

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: 2009-10036

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 13, 2009

Genesee 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 Wednesday, May 13, 2009. The claimant personally appeared and testified with his authorized representative, [REDACTED] and family friend, [REDACTED] as a witness.

ISSUES

- (1) Did the department properly deny the claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance?
- (2) Did the department properly determine that the claimant has not established continued eligibility for 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 June 26, 2008, the claimant applied for State Disability Assistance.
- (2) On August 13, 2008, the claimant was approved for State Disability Assistance by the Medical Review Team (MRT) with a begin date of July 2008 with a medical review requested November 2008.
- (3) On October 29, 2008, the claimant applied for Medical Assistance with retroactive Medical Assistance to July 2008 and an application for continued eligibility for State Disability Assistance.
- (4) On November 26, 2008, the MRT denied Medical Assistance and retroactive Medical Assistance stating that the claimant was capable of performing other work under Medical-Vocational Grid Rule 201.27 per 20 CFR 416.920(f) and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.
- (5) On November 30, 2008, the department caseworker sent the claimant a notice that his application was denied for Medical Assistance and retroactive Medical Assistance and continued disability for State Disability Assistance.
- (6) On December 9, 2008, the department received a hearing request from the claimant, contesting the department's negative action for continued disability for State Disability Assistance and for eligibility for Medical Assistance and retroactive Medical Assistance.
- (7) On January 30, 2009, 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 a herniated disc, lumbar radiculopathy, and hypertension. He is 47 years old and has a 12th grade education with a history of carpentry work. The claimant did not meet applicable Social Security Listings 1.00 and 4.00. The claimant is capable of performing other work that is sedentary work per 20 CFR 416.967(a) under Vocational Rule 201.28.

(8) During the hearing on May 13, 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 13, 2009 and forwarded to SHRT for review on May 13, 2009.

(9) On May 27, 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 status post lumbar laminectomy at L4-L5 with a partial right foot drop. He is wearing a foot brace. The claimant also had absent reflexes at his right knee and left arm or his right ankle and left knee. The absent reflex location was not consistent with the medical information. The claimant was admitted in [REDACTED] for chest pain, but the discharge summary was not in file so we do not know the discharge diagnosis. In [REDACTED], he had a stress test pending. The claimant's treating physician has given less than sedentary work restrictions based on the claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927c(2)(3)(4) and 20 CFR 416.927d(3)(4)(5), will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing at least sedentary 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 at least sedentary work. The claimant is unable to return his past work. Therefore, based on the claimant's vocational profile (younger individual, high school education, and history as working as a carpenter), 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 no longer preclude work activity at the above stated level for 90 days.

(10) The claimant is a 48 year-old man whose date of birth is [REDACTED]. The claimant is 6' tall and weighs 280 pounds. The claimant has gained 40 pounds in the past year because he can't move around and exercise. The claimant has a high school diploma. The claimant can read and write and do basic math. The claimant was last employed as a carpenter at the heavy level in 2006, which is his pertinent work history of raw framing.

(11) The claimant's alleged impairments are herniated disc, lumbar radiculopathy, fusion at L4-L5 right [REDACTED], high blood pressure controlled with medication, chronic back pain, depression, anxiety, bilateral arthritis, and right foot drop.

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 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's treating physician completed a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment and chief complaint of low back pain with right leg pain with numbness and weakness and right foot drop. The claimant's current diagnosis was lumbar radiculopathy and S/P L3-L4 disc herniation. The claimant had a normal physical examination except that cardiovascularly he had chest pain. The claimant was absent reflexes in his right knee and left arm and the claimant reported depression. (Department Exhibit 17)

The treating physician's clinical impression was that the claimant was stable with limitations that were expected to last more than 90 days. The claimant could occasionally lift up to 10 pounds, but never 20 pounds. The claimant could stand and/or walk less than two hours in an eight-hour workday and sit about six hours in an eight-hour workday. The claimant needed a foot brace and occasional cane as a medically required and needed assistive device for ambulation. The claimant could use both hands/arms for repetitive action, but only his left foot/leg for operating foot/leg controls. The medical findings that support the above physical limitation were that the claimant wears a brace on his right foot due to foot drop where he is unable to lift over 10 pounds due to scar tissue. The claimant had no mental limitations and could meet his needs in the home. (Department Exhibit 18)

On [REDACTED], the claimant's treating neurosurgeon completed a Medical Examination Report, DHS-49, and consultative note on the claimant. The claimant was first examined on [REDACTED] and was last examined on [REDACTED]. The claimant had a history of impairment and chief complaint of low back pain and right leg pain. The claimant's

current diagnosis was lumbar radiculopathy and displacement of the lumbar intervertebral disc without myelopathy. The claimant had a normal physical examination except his treating neurosurgeon noted foot drop, low back pain, and foot brace. (Claimant Exhibit C-B4)

The claimant had limitations where he needed a foot brace as an assistive device that was medically required and needed for ambulation. The claimant could use both hands/arms for repetitive action, but neither foot/leg controls. The claimant could not meet his needs in the home because he needed help with shoes and socks. (Claimant Exhibit C-B8)

The claimant had a right-sided partial foot drop that has been present for the last couple of years. The claimant had surgery two years after his disc herniation where post-surgically he did well, but after having a bad fall he re-injured his back and re-exacerbated the pain down his right leg. A repeat MRI showed a left-sided L3-L4 disc herniation, but the claimant has no left-sided symptoms whatsoever. The MRI also revealed scar tissue on the right side which the treating neurosurgeon believed in combination with the claimant's fall lead to his current symptomology. The claimant is improving significantly in terms of the pain in his back and right leg. The treating neurosurgeon and the claimant were waiting to see if his issues resolved further. However, the treating neurosurgeon did not anticipate a full recovery or an easy recovery because of the prolonged compression of his nerve root without it being addressed surgically. (Claimant Exhibit B-7, B-8)

On [REDACTED], the claimant was given an x-ray of the lumbosacral spine as the result of pain at the [REDACTED]. There were no significant listhesis seen in flexion or extension projections. Diffuse mild spondylotic changes were seen predominately in the lower lumbar spine. The vertebral body height was maintained. (Department Exhibit 14)

On [REDACTED], the claimant was given an MRI of the lumbar spine with and without contrast at [REDACTED] higan. The radiologist's impression was moderate-sized left paracentral disc protrusion that was unchanged at the L3-L4 from a comparison to [REDACTED] MRI. At L4-L5, there was a new right laminectomy with enhancing scar about the right L4 nerve root with no recurrent disc identified. There were foraminal stenoses bilaterally from L2-L3 through L4-L5. At L3-L4 there was hypertrophic facet disease with moderate bilateral foraminal narrowing. (Department Exhibit 12-13)

On [REDACTED], the claimant's treating physician submitted a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a history and chief complaint of back pain, right leg pain, right leg weakness and numbness. The claimant had a current diagnosis of herniated disc, lumbar radiculopathy, lumbar laminectomy and discectomy performed on [REDACTED]. The claimant had a normal physical examination except the treating physician noted that the claimant had an analgesic gait that the claimant stated was due to right knee pain. The claimant's pain was 10/10 pre operation and at a 7-4/10 now. The claimant had a mild ventricle hernia abdominally. The claimant had right knee degenerative damage and right knee decreased range of motion. The claimant had right foot drop and decreased knee reflex on the right side and ankle reflex on the right side. The claimant was depressed most of the time with a mildly derived affect. (Department Exhibit 11)

The treating physician's clinical impression was that the claimant was improving and had a temporary disability where he was expected to return to work at a desk job November 10, 2008. The claimant had physical limitations that were expected to last more than 90 days where the claimant could lift okay, but could not carry. The claimant could frequently lift up to 10

pounds, could occasionally lift up to 25 pounds, but never 50 pounds or more. The claimant could stand and/or walk at least two hours of an eight-hour workday and sit about six hours of an eight-hour workday. The claimant did not require any assistive devices medically required or needed for ambulation. The claimant could use both hands/arms and his left foot/leg for repetitive actions, but not his right foot. The medical findings that support the above physical limitations were per his neurosurgeon that his right leg was still weak and he had foot drop where he is unable to carry over 10 pounds. The claimant had no mental limitations and could meet his needs in the home.

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant had a discharge diagnosis of right sciatic with bilateral foot dorsiflexion and plantar flexion weakness with increasing pain for the last few days along with intermittent nocturnal urinary incontinence. The claimant was subsequently evaluated by neurosurgery and had a L4-L5 laminectomy, discectomy, and also partial medical facetectomy with fusion. The claimant also had a discharge diagnosis of hypertension and hypertriglyceridemia. Postoperatively, the claimant was fine where pain was well controlled. (Department Exhibit 16-17)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant had back surgery in [REDACTED]. The claimant's treating physician on [REDACTED] stated he would be okay to go back to work at a desk job on [REDACTED]. The claimant's treating physician on [REDACTED] still limited him to at least light work although he had a foot brace due to foot drop and occasionally used a cane. The claimant's treating surgeon on [REDACTED] stated that he had limitations and used a foot brace, could use hand/arms, but neither feet/leg for operating foot/leg controls. The

treating neurosurgeon stated that the claimant's foot drop has been present for the last couple of years because when his disc hernia occurred he was unable to have surgery until two years after his disc herniation. The claimant was doing well until he fell post surgery and re-injured his back. The claimant is improving significantly in terms of pain in his back and right leg since his fall. The claimant's treating neurosurgeon stated that he did not anticipate a full recovery or an easy recovery after such a prolonged compression of his nerve root without it being addressed surgically. 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 and does drive, although he does have a problem sitting for a long period of time

and braking with his right foot. The claimant does not cook because he cannot stand. The claimant grocery shops using an Amigo cart once a month, but he has a problem walking and reaching. The claimant does not clean his own home, but occasionally does dishes. The claimant doesn't do any outside work or have any hobbies. The claimant felt that his condition has worsened in the past year because he fell in February 2009, which resulted in increased pain. The claimant stated that he has depression and anxiety where he is currently taking medication, but not in therapy. The claimant was given a referral to CMH.

The claimant wakes up between 9:00 to 10:00 a.m. He has breakfast. He stretches. He does have a hard time sleeping at night because of the pain. He watches TV. He takes a nap for 1-2 hours. He goes to bed between 10:00 p.m. and 1:00 a.m.

The claimant felt that he could walk 25-50 feet without a cane and 100 yards with a cane. The longest he felt he could stand was 15-20 minutes with a cane. The longest he felt he could sit was 30-60 minutes. The heaviest weight he could carry was 5-10 pounds and walk. The claimant stated that his level of pain on a scale of 1 to 10 without medication was an 8 that decreases to a 6/7 with medication.

The claimant does not or has ever smoked. The claimant does occasionally drink alcohol. The claimant stopped smoking marijuana in 2008. The claimant stated that there was no work that he thought he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant was previously employed and has a pertinent work history as a carpenter performing rough framing at the heavy level. With the claimant's current issues with his back, he would have a hard time lifting the weight and the sustained physical activity of his previous employment. Therefore, the claimant is not disqualified from receiving

disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

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

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

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

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

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

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

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or

she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

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

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

In the instant case, the claimant stated that he has depression and anxiety. The claimant's treating physician on [REDACTED] stated that he had no mental impairments. The claimant's treating neurosurgeon on [REDACTED] stated he had no mental impairments. The claimant is taking medication, but not in therapy. The claimant was referred to CMH for assistance. As a result, there is insufficient 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 cannot meet the physical requirements of light work. 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 considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.22. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression and anxiety. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for

making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant cannot perform a wide range of light activities and that the claimant does meet the definition of disabled under the MA program. The claimant is approved for MA retroactive to July 2008 with a review date in October 2010. The claimant is expected upon medical review to have complied with his physician's and his neurosurgeon's medical instructions, participated in physical therapy, and sought and complied with mental health treatment.

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

DISABILITY – SDA

DEPARTMENT POLICY

SDA

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

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

DISABILITY

A person is disabled for SDA purposes if he:

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

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

Other Benefits or Services

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

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

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as "special

education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.

- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

Because the claimant does meet the definition of disabled under the MA program and because the evidence in the record does establish that the claimant is unable to work for a period exceeding 90 days, the claimant does meet the disability criteria for continued SDA. The claimant is awarded continued SDA retroactive to November 2009. After November 2009, the claimant would be required to participate with the Michigan Rehabilitation Services for retraining in order to be eligible for continued SDA benefits starting in December 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P, and continued SDA benefits. The claimant is unable to perform any level of light work. The department has not established its case by a preponderance of the evidence.

Accordingly, the department's decision is **REVERSED**. The department is ordered to conduct a medical review in October 2010 to determine claimant's eligibility for Medical Assistance. The claimant is expected upon medical review to have complied with his physician's and his neurosurgeon's medical instructions, participated in physical therapy, and sought and confided with mental health treatment. The claimant is awarded continued SDA retroactive to November 2009. After November 2009, the claimant would be required to participate with the

Michigan Rehabilitation Services for retraining in order to be eligible for continued SDA benefits starting in December 2009.

/s/

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

Date Signed: September 15, 2009

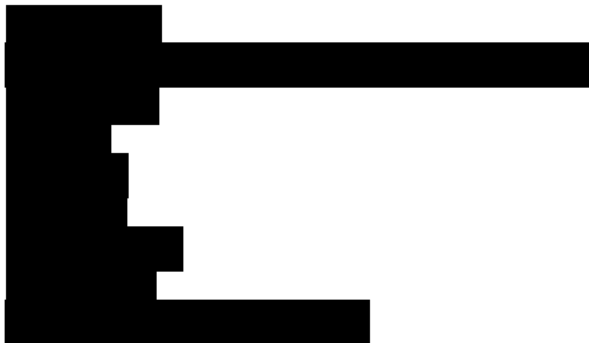
Date Mailed: September 15, 2009

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:

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