

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: 2008-29276

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 5, 2009

Alger 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 Thursday, February 5, 2009. The claimant personally appeared and testified with his mother, [REDACTED] and sister, [REDACTED] as witnesses.

ISSUE

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

FINDINGS OF FACT

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

(1) On April 7, 2008, the claimant applied for MA-P and SDA with retroactive MA-P to March 2008.

(2) On July 28, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant's impairment lacks 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 July 31, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On August 25, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On September 8, 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:

This young claimant suffered a stroke. He has made some improvement and had some recovery since his stroke. However, his condition would limit him to unskilled, sedentary work. Medical opinion was considered in light of CFR 416.927. The evidence in file does not demonstrate any other impairment that would pose a significant limitation.

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 unskilled, sedentary work. Therefore, based on the claimant's vocational profile (younger individual, high school education, and history of skilled work), MA-P is denied using Vocational Rule 201.21 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(6) During the hearing on February 5, 2009, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on May 7, 2009 and forwarded to SHRT for review on May 7, 2009.

(7) On May 29, 2009, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA. The SHRT report reads in part:

The claimant is alleging disability due to a stroke and depression. He is 31 years old and has a high school education with a history of skilled work. The claimant did not meet applicable Social Security listings found in CFR 404, Subpart P. The claimant is capable of performing other work that is light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) under Vocational Rule 201.27.

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 skilled work. Therefore, based on the claimant's vocational profile (younger individual with a high school education), MA-P is denied using Vocational Rule as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(8) The claimant is a 31 year-old man whose date of birth is [REDACTED]. The claimant is 5' 6" tall and weighs 170 pounds. The claimant has lost 25 pounds as a result of his hospitalization. The claimant has a high school diploma and three years of college. The claimant can read and write and do basic math. The claimant was last employed as a food prep and bartender in 2006.

(9) The claimant's alleged impairments are a stroke on [REDACTED] and hydrocephalous.

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 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 given an independent psychological evaluation by a licensed psychologist, [REDACTED]. The claimant was diagnosed with adjustment disorder with mixed anxiety and depressed mood, rule out marijuana dependence, and rule out

pathological gambling with a secondary diagnosis of narcissistic features and dependent features. The claimant was given a GAF of 42. His prognosis was fair to guarded. The claimant would benefit from receiving services from Michigan Rehabilitation Services (MRS). The claimant needs further evaluation and testing by a vocational counselor to explore education and employment options to determine which type of job skills he could master. His stroke has possibly affected his ability to complete tasks that have time limitations or that have a visual component and he needs close monitoring when beginning any new task. The independent medical examiner licensed psychologist recommended the claimant receive substance abuse counseling to assess and treat any addiction or compulsion issues. He remains at high risk for relapse or development of cross-addiction. The claimant would benefit from cognitive behavioral therapy to help manage his fears and anxiety and a motivational counseling style that would highlight his strength of being persistent in the face of discomfort that he was able to connect with in his years of running track and field. Supportive counseling would also be helpful to explore core issues of low self-esteem that underlie narcissistic and dependent personality features. The claimant should follow up with his primary care physician to explore his recent weight gain with increase in fatigue and sleeping. The claimant missed his first appointment where his mother called and rescheduled after the interviewer left a message at the claimant's home. The claimant appeared disheveled, with uncombed hair, ungroomed beard and unmatched clothes. The claimant was alert and upbeat. He appeared guarded and was vague in his answers with minimal eye contact; that changed toward the close of the interview where he elaborated more on his responses and appeared to answer questions with more thought. The claimant was currently functioning within the average range for verbal comprehension where his fund of information was quite strong and he was able to access remote knowledge regarding his

environment. There was a discrepancy between fluid and crystallized thought processes with specific weakness in tasks that were dependent on motor skills. A significant divergence such as this may be seen with individuals who have suffered a stroke or brain tumor of some kind. The claimant is functional within the superior range of work and memory where he had a superior ability to retain temporary information in his memory and then perform a mental manipulation of that information to produce a result. He was able to pay attention to the task at hand, concentrate, and use the skills of mental control and reasoning. The claimant was in the low-average range of processing speed that showed his cognitive ability was affected by his stroke or TBI. The claimant was in the mild range that showed there were some symptoms of an anxiety disorder present. His anxiety appeared to be transient and situational. The claimant's urine drug screen test was negative for most common drugs of abuse including marijuana. The claimant appears to be a young man who prior to his stroke was struggling to develop and manage normal life goals of education, career, and even basic independent living skills. His experience of having a stroke seems to have complicated his life even more and put him at an even greater distance from achieving these goals. He appears to have functioned adequately to his third year of college and even notes excelling in track and field because of his ability to persist in the face of tremendous discomfort. The claimant reports sporadic marijuana use and gambling. The medical records state that his marijuana use could have contributed to his stroke. (Department Exhibit 1-7)

On [REDACTED], the claimant was seen by a treating specialist at [REDACTED] [REDACTED] for an initial evaluation. The claimant complained of being ataxic. The claimant does not notice any focal weakness. He has had no speaking or swallowing difficulties or any numbing or tingling, bowel or bladder incontinence. His memory has been good, but he does notice slowed cognition. The claimant has not fallen, but has had some close calls. The

claimant acknowledges depression and has gained some weight since the treating specialist saw him in [REDACTED]. The claimant also has a lot of problems with social anxiety and does not leave the house very often. The claimant suffered a left cerebellar stroke approximately one year ago. The claimant is still left with some persistent ataxia and cannot tandem walk. In addition, he has noticed some cognitive slowing. The treating specialist felt the claimant's case was rather complicated by the fact that he probably had at least some neuropsychiatric difficulties before the stroke in that he had some problems with anxiety and depression. The claimant does not smoke, although hypertension is certainly a stroke risk factor. The treating specialist did not see the claimant's balance improving now that he is a year from his stroke, but there is no particular reason why it should worsen either. (Department Exhibit 13-15)

On [REDACTED], the claimant was seen at [REDACTED] for an evaluation after his discharge from the rehabilitation unit on May 9, 2008. The claimant had a cerebellar stroke in [REDACTED] that was complicated by the development of hydrocephalus that required a shunt and an early posterior fossa craniotomy because of the hemorrhage from the stroke. The claimant was independent in self care. He did not have any significant headaches. He has not gone back to using any of his marijuana. His constipation has been improving. On examination, the claimant looked good, but he still maintained poor eye contact but certainly was pleasant and spoke readily, following directions easily. The claimant stands and walks with a bit of weaving as he started, but as he went down the long hall he really had a narrow base of support and was going with a fast speed. The treating specialist did not see any near trips, crossovers, or near losses of balance. The claimant could do unilateral leg standing, but was still probably a bit short. The treating specialist did not see any evidence of ataxia of the upper limbs. The claimant is now doing extremely well. The treating specialist

strongly reinforced the claimant's persistence with avoiding any marijuana and resuming some his old friends. (Department Exhibit A)

On [REDACTED], the claimant was seen by his treating physician as a follow up after he had a left cerebellar infarct which in turn later, because of is smoking marijuana and consuming excessive caffeine after his discharge, developed into a hemorrhagic infarct where in turn he needed to have a left craniotomy. The claimant also had a right ventricular peritoneal shunt. The claimant denied having any headaches. His left outer fields were diminished on the left, but not on the right. The claimant is currently not smoking any marijuana. He denied any nausea or vomiting. The claimant said that he doesn't feel depressed, but he feels frustrated because he's wobbly when he first gets up, but when he starts walking that he is fine. There does appear to be the tip of a shunt on the right lower quadrant with some scar tissue. It was not tender to the touch with a well-healed incision site. The claimant when asked to stand on his left leg does appear to be a sway to the left, but when he was asked to stand on his right leg only there does appear to be more of a prominent sway to the left than when he is only having to stand on his left leg. There were no sensory deficits on the upper or lower extremities. The claimant did have a left visual field defect. The claimant had adjustment disorder because of his decreased ability for balance. The claimant has stopped smoking. His hypertension and constipation were stable with medication. (Department Exhibit 13)

On [REDACTED], the claimant was admitted to [REDACTED] [REDACTED] with a discharge date of [REDACTED]. The claimant developed severe ataxia in late [REDACTED] where he had what appeared to be a small cerebellar stroke. The claimant was in the hospital for a few days and then went home, but ended up returning and had a great deal of lethargy. A repeat scan showed that the claimant had a hemorrhage and a posterior fossa craniotomy was done on [REDACTED]

██████████ for evacuation of the hemorrhage. The claimant continued to do poorly and a follow-up scan showed enlarging ventricles and so on ██████████, an external ventricular drain was performed. The claimant also developed hyponatremia secondary to syndrome of inappropriate antidiuretic hormone. The claimant had a right ventriculoperitoneal shunt on ██████████ because of the high pressures in his head. After this treatment, the claimant improved and was able to participate in functional retraining activity sufficient to be accepted on the rehabilitation unit by ██████████. The claimant had a significant history of marijuana addiction and had been found to be severely hypertensive. The claimant's hypertension was controlled with three medications and he underwent addiction counseling. The claimant was also found to be positive for Factor V Leiden through a blood study. After discharge from the rehabilitation unit, the claimant was referred to home health to include physical and occupational therapy 2 to 3 times a week for 3 to 4 weeks and nursing to follow his blood pressure. (Department Exhibit 18-20)

On ██████████, the claimant was admitted to ██████████ with a discharge date of ██████████. The claimant's primary diagnosis was status post left posterior inferior artery cerebellar infarction with new left cerebellar hemorrhagic infarct and posterior fossa syndrome and obstructive hydrocephalus with a secondary diagnosis of positive Factor V Leiden, hypertension, hyponatremia secondary to SIADH, resolved, depressive disorder, and chronic cannabis use. The claimant underwent an external ventricular drain on April 5, 2008 and a right ventriculoperitoneal shunt on ██████████ with the Medtronic programmable valve set at performance level 1.5. The claimant was discharged to the rehabilitation unit in stable condition on ██████████ with stable vital signs. The claimant's wounds were intact and dry where he was afebrile. (Department Exhibit 41-43)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's final diagnosis was left cerebellar infarct with a secondary diagnosis of hypertension and substance abuse. The claimant was admitted to the emergency room where coordination was noted to be impaired on the left side as well where he showed evidence of arm drift. Diagnostic workup revealed evidence of a cerebellar infarct consistent with a posterior inferior cerebellar artery distribution. Further investigation revealed no evidence of an embolic source or vessel dissection. During his hospital course, the claimant had neurological improvement with a recovery of his external ocular muscle function, resolving of the nystagmus, no focal weakness in his extremities, and an improving arm drift. Ambulation was begun and he was noted to be ataxic as would be expected for a cerebellar infarct. Admitting laboratory studies showed evidence of cannabis substance abuse. The claimant was discharged home in stable condition on [REDACTED] with no discharge medications. During his critical care, the claimant's blood pressure was notably elevated and not pharmacologically reduced due to concerns of stroke progression. (Department Exhibit 126-127)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant was admitted to the hospital on [REDACTED] as the result of a stroke where he was treated and released on [REDACTED]. The claimant subsequently had complications and was readmitted on [REDACTED] and released to a rehab center on [REDACTED]. The claimant was subsequently released from his rehab facility on [REDACTED] where he had improved significantly except for a left visual field defect and adjustment disorder resulting in decreased ability for balance as cited by his treating physician on [REDACTED]. The claimant's treating rehab specialist on [REDACTED] stated that he was doing extremely well. The claimant did weave when he starts walking, but has a narrow base of support

and ended up going at a fast speed on [REDACTED]. The claimant's treating neurologist on [REDACTED] stated that his neurological exam was remarkable for intact vital signs and his mental status was unremarkable. The claimant was ataxic with tandem walking. The claimant still had persistent ataxia and cannot tandem walk. In addition, he had some noted cognitive slowing. On [REDACTED], the claimant was given a psychological evaluation by an independent medical examiner [REDACTED], licensed psychologist, who stated that the claimant would benefit from MRS, substance counseling, and cognitive behavioral therapy. The claimant was diagnosed with adjustment disorder with mixed anxiety and depression where rule out marijuana dependence and pathological gambling with a secondary diagnosis of narcissistic features and dependent features. The claimant was given a GAF of 42 with a fair to guarded prognosis on [REDACTED]. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

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

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant does not have a driver's license and does not drive. The claimant does not cook because he's not good at it, but is physically able. The claimant does not grocery shop, but he is physically able. The claimant does clean his own room and he cleans up the newspaper. The claimant does not do any outside work because his balance is bad. The claimant's hobbies are playing scrabble, cards, and watching sports TV. The claimant stated that his condition hasn't gotten better. The claimant stated that he is depressed where he is currently taking medication, but not in therapy where he tried [REDACTED], but they did not find him to be impaired.

The claimant wakes up between 4:00 to 5:00 a.m. He watches TV and plays scrabble. He visits with his friends. He goes to bed between 6:00 to 7:00 p.m.

The claimant did not know how far he could walk, stand, or sit. The heaviest weight he felt he could carry was 5-10 pounds. The claimant is left-handed and had a left-sided stroke. The claimant is not taking any medications for pain. The claimant does not smoke or has never smoked cigarettes. The claimant stopped drinking in March 2008 where before he would have a few beers. The claimant stopped smoking marijuana in March 2008.

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 bartender and as a food preparation worker. The claimant had a stroke on [REDACTED] where he has had some improvement since his stroke. However, the claimant is still having problems with his balance and cognitive difficulties. The claimant would have a difficult time performing the duties of a

bartender mixing drinks and collecting money and any other responsibilities required of a bartender. The claimant would also have a difficult time performing food preparation knowing which ingredients go where and having to stand for extensive periods of time while he is prepping food. Therefore, the claimant is not disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

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

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

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

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

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

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

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

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 where he is currently taking medication, but not in therapy. The claimant did have some cognitive slowing as cited by his treating specialist on [REDACTED] where he stated that he had some neuropsychiatric difficulties before the stroke where he had some problems with anxiety and depression which could be accentuated following the stroke. The treating independent licensed psychologist on

██████████ cited that the claimant had some cognitive difficulties and would benefit from cognitive behavioral therapy. As a result, there is sufficient medical evidence of an 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 a skilled and unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.20. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression, anxiety, and adjustment disorder. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of simple, unskilled, light activities and that the claimant does not meet the definition of disabled under the MA program.

The department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or

meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as "special education" as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

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

DECISION AND ORDER

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

and SDA. The claimant should be able to perform any level of simple, unskilled, light work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

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

Date Signed: September 9, 2009

Date Mailed: September 9, 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:

