with 3+ out of 4 reflexes throughout. Vibration sense is impaired in the lower extremities. Her gait was wide-based, stiff, and somewhat ataxic. She could not walk heels, toes, or tandem. The claimant has a history of relapsing and remitting multiple sclerosis. A proper evaluation was difficult to assess because the claimant had a recent leg fracture and deconditioning. However, the treating specialist felt that it was likely that the claimant was going into secondary progressive phase based on her gait examination and recent difficulties with balance and coordination. (Department Exhibit 2-4)

At Step 2, the objective medical evidence on the record indicates that the claimant has established that she has a severe impairment. The claimant has a history of multiple sclerosis as referenced by a MRI performed [REDACTED] that showed that the claimant's MS had progressed. However, the claimant's lesions did not demonstrate any restrictive diffusion or enhancement. The claimant's independent medical psychological evaluation performed on [REDACTED] did not show any serious thought disorder although the claimant was diagnosed with adjustment disorder with depressed mood. The claimant recently broke her leg, which is affecting her mobility. However, the claimant should be able to perform simple, unskilled, light work. Therefore, the claimant is not disqualified from receiving disability at Step

2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings; that the claimant does have a driver's license, but she rarely drives except for short distances with someone else because her peripheral vision is gone and she has a slow reaction time. The claimant does not cook because she has decreased dexterity and sensory issues. The claimant grocery shops with her son using the Amigo cart or wheelchair, but picks up nothing breakable. The claimant does not clean her own home because of her bad balance. She is able to fold laundry sitting down and taking breaks. The claimant does not do any outside work. Her hobby is watching reading. The claimant felt that her condition has worsened in the past year because she is getting dizzier, vision issues with her peripheral, balance issues, double vision, numbness, and leg muscle spasms. The

claimant testified that she is depressed where she is currently not taking medication or in therapy, but she was interested in a referral to [REDACTED] This Administrative Law Judge notes that there were no medical records submitted that showed that the claimant is participating with [REDACTED]

The claimant wakes up between 7:30 a.m. and 8:00 a.m. She has breakfast. She reads. She folds the laundry. She takes care of her personal needs. The claimant attends any appointments that she has during the day. She has lunch using plastic dishes. She takes two naps during the day for one hour. She sits with an ice vest on. She watches TV. The claimant goes to bed between 8:00 p.m. to 9:00 p.m.

The claimant felt that she could walk a foot and a half without assistance and with her cane/walker ten feet. The claimant felt she could stand zero minutes without assistance, but with a walker or a cane five minutes. The claimant did not have a problem sitting. The claimant did not think she could lift any weight. The claimant stated she was right handed. Her level of pain on a scale of 1 to 10 without medication was a 2, but she is currently not taking any medication for pain. The claimant does not smoke where she stopped smoking 24 years ago. The claimant drinks once a year, wine. The claimant is currently not taking or has ever taken 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 was previously employed as a clerical assistant at the light level. The claimant should be able to perform that level at work at the simple, unskilled level. The claimant was previously employed as a paramedic, which is her pertinent work history at the heavy level. With the claimant's MS issues she would have a difficult time performing heavy, strenuous work as required by a paramedic in highly stressful situations. However, the

claimant should be able to perform simple, unskilled light to sedentary work. The claimant's fractured leg and ankle occurred in [REDACTED], which she should be healing and her walk and stride should be improved. 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 your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

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

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

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or

standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

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

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 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 she has depression, but she is not in therapy or taking medication. The claimant was referred to [REDACTED] but no medical records were submitted. The claimant did undergo an independent medical psychological evaluation on [REDACTED], but there was no reported thought disorder portrayed and the claimant was diagnosed with adjustment disorder with depressed mood. She was given a GAF of 49 which shows serious symptoms or any serious impairment in social, occupational, or school functioning. Her prognosis was determined as poor by the independent medical examiner but she could manage

her own benefit funds. This Administrative Law Judge will give the claimant the benefit of the doubt, but she is still not receiving therapy or medication for her mental impairment which does not reflect an impairment that would prevent her from doing any work, but this Administrative Law Judge will limit the claimant to simple, unskilled light work. As a result, there is sufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from working at any job.

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 individual, with a high school education and more, and a skilled and unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.13. 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 claimant's past work was performed at the simple, unskilled, light level. Therefore, the claimant retains the capacity to perform her past relevant 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: April 13, 2009

Date Mailed: April 13, 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:

[REDACTED]