

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: 2008-31240

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 3, 2009

Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on Tuesday, March 3, 2009. The claimant personally appeared and testified with his authorized representative, [REDACTED]

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA-P), 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 September 27, 2007, the claimant applied for MA-P and SDA with retroactive MA-P to June 2007.

(2) On June 2, 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 past relevant work and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On June 5, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On September 2, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On September 26, 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:

The claimant is alleging disability due to diabetes, heart disease, and pain. The claimant is 64 year-old and has a high school education with a history of sedentary work. The claimant did not meet applicable Social Security Listings 9.02, 4.02 and 4.04. The claimant is capable of performing past work in real estate.

(6) During the hearing on March 3, 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 March 3, 2009 and forwarded to SHRT for review on March 3, 2009.

(7) On March 13, 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 diabetes, heart disease, and pain. The claimant is 65 year-old and has a high school education with a history of semi-skilled and skilled work. The claimant did not meet applicable Social Security Listings 9.08,

4.02 and 4.04. The claimant is capable of performing past work in real estate.

This case has an application date of September 2007 with retro to June 2007. In [REDACTED], the claimant was hospitalized after a fall. He was noticed to have a history of myocardial infarction in [REDACTED]. His diagnoses included syncope and alcoholism. An echocardiogram dated [REDACTED] showed moderate enlargement of the left ventricle and an ejection fraction of 48 percent, but otherwise showed no significant abnormalities. In [REDACTED], office notes indicated the claimant's workup for syncope was all negative. Notes from [REDACTED] through [REDACTED] indicate the claimant denied angina, dyspnea, orthopnea, and palpitations. The claimant's also reported bypass surgery and stenting, which is not documented in the medical records. Based on the history of heart bypass, stenting, and heart attack, the claimant will be limited to light work. The claimant's past work as a real estate agent, which is light work according to the Dictionary of Occupational Titles.

(8) The claimant is a 65 year-old man whose date of birth is [REDACTED]. The claimant is 6' 2" tall and weighs 280 pounds. The claimant has gained 20 pounds in the past year as a result of his insulin medication. The claimant has a high school diploma and two years of college for a business degree. The claimant can read and write and do basic math. The claimant was last employed as a real estate seller in 2006. The claimant has been a restaurant manager from 1970 to 1992.

(9) The claimant's alleged impairments are diabetes, coronary artery disease, neuropathy, stent, bypass, and two heart attacks.

#### 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 (6<sup>th</sup> 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 his treating physician at [REDACTED] [REDACTED] for an established patient visit. The claimant had normal vitals except he was overweight at 283 pounds at 6 feet. The claimant complained of pain in his right leg. The claimant has been doing well. The claimant denied angina, dyspnea, orthopnea, palpitations, or claudications. The claimant denied nausea, vomiting, diarrhea, constipation, dysphagia, heartburn, hematochezia, hematemesis, or tenesmus. The claimant was alert, conscious, and

cooperative. The treating physician stated that the claimant's general appearance was that of a well-developed, well-nourished male. Cardiovascularly, the claimant's PMI in the 5<sup>th</sup> intercostal space mid clavicular line. The claimant's heart sounds were normal with no added sounds or murmurs. Abdominal aorta did not reveal any bruits. Femoral arteries were equal in pulse and amplitude on both sides with no bruits. Pedal pulses present and equal bilaterally. The claimant's extremities were present x4 with no cyanosis, clubbing, or edema. The claimant's diagnosis was right knee effusion with a prescription of prednisone with a return visit in two weeks. (Department Exhibit 14-16)

On [REDACTED], the claimant was seen by an independent medical consultant at [REDACTED]. The treating physician's assessment was type 1 diabetes, control unknown. The claimant has a history of neuropathy. The claimant stated he does check his blood sugars. The claimant has a history of coronary artery disease that is complicated by nicotine addiction. The claimant had double bypass surgery and stents x2. The claimant does not have angina. The claimant does not use nitroglycerin. The claimant was obese. The physical examination revealed an overweight man with no acute distress. Distal extremities have good pulses with no pedal edema. The claimant had evidence of a very well healed small ulcer on the plantar surface of the right third toe, which appears as a minimal scar. The claimant's feet are pink, warm, and dry. The claimant had good pulses where there were no significant status changes. The claimant had slow but normal range of motion of the neck, back, shoulders, elbows, wrists, hands, hips, knees, ankles, and feet. The claimant does have mild paraspinal tenderness. The claimant was able to heel toe gait. The claimant gets in and out of a chair and on and off the examination table without difficulties. The claimant does have some decreased

sensation in the lower extremities and the feet neurologically. DTRs were +1 to +2 symmetrical and gait was unremarkable. (Department Exhibit 3-6)

On [REDACTED], the claimant was seen by his treating physician at [REDACTED] [REDACTED] for an established patient visit. The claimant had a third digit toe infection on the right foot that has been present for three weeks where the claimant also stated he is not taking any medication. The claimant denies fatigue, fever, chills, night sweats, or weight loss. Cardiovascularly, the claimant denies angina, dyspnea, orthopnea, palpitations, or claudications. The claimant was alert, conscious, and cooperative. The general appearance was that of a well-developed, well-nourished male. The claimant had good respiratory effort. Cardiovascularly, the claimant's heart sounds were normal with no added sounds or murmurs. Abdominal aorta did not reveal any bruits. Femoral arteries were equal in pulse and amplitude on both sides with no bruits. Pedal pulses were present and equal bilaterally. The claimant's extremities were present x4 with no cyanosis, clubbing, or edema. The claimant's third right toe was pre-gangrene. His diabetes mellitus type 2 is uncontrolled. (Department Exhibit 6-7)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's diagnosis was a fall, secondary to orthostatic hypotension, mediastinal lymphadenopathy that requires further follow-up, syncope, alcoholism, hypertension, diabetes mellitus, and myocardial infarction in [REDACTED] with coronary artery disease. The claimant had a fall at 4:00 a.m. in the morning prior to admission. The claimant was walking in the yard and tripped over a hard wooden chair with his left foot hitting his fourth toe. The claimant did not recall what time he woke up, but he woke with a sudden onset of chest pain, sharp and shooting in nature. The claimant stated that he smokes a pack of cigarettes a day for the past 40 years with occasional alcohol use, but no illegal drug use. The claimant was alert and

oriented x3 with normal vitals except his blood pressure was 190/80. The claimant's lungs were clear to auscultation. Cardiovascularly, the claimant's first and second heart sounds were normally audible with no accompaniments. The claimant's abdomen was soft, non-tender, with no organomegaly. The workup revealed enlarged hilar lymph nodes. The claimant had counseling for alcohol use. The claimant was seen by a cardiologist who felt that it was muscular pain. (Department Exhibit 14-15)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant has coronary artery disease that required stenting with a history of two heart attacks in [REDACTED]. The claimant currently has uncontrolled diabetes mellitus with corresponding neuropathy because he is not following the required regimen. The claimant did not have any heart issues as documented by his treating physician on [REDACTED] office visits. The claimant had an independent medical examination on [REDACTED] that stated he has coronary artery disease with no angina and he does not use nitroglycerin. The claimant does have a nicotine addiction and obesity. On [REDACTED], the claimant was hospitalized for falling at 4:00 a.m. in the morning. The claimant's cardiac workup was negative. The claimant was admitted with a history of alcoholism after a fall where he was started on CIWA protocol for alcohol DT prophylaxis and to monitor his blood pressure. 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 a day with no problem. The claimant grocery shops once a week with no problem, but does ride the Amigo cart. The claimant does not clean his own home because he's not strong enough to walk and bend over. The claimant doesn't do any outside work. His hobbies are watching TV and reading. The claimant felt that his condition has worsened in the past year because of his legs and neuropathy. The claimant is currently not taking any medications.

The claimant wakes up at 7:00 a.m. He goes back to sleep and gets up between 10:00 to 11:00 a.m. He watches the news and reads. He uses the internet and the computer to look for a job. At 1:00 p.m. he has a light lunch. He has dinner at 7:00 p.m. He hangs out at his son's restaurant. He goes to bed between 11:00 p.m. to 3:00 a.m.

The claimant felt that he could walk a quarter of a mile. The longest he felt he could stand was 15-20 minutes. He did not have a problem sitting. The heaviest weight he felt he could carry was 20 pounds. The claimant uses his right hand, but he has left-sided weakness after his

artery removal. The claimant's level of pain on a scale of 1 to 10 without medication was a 7/8, but he is currently not taking any medication.

The claimant smokes a pack and a half of cigarettes a day. He drinks alcohol occasionally. The claimant last smoked pot July 31, 2008. The claimant felt there was work that he could do, but couldn't find a job because of the economy.

This Administrative Law Judge finds that the claimant has not established that he cannot perform any of his prior work. The claimant was previously employed as a real estate seller, which is performed at the light to sedentary level in the national economy. The claimant continues to smoke and drink even with his coronary artery disease and prior heart issues. The claimant is currently not taking any medication even though he has diabetes and coronary artery disease and a history of heart attacks. 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 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).

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.

At Step 5, the claimant should be able to meet the physical requirements of light work. Under the Medical-Vocational guidelines, an advanced age individual, with a high school education and more, and a skilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.03. 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 light activities and that the claimant does not meet the definition of disabled under the MA program. The claimant is also capable of performing his past relevant work.

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 light work. In addition, the claimant is capable of performing his 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: May 21, 2009

Date Mailed: May 22, 2009

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

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:

