

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: 2009-3247

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 25, 2009

Alpena 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, February 25, 2009. The claimant personally appeared and testified with his mother, [REDACTED] as a witness.

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA-P) 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 June 25, 2008, the claimant applied for MA-P and SDA without filing an application for retroactive MA-P.

(2) On October 8, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P stating that the claimant had a non-exertional impairment and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On October 13, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On October 23, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On November 6, 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 49 form does not actually gather a complete mental status exam. The mental status exam in file is over a year old. A complete current mental status exam is suggested to evaluate the claimant's current level of functioning.

Additional medical information is suggested to assess the severity of the claimant's impairment(s). Please obtain a mental status examination with a psychiatrist or psychologist in narrative format. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the information in the file is inadequate to ascertain whether the claimant is or would be disabled for 90 days.

(6) During the hearing on February 25, 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 26, 2009 and forwarded to SHRT for review on March 30, 2009.

(7) On April 7, 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 has a long history of polysubstance abuse. P.L. 104-121 is cited due to the materiality of drug and alcohol abuse. The medical evidence of record does not document a mental/physical impairment(s) that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due to lack of severity.

(8) The claimant is a 22 year-old man whose date of birth is [REDACTED]. The claimant is 5' 6" tall and weighs 170 pounds. The claimant has a high school diploma and one semester of college. The claimant can read and write and do basic math. The claimant was last employed as a cashier on September 14, 2008. The claimant has also been employed as a laborer.

(9) The claimant's alleged impairments are bipolar disorder, attention deficit hyperactivity disorder, oppositional defiant disorder, and seasonal affective disorder.

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 September 14, 2008. Therefore, the claimant is not disqualified from receiving disability at Step 1.

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

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

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

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

On [REDACTED], the claimant was given an independent medical examination for a mental status examination. The claimant was diagnosed with bipolar disorder, currently depressed, attention deficit hyperactivity disorder by history, and polysubstance abuse/dependence. The claimant was given a Global Assessment Functioning score of 50 to 55. The licensed psychiatrist recommended inpatient hospitalization for acute stabilization and reinitiation of his psychotropic medications, but the claimant refused. The claimant did not want to initiate all of his previous medications, but he agreed to take his Abilify and Celexa where he gave written consent. The claimant was casually dressed and his mother came with him for the

interview. The claimant appeared tired and had his eyes shut during most of the interview. The claimant stated that he was not a morning person and this was not the best time to get his history. The claimant was oriented x4. Affect was dysphoric and anxious. The claimant stated that he would not care if he died, but he had no active suicidal thoughts or intent. The claimant also had no homicidal ideation or psychotic features at this time. The claimant's thoughts were well organized without any delusions, hallucinations, or any bizarre preoccupations. However, the licensed psychiatrist stated that the claimant's insight, impulsivity, and judgment seemed to be a little impaired. The claimant stated that his medications were not working for him and he stopped taking them unilaterally 2-3 months ago. Cognition and other higher functions seemed to be intact. There was evidence of impaired self esteem, some anxiety, and easy irritability and frustration was noted during the session. The claimant snapped at his mother several times. The claimant's speech was a little monotonous but goal directed without any flight of ideas, tangentiality, or circumstantiality. The claimant appeared to be extremely tired and psychomotorally exhausted. (Department Exhibit 39-41)

On [REDACTED], the claimant was seen by his treating specialist at the [REDACTED]. The assessment was chronic right wrist pain. The pain was located over the ulnar aspect of his right wrist. The pain was described as dull and aching in nature. The claimant had increased range of motion and activity of right wrist aggravates his pain where nothing seems to make it better. The claimant stated his pain scores ranged from 3 out of 10 to 10 out of 10 on a verbal analog pain scale of 0 to 10. The claimant smokes 1-1/2 packs of cigarettes per day and has done so for the past five years. The claimant admits drinking one beer per week. The claimant has a history of marijuana, cocaine, heroin and other pill abuse. The claimant currently admits to using marijuana. On physical exam, the

claimant was alert and oriented x3 and in no acute distress. Range of motion of his wrist was relatively within normal limits when compared to the left. There was no pain to light touch in the upper extremities bilaterally. Reflexes were 2+ and symmetric throughout the upper extremities bilaterally. Muscle strength in the upper extremities was 5 out of 5 bilaterally. The treating pain specialist did not feel that long-term narcotic therapy would be extremely beneficial for the claimant because of his young age especially given his previous substance problem with illicit and recreational drugs. The treating specialist explained to the claimant that alternating between ibuprofen and acetaminophen would most appropriately treat his pain. (Department Exhibit 11-13)

On [REDACTED], the claimant's clinical therapist sent a letter on his behalf where the claimant has been a client of [REDACTED] since [REDACTED]. The claimant was self-referred for substance abuse treatment where he reported a history of both psychiatric problems and polysubstance dependence. The claimant reported being addicted to heroin, marijuana, and alcohol and then attempting to abstain from both substances. At the time of intake, he had already undergone acute withdrawal from opioids. The claimant did not present with an indication of suicidal ideation and was receiving psychiatric treatment for mental health problems. The claimant was diagnosed with opioid dependence, sedative dependence, cannabis dependence, alcohol abuse, rule out dependence, where the claimant reported bipolar disorder, attention deficit hyperactivity disorder, seasonal affective disorder, and oppositional defiant disorder. The claimant was given a GAF of 47. The claimant was making good progress in both abstaining from substances and remaining in active recovery. The claimant is experiencing some psychological stress due to symptoms of post-acute withdrawal, but has been effective in

preventing a relapse. The claimant exhibits high motivation to remain clean and plans to continue with substance abuse treatment. (Department Exhibit 43)

On [REDACTED], the claimant was discharged from [REDACTED] [REDACTED] after being admitted on [REDACTED] 008. The claimant was admitted for seizures after taking an overdose of Ultram in combination with Wellbutrin and other psychiatric medications. The claimant had one episode of a seizure. The claimant pulled out his IV on his own and left the hospital against medical advice. The claimant did not sign an AMA form. He stated that he had things to do and that the IV was hurting his arm. The claimant did not have any more seizures and his vital signs remained stable. The claimant did have his laboratory studies done in the morning. The claimant has a history of polysubstance abuse where the claimant tested positive for marijuana, methadone, and Ultram. The claimant had a history of bipolar disorder where he was stable on current meds, attention deficit hyperactivity disorder, on medication, oppositional defiant disorder, stable, and chronic wrist pain. The claimant left against medical advice with no discharge instructions being given to the claimant. He was warned about the risk of further seizure activity especially in combination with current anti-depressants and anti-psychotic medication. The claimant was told to discontinue Ultram. (Department Exhibit 4-5)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant is currently being treated and taking medication with [REDACTED] for multi-substance abuse and alcohol abuse where reported bipolar disorder, attention deficit hyperactivity disorder, seasonal affective disorder, and oppositional defiant disorder on [REDACTED]. The claimant had an attempted overdose on [REDACTED] of his mental health medications where he left the hospital against medical advice. An attempt at the [REDACTED] for long-term therapy on [REDACTED] was not

successful because the treating pain specialist thought that the claimant needed to be served by alternating between ibuprofen and acetaminophen. An independent medical examination on [REDACTED] stated that the claimant would benefit from inpatient hospitalization for acute stabilization and reinitiation of his psychotropic medications, but the claimant refused at that time. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

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

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant does have a driver's license, but does not drive because he doesn't have a car although he is physically able. The claimant does not cook even though he is physically able. The claimant grocery shops twice a month with no problem. The claimant is capable of cleaning his own home where he is

physically able, but he hates cleaning and would rather do something else. 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 has had an increase in depression and is having a harder time functioning. The claimant stated for his mental impairments he is taking medication and in therapy.

The claimant wakes up between 2:00 to 3:00 p.m. He watches TV. He goes to bed at 4:00 a.m.

The claimant did not have a problem walking, standing, sitting, or lifting weight. The claimant felt his level of functioning on a scale of 1 to 10 without medication was a 1/2 that increases to a 4 with medication.

The claimant smokes a pack of cigarettes a day. Once every three weeks the claimant has two beers. The claimant stopped using illegal and illicit drugs three weeks ago where he used heroin, cocaine, oxycontin, percocet, vicodin, and methadone. The claimant is still smoking marijuana.

This Administrative Law Judge finds that the claimant has not established that he cannot perform any of his prior work. The claimant is not physically impaired, but is mentally impaired where he is currently undergoing therapy and taking medications. The claimant should be able to perform his past work as a cashier and even if he would have a problem dealing with the customers and counting the money because of his mental impairments, the claimant should be able to perform work as a laborer which he has been previously employed in the past. 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The claimant has submitted insufficient evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitation indicates his limitations are 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 bipolar disorder, attention deficit hyperactivity disorder, seasonal affective disorder, and oppositional defiant disorder. The claimant is in therapy and taking medications. Based on the objective medical record, the claimant had a seizure after an attempted overdose on [REDACTED]. He left the hospital without treatment. On [REDACTED] the claimant was being treated for his mental impairments at [REDACTED] where he was given a GAF of 47. The claimant was seeking long-term admittance into a long-term narcotic program, but was denied because of his

age and his previous substance abuse history. The claimant had an independent mental status examination where he given a GAF of 50 to 55 and was recommended to enter inpatient hospitalization for acute stabilization and reinitiation of his psychotropic medication, but the claimant refused. The claimant seems to stabilize when he is taking his medication and in therapy. However, as the record reflects, there are times when the claimant does not take his medication as is prescribed and uses illegal or illicit drugs, which hamper his recovery. 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 should be able to meet the physical requirements of medium 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 medium work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 203.28. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as SAD, BPD, ADHD, and ODD. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of simple, unskilled, medium activities and that the claimant does not meet the definition of disabled under the MA program.

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

DISABILITY – SDA

DEPARTMENT POLICY

SDA

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

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

DISABILITY

A person is disabled for SDA purposes if he:

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

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

Other Benefits or Services

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

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

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

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

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance

with department policy when it denied the claimant's application for MA-P, retroactive MA-P, and SDA. The claimant should be able to perform any level of simple, unskilled, medium 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: July 9, 2009

Date Mailed: July 9, 2009

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

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CGF/vmc

cc:

