

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No. 200937200
Issue No. 2009; 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: October 20, 2009
St. Clair 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 the claimant's request for a hearing. After due notice, an in-person hearing was held on Tuesday, October 20, 2009. The claimant personally appeared and testified with her authorized representative, [REDACTED]

ISSUE

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

FINDINGS OF FACT

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

1. On March 6, 2009, the claimant applied for MA-P and SDA with retroactive MA-P to December 2008.
2. On May 28, 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 SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

3. On June 1, 2009, the department caseworker sent the claimant a notice that her application was denied.
4. On August 10, 2009, the department received a hearing request from the claimant, contesting the department's negative action.
5. On October 7, 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 face numbness, headaches, degenerative disc disease, liver damage, and depression. She is 46 years old with 12 years of education and a history of working as a real estate agent, real estate broker, and an assistant manager in retail. The claimant did not meet applicable Social Security Listings 11.01, 1.01, 5.01, and 12.01. The claimant is capable of performing work that is medium work per 20 CFR 416.967(c) that is unskilled work per 20 CFR 416.968(a) under Vocational Rule 203.29.

6. During the hearing on October 20, 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 October 20, 2009 and forwarded to SHRT for review on October 21, 2009.
7. On October 28, 2009, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA. The SHRT report reads in part:

The claimant is alleging disability due to face numbness, headaches, degenerative disc disease, liver damage, and depression. She is 46 years old with 12 years of education and a history of working as a real estate agent, real estate broker, and an assistant manager in retail. The claimant did not meet applicable Social Security Listings 11.01, 1.01, 5.01, and 12.01. The claimant is capable of performing work, with the limitation of over the shoulder reaching of the left upper extremity, that is light work per 20 CFR 416.967(b) that is unskilled work per 20 CFR 416.968(a) under Vocational Rule 203.29.

8. The claimant is a 47 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 10" tall and weighs 150 pounds. The claimant has lost 25 pounds in the past year as a result of illness and liver damage. The claimant has a high school diploma. The claimant can read and write and do basic math. The claimant was last employed as an assistant manager in March 2007. She has also been employed as a real estate agent, real estate broker, and a retail sales person.
9. The claimant's alleged impairments are hepatitis C, cirrhosis of the liver, chronic pain, sepsis, degenerative disc disease, migraines, depression, and a lump in right breast.

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 the 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 (formerly known as the Family Independence Agency) 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 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 2007. 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 underwent a Mental Residual Functional Capacity Assessment by a treating psychiatrist. The claimant did not have any marked limitations. The independent medical consultant licensed psychiatrist finds that the

claimant has major depression and adjustment disorder with a GAF of 60. The claimant presented as moderately depressed and mildly anxious with mild impairment of concentration. The claimant could follow basic instructions and was cooperative and fairly attentive. The claimant is able to tolerate brief interpersonal contact that are consistent with and supported by the MER, which is given great weight in this MRFCA. The opinions that the claimant would have difficulty working under time constraints is due to impaired concentration is not fully support by the internal CE data or the external MER and is given less weight. The claimant appears to be as active as pain allows where she reports being bedridden by pain on some days. The claimant meets her personal needs, prepares simple meals, and does light chores as pain and her physical limitations permit. Allegations of limitations in focus, independence and temper are not fully supported by the MER. The claimant has some depression and anxiety associated with her physical problems and chronic pain, but the alleged degree and severity and functional limitation is not fully supported by the MER. AP records report her mood is related to pain level. The current examiner finds moderate depression and mild anxiety with mental functions and capacity to relate grossly intact. A GAF of 60 was assigned. The claimant retains the mental capacity to sustain an independent routine of simple tasks where she can tolerate and respond appropriately to routine levels of coworker and supervisor interaction. She is able to adjust to simple changes in routine. Department Exhibit E-H.

On [REDACTED], the claimant underwent a Physical Residual Functional Capacity Assessment by an independent medical consultant. The claimant's primary diagnosis was degenerative disc disease of the C-spine with spondylosis with a secondary diagnosis of transient ischemic attacks. The claimant also had hepatitis C and headaches. The claimant could occasionally lift 20 pounds and frequently lift 10 pounds. She could stand and/or walk with normal breaks for a total of 6 hours in an 8-hour workday and sit for about 6 hours in an 8-hour workday. There were no limitations to pushing and pulling including operating hand and/or foot controls. An MRI of the cervical spine dated [REDACTED] reveals C5-C6 bulging disc with endplate osteophyte formation with C6-C7 bulging disc. The claimant has cervical radiculopathy with frequent cervical pain. The claimant's main complaint is of neck pain from an accident when she fell off a porch in November 2007. In February 2009, the claimant had a possible TIA involving the right MCA territory with left-sided facial paresthesia, but all tests were negative. A [REDACTED] liver biopsy confirmed acute hepatitis with bridging necrosis and cholestasis. The claimant could occasionally climb ramps, stairs, ladders, ropes, scaffolding, balancing, stooping, kneeling, crouching, and crawling. The claimant's impairments would not limit her ability to perform work-related activities 8 hours a day, 40 hours a week, on a sustained basis. Department Exhibit L-S.

On [REDACTED], the claimant was seen for an independent physical evaluation by an independent medical consultant, [REDACTED]. The independent medical consultant's diagnosis was chronic cervical myofascial strain, cervical disc prolapse at C5-6, cervical radiculitis, C5-6 level with chronic features, and chronic myofascial pain syndrome. The claimant should limit activities requiring lifting or carrying in excess of 5-10 pounds. Lifting and carrying, if done at all, should be done from the waist level only

and at a frequency not to exceed 3-4 times per hour. The claimant should avoid vigorous pulling, pushing, reaching, and carrying out activities at or above shoulder level. Torsional types of movements should also be restricted. The claimant had a normal physical examination. She was wearing a soft cervical collar where grip strength was 66 pounds of force on the right and 51 on the left, which represents grip strength in the 75th percentile. There was decreased sensation in the left upper extremity diffusely and non-dermatomal. There were no pathological reflexes where muscle stretch reflexes were 1-2+ brachioradialis, biceps, triceps, 2+ patella, and 1+ Achilles. The claimant had normal range of motion in all major peripheral joints that were within functional limits. The claimant ambulated normally. Manual muscle testing demonstrated the presence of pain inhibition in the left upper extremity. There was palpable tenderness of erector spinae muscles from level C5 to T1 on the left without acute spasm. There was also tenderness in the trapezius muscle bilaterally in all three divisions, as well as proximal rhomboid. The muscles were taut and there were multiple tender points. Electrodiagnostic testing was also performed that showed that there was increased insertional activity in the left deltoid, triceps, brachioradialis, pronator teres, as well as flexor carpi radialis, all on the left. There was an increase in polyphasic motor unit activity noted with contraction in the left pronator teres, left flexor carpi radialis, and erector spinae muscles from level C5-7 on the left. A nerve conduction study was essentially normal for all intensive purposes. The finding of increased insertional activity as well as increased polyphasicity notes was reflective of a probable left C6 membrane instability. There was no evidence of plexopathy, myopathy, or peripheral neuropathy. X-ray examination of the cervical spine was essentially within normal limits. Department Exhibit C-H.

On [REDACTED] the claimant underwent an electroencephalographic examination report at [REDACTED]. The radiologist's impression was no definite appearance of any focal or generalized epileptiform feature. The beta activity may be related to medication effect. Department Exhibit 108-109.

On [REDACTED], the claimant underwent a CT scan of the brain at [REDACTED]. The radiologist's impression was normal CT scan of the brain. Department Exhibit 107.

On [REDACTED], the claimant was admitted and discharged on [REDACTED] from [REDACTED]. The final diagnosis was possible transient ischemic attack involving the right middle cerebral artery territory, cervical degenerative joint disease, acute hepatitis C history, history of cholecystectomy, history of chronic pain syndrome, history of anxiety, and nicotine dependence. The claimant was discharged in stable condition with a guarded prognosis. A CT of the brain showed no acute changes with an unremarkable chest x-ray. Ultrasound of the carotids showed no hemodynamic significant stenosis. The 2-D echocardiogram official report shows ejection fraction 50-55% with no significant abnormalities. Follow-up care was a recommendation of no smoking with a list of medications. Department Exhibit A6-A7.

On [REDACTED], the claimant underwent an MRI of the cervical spine at [REDACTED]. The radiologist's impression was posterior cervical spondylosis at C5-C6 and C6-C7. There was minimal disc bulging paracentrally to the left at C5-C6 was also noted with discreet herniation or canal stenosis. Department Exhibit 111.

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant has back issues with a history of hepatitis C. The claimant didn't have any marked impairments, but does have some mental limitations. 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 she has no car and she gets confused and lost. The claimant does not cook even though she is physically able. She has a problem getting out of bed because of her migraines. The claimant grocery shops once a month with help. She has a problem bending, lifting, carrying, and driving. The claimant does clean her own home by vacuuming. She testified that she has pain after exertion. The claimant doesn't do any outside work. Her hobbies are painting and reading. The claimant felt that her condition has worsened in the past year because she has an increase in pain and an increase in numbness. The claimant stated she has depression where she is not taking medication or in therapy because she has no money.

The claimant stated that she wakes up at 9:00 a.m. She has coffee and picks up. She takes a nap about 2:00 to 3:00 p.m. for 15-60 minutes. She takes a hot bath at 4:00 p.m. She can't sleep because of pain and worrying. She goes to bed between 2:00 to 3:00 a.m.

The claimant felt that she could walk 1 block. The longest she felt she could stand was 20-30 minutes. The longest she felt she could sit was 2 hours. The heaviest weight she felt she could carry was 5 pounds. The claimant stated she is right-handed. Her level of pain on a scale from 1 to 10 without medication is a 7/10 and the claimant is not taking medication for pain.

The claimant smokes a pack of cigarettes a day. She stopped drinking alcohol in May 2008 where before she would drink occasionally. The claimant stopped smoking cocaine at 18. The claimant stated that there was no work she felt she could do.

This Administrative Law Judge finds that the claimant has not established that she cannot perform any of her prior work. The claimant was previously employed as a retail sales person, which is performed at the light level. The claimant has also been employed as a real estate broker and assistant manager, which are jobs that are performed at the sedentary level. The claimant has also been a real estate agent, which she may have a difficult time performing because it requires a lot of standing and walking to show clients around the different houses. The claimant should be able to perform light work. 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 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 objective medical evidence on the record is insufficient that the claimant lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. The claimant's testimony as to her limitation indicates her 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 she has depression where she is not taking medication nor in therapy. See MA analysis, Step 2. The claimant had a Mental Residual Functional Capacity Assessment where she had no marked limitations, but

several moderate limitations. The independent medical consultant thought the claimant retained the mental capacity to sustain an independent routine of simple tasks and that she could tolerate and respond appropriately to routine levels of coworkers and supervisor interaction. In addition, she was able to adjust to simple changes in routine. 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 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 and skilled work history, who is limited to light work, is not 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. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of simple, unskilled, light activities and that the claimant does not meet the definition of disabled under the MA program.

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

DISABILITY – SDA

DEPARTMENT POLICY

SDA

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

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

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or

- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

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

Other Benefits or Services

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

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

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

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.

- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P, retroactive MA-P, and SDA. The claimant should be able to perform any level of simple, unskilled, light work. The department has established its case by a preponderance of the evidence.

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

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

Date Signed: October 19, 2010

Date Mailed: October 19, 2010

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 / vc

cc:

