

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: 2009-25294
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2009
Ionia 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 Wednesday, July 29, 2009. The claimant personally appeared and testified with his sister, [REDACTED] and physician and brother-in-law, [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 January 7, 2009, the claimant applied for MA-P and SDA with retroactive MA-P to October 2008.

(2) On March 5, 2009, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was capable of performing other work 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.

(3) On March 10, 2009, the department caseworker sent the claimant a notice that his application was denied.

(4) On April 27, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On June 25, 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 objective medical evidence presented does not establish a disability at the listing or equivalence level. The collective medical evidence shows that the claimant is capable of performing a wide range of simple, light, unskilled work.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, light, unskilled work. Therefore, based on the claimant's vocational profile (younger individual, high school graduate, and an unskilled work history), MA-P is denied using Vocational Rule 202.20 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) The claimant is a 45 year-old man whose date of birth is [REDACTED]. The claimant is 5' 3" tall and weighs 135 pounds. The claimant has a high school diploma. The claimant can read, but can only print his name, and the claimant can do basic math. The claimant was last employed in March 2004 as a deli worker.

(7) The claimant's alleged impairments are a stroke on [REDACTED], car accident in [REDACTED] resulting in a closed head injury, emphysema, and COPD.

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 March 2004. Therefore, the claimant is not disqualified from receiving disability at Step 1.

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

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

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

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

On [REDACTED], the claimant was seen by his treating specialist at [REDACTED]

[REDACTED] The claimant was seen for a follow-up. The claimant had diagnostic bilateral sacroiliac joint injections with 0% relief. The diagnostic bilateral 4-5 and 5-1 facet blocks were negative at 4%. Therefore, bilateral S1 transforaminal injections were carried out. The claimant noticed no change with the injections. The claimant rates his pain at 7/10 where the pain is localized in the lumbosacral junction that is worse on the left than the right. The pain does not radiate. The claimant ambulates with the assistance of a cane. He has pain with reflection of his knee and lumbar spine that increased pain with extension; straight leg raises were provocative of back pain without radiation. The claimant had mechanical low back pain that was chronic, status post motor vehicle accident in 2005. (Department Exhibit B-C)

On [REDACTED], the claimant had a psychological evaluation from his treating psychologist, [REDACTED]. The claimant's ability to function has been seriously compromised by a closed head injury he sustained in [REDACTED]. Additional cognitive deficits were also experienced subsequent to his recent stroke leading to symptoms consistent with a diagnosis of cognitive disorder. The independent medical examiner observed during his evaluation that the claimant became easily confused, aphasia, difficulty in organizing his thoughts, marked difficulty in making decisions, mood instability, and low frustration tolerance. The claimant was a poor historian and had difficulty not only with short term but also long term memory. The claimant's prognosis was poor. The claimant was given a GAF of 40 with the highest GAF of the past year of 44. (Department Exhibit 4-7)

On [REDACTED], the claimant was seen by his treating physician. The claimant had a normal physical examination except that the treating physician cited persistent low back pain. The claimant has spasms, limitation of motion, and weakness and numbness in the right leg. The claimant currently smokes one pack of cigarettes a day. The claimant is not now using alcohol, but was formerly a heavy user. The claimant was a former user of multiple drugs. Psychiatrically, there was no increased nervousness, mood changes, or depression. The claimant is coping well. Respiratorally, the claimant's lungs were clear to auscultation and percussion with normal respiratory effort. The claimant did not have any fremitus. In the extremities, the right upper had no independent movement and left lower was tender due to excess use, right lower can support weight with a cane. The treating physician did note that he had a depressed affect. The claimant's ischemic heart disease remains stable where the treating physician did not change his medication, but continues to monitor for complications. The claimant's CVA has not changed where he would be continued on medication and monitored for compliance. The claimant's low back pain was unchanged where medication was not changed, but will continue to monitor. The claimant's knee pain is of recent onset and is of gradual onset. Plan to treat with over-the-counter meds. (Department Exhibit L-M)

On [REDACTED], the claimant was given an independent medical examination by [REDACTED]. The claimant had a diagnosis of right hemiparesis. The claimant's reflexes were hyperactive. He has an extensor plantar response on the right. There were no sensory deficits. The claimant walks with the use of a cane and has difficulty walking both heel and toe. The claimant is able to speak intelligibly and understandably. The claimant was a well-developed, well-nourished male in obvious distress. The claimant was alert, well-oriented and cooperative. Affect, dress, and effort were all appropriate. The claimant's

immediate, recent, and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. His speech was mildly impaired, but was easily understood. The claimant had a normal physical examination except for musculoskeletally. There was full fist and full grip strength on the left and full fist and decreased grip strength with 10% remaining on the right. Dexterity was severely impaired on the right. The claimant could not pick up a coin or button clothing, but can open a door depending on the type of door knob. The claimant had no difficulty getting on and off the examination table. However, he was unable to walk heel and toe. The claimant had no difficulty squatting and was able to hop. Range of motions was normal except for those listed. Motor strength was 1/5 in the right upper extremity and 4/5 in the right lower extremity. The tone appeared normal in the leg and decreased in the arm. Reflexes were 3+ on the right and 2+ on the left side. Romberg testing was negative. Straight leg raising was accomplished to 60% on the right and 90% on the left. The claimant walked with a moderate right-sized limp with the use of a cane. (Department Exhibit 61-65)

On [REDACTED], the claimant was given a person centered assessment by [REDACTED]. The claimant was given a diagnosis of generalized anxiety disorder and adjustment disorder with depressed mood. The claimant was given a GAF of 50. Outpatient therapy was recommended for the claimant to assist with his current situation; however, outpatient therapy does not need to be required as part of his court order or parole requirements. (Department Exhibit N-W)

On [REDACTED], the claimant was given a coronary CT angiogram at [REDACTED]. The radiologist's impression was minimal atherosclerotic plaque of the proximal right coronary artery resulting in less than 25% stenosis. No other atherosclerotic plaque or significant stenosis was noted in the coronary arteries. (Department 19-20)

On [REDACTED], the claimant was seen by his treating cardiologist at [REDACTED]. The claimant had a medical history of hypertension, with dyslipidemia, cerebrovascular accident in [REDACTED] secondary to a totally occluded left internal carotid artery. The claimant denies any symptoms of chest discomfort, shortness of breath, paroxysmal, nocturnal dyspnea, orthopnea, dizziness, syncope, or claudication. The claimant did note frequent palpitations, but not on a daily basis. The claimant denies any fever, chills, night sweats, rash, or weight loss. The claimant walks with a cane and has residual right-sided upper extremity paralysis with right lower extremity weakness. The claimant had a normal physical examination. Cardiovascularly, the claimant's apex beat was within the 5th intercostal space. S1 and S2 were normal, with no murmur, no S3, or gallop. The claimant had right upper extremity paralysis and left lower extremity weakness noted on physical exam. The claimant walks with a cane. The claimant's total cholesterol was 169 where his LDL was 115, HDL was 35, and triglycerides were 691. An EKG performed today showed normal sinus rhythm. (Department Exhibit 16-18)

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 in a single car motor vehicle accident in [REDACTED] after drinking excessively. The claimant suffered a stroke in [REDACTED] while in prison. The claimant has upper right-side paralysis and right lower extremity weakness. The claimant does walk with a cane. The claimant's speech was unimpaired even though he did have some cognitive difficulties. 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 because he was ticketed for operating a vehicle causing serious injury. The claimant does not cook because he can't use his right hand. The claimant does grocery shop with his sister once a month. He has a hard time putting processes together and uses an Amigo cart. The claimant does not clean his own home nor do any outside work. The claimant felt that his condition has worsened in the past year because of his mental status. The claimant is currently taking medication and in therapy with [REDACTED]

The claimant wakes up between 6:00 to 8:00 a.m. He watches TV. He goes to bed from 10:00 to 11:00 p.m.

The claimant felt that he could walk 50 feet. The longest he felt he could stand was 2-3 minutes. The longest he felt he could sit was 15-20 minutes. The claimant didn't think he could carry any weight. He is left-handed because of a stroke on his right side. The claimant stated that his level of pain on a scale of 1 to 10 without medication was a 10; that decreases to a 3/4 with

medication. The claimant smokes 2-3 cigarettes a day. He stopped drinking alcohol on October 20, 2005 where before his alcohol use varied. The claimant stopped smoking meth 11 years ago. The claimant stated that there was no work that he thought he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant was previously employed as a deli worker, which requires him to cut meat, lift tubs, serve food, and work around a meat slicer, which with the claimant's current impairments on his right side resulting from a stroke in [REDACTED] would prove difficult. 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).

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 sufficient evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitation indicates his limitations are exertional 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 a closed head injury and cognitive difficulties resulting from a stroke. He is currently taking medication and in therapy with [REDACTED]. (See analysis in Step 2.) As a result, there is sufficient medical evidence of a mental 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 would not 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 an unskilled work history, who is limited to light work, is 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 a closed head injury and a stroke. 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 simple, unskilled, light activities and that the claimant does meet the definition of disabled under the MA program. The claimant was approved for Social Security SSI with a disability onset date of [REDACTED], which provides retroactive coverage until December 2008. This Administrative Law Judge awards the claimant MA benefits for a closed period of time of October 2008 through November 2008.

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 based on his application of January 7, 2009. The claimant is eligible for SDA until December 2009. Starting in January 2010 to be continued eligible, the claimant must participate with Michigan Rehabilitation Services.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P, retroactive MA-P, and SDA. The claimant 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 claimant is awarded retroactive MA-P for a closed period of time of October 2008 through November 2008. SDA benefits are awarded based on the January 7, 2009 application until December 2009 with benefits continuing January 2010 if the claimant participates with Michigan Rehabilitation Services.

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

Date Signed: October 30, 2009

Date Mailed: October 30, 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:

