

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

IN THE MATTER OF:



Reg No. 200910430
Issue No. 2009; 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date:
April 21, 2009
Hillsdale 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, a telephone hearing was held on Tuesday, April 21, 2009. The claimant personally appeared and testified on her own behalf.

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 September 16, 2008, the claimant applied for MA-P and SDA with retroactive MA-P to June 2008.
2. On November 12, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant had a non-exertional impairment and SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

3. On November 14, 2008, the department caseworker sent the claimant a notice that her application was denied.
4. On December 10, 2008, the department received a hearing request from the claimant, contesting the department's negative action.
5. On January 20, 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 bipolar, depression, arthritis, carpal tunnel syndrome, neck, shoulder, arm, and hand pain. The claimant is 44 years old with 12 years or more of education and a history of unskilled work. The claimant did not meet applicable Social Security Listings 1.02, 1.04, 5.01, 12.02, 12.04, 12.06, and 12.08.

SHRT decided that there were insufficient evidence and requested an independent physical examination by an internist in narrative form and a psychiatric examination.

6. During the hearing on April 21, 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 July 15, 2009 and forwarded to SHRT for review on August 10, 2009.
7. On August 12, 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 45 years old with 13 or more years of education and a history of working as a cashier, home daycare worker, and in pricing merchandise. The claimant's disabilities are alleged due to joint and hand pain and depression. The claimant did not meet applicable Social Security Listings 1.01 and 12.01. The claimant is capable of performing other 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. This may be consistent with past relevant work. However, there was no detailed description of past work to determine this. In lieu of

denying benefits as capable of performing past work, a denial to other work will be given.

8. The claimant is a 46 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 4" tall and weighs 220 pounds. The claimant has a high school diploma and 1½ years of college for secretarial courses. The claimant can read or write and do basic math. The claimant was last employed in August 2008 as a shipping and receiving clerk at the light level. The claimant has also been employed as a cashier at the light level, quality technician at the medium level, and home daycare owner at the light level.
9. The claimant's alleged impairments are bipolar disorder, depression, arthritis, carpal tunnel syndrome, chronic pain, and chronic headaches.

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 August 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 Psychiatric/Psychological Examination Report by [REDACTED] from [REDACTED]. The claimant was given a diagnosis of bipolar II disorder, depressed, with a Tier II diagnosis of borderline personality traits. The claimant was given a GAF of 51. Her prognosis appeared guarded depending upon treatment. The claimant was not able to manage her own benefit funds. The claimant was able to understand, remember, and carry out instructions. She struggles to respond appropriately to change. Interaction with others is generally appropriate. She is restricted in her ability to retain and work in coordination with others without being distracted by them or by internal stimuli. The claimant was in contact with reality. Her insight and judgment appear adequate. There were no apparent exaggerations or minimization of symptoms. The claimant responses were spontaneously produced, relevant, clear, logical, and organized. The claimant denied hallucinations, delusions, persecutions, obsessions, thoughts controlled by others, and unusual powers. There was no suicidal ideation today, but the claimant stated she takes it day by day. The claimant appeared depressed. The claimant was oriented x3. Department Exhibit 1-FF.

On [REDACTED], the claimant underwent a physical examination at [REDACTED], [REDACTED]. The independent medical consultant’s assessment was neck pain with right arm pain, depression, hypothyroidism, osteoarthritis, carpal tunnel syndrome, and obesity. The claimant was alert, awake, and oriented x3. Speech was normal. Power was 5/5 in all four limbs. She had slightly weak handgrip on the right side compared to left. Muscle bulk and tone were normal in the upper and lower extremities bilaterally. Deep tendon reflexes were intact and symmetrical in the upper and lower extremities bilaterally. The claimant cannot walk on heels, toes, or squat down. There were no assistive devices needed for ambulation. The claimant’s hands did not show any synovitis. Wrists and elbows did not show any swelling, redness, or tenderness. Range of motion was normal. Right shoulder showed tenderness on palpation laterally with decreased range of motion due to pain. Cervical spine showed a lot of tenderness mostly on the right side with decreased range of motion due to pain. Lumbosacral spine showed slight tenderness on palpation with no muscle spasm noted with a slight decrease of range of motion noted mostly due to obesity. Hips, knees, and ankles did not show any redness, swelling, or tenderness. Range of motion was normal. The left knee did show crepitus on movement. The independent medical consultant’s clinical impression was that the claimant was stable with physical limitations that were expected to last more than 90 days. The claimant could frequently lift less than 10 pounds, could occasionally lift 25 pounds, but not 50 pounds or more. The claimant could stand and/or walk at least 2 hours of an 8-hour workday and sit less than 6 hours of an 8-hour workday. The claimant could use both hands/arms for simple grasping, but only the left for reaching, pushing/pulling, and fine manipulation. The claimant could use both feet/legs for operating foot/leg controls. The medical finding that supports the above physical

limitation was pain in right arm. The claimant was mentally limited in sustained concentration, memory, and social interaction. The finding that supports the above mental limitations is depression. The claimant could meet her needs in the home. Department Exhibit A-I.

On [REDACTED], the claimant had a MRI of the cervical spine performed at [REDACTED]. The radiologist's impression was moderate degenerative disc disease demonstrated at C5-C6 and C6-C7 levels. At C5-C6 there was moderate spinal stenosis with slightly greater compromise on the right side of the canal. There was a small disc protrusion along the right posterior margin of the disc, more likely a chronic finding. Department Exhibit W-X.

On [REDACTED], the claimant's treating physician submitted a Mental Residual Functional Capacity Assessment, DHS-49E, on behalf of the claimant. The claimant was markedly limited in sustained concentration and persistence in her ability to maintain attention and concentrate for extended periods; the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; the ability to sustain an ordinary routine without supervision; the ability to work in coordination with or proximity to others without being distracted by them; and the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The claimant was markedly limited in social interaction in her ability to interact appropriately with the general public and her ability to get long with co-workers and peers without distracting them or exhibiting behavioral extremes. Department Exhibit 166-167.

On [REDACTED], the claimant's treating psychologist submitted a Psychiatric/Psychological Examination Report, DHS-49D, on behalf of the claimant. The claimant was diagnosed with major depression, moderate and recurrent, with bipolar disorder Type II with a Tier Axis II diagnosis of borderline personality disorder. The claimant was given a current GAF of 50 compared to 65 last year. The claimant was capable of managing her own funds. Department Exhibit 164-165.

On [REDACTED], the claimant was admitted to the hospital and discharged on [REDACTED]. The claimant's discharge diagnosis was bipolar disorder Type II, most recent episode depressed; panic disorder without agoraphobia; and pain disorder. The claimant had a Tier II diagnosis of rule out borderline personality disorder. The claimant was given a GAF score of 65-70 on discharge. The claimant reported that she had overdosed on her Seroquel, Cymbalta, and Lexapro with the intent to kill herself. Department Exhibit 147-148.

On [REDACTED], the claimant was admitted to the hospital and discharge on [REDACTED]. The claimant's admitting diagnosis was respiratory failure with a discharge diagnosis of acute respiratory failure and suicide attempt secondary to antidepressants. The claimant was admitted after overdosing on her medication where she was found still to be a danger to herself and submitted to inpatient psychiatric care. Department Exhibit 171.

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant was treated in [REDACTED] for a suicide attempt that required subsequent psychiatric hospitalization. The claimant was released in stable condition and has continued to take her medication and participate in therapy. The claimant has some physical limitations as documented in her independent medical consultative exam of obesity, right arm pain, osteoarthritis, and carpal tunnel syndrome. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

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

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the claimant has a Wisconsin driver's license where she drives to her doctor's appointment and has a problem turning her neck left to right. The claimant does not cook because she has no will. The claimant grocery shops twice a month where her cousin takes her, but she tires easily and has pain in her neck that makes it hard. The claimant does clean her own home by vacuuming. She doesn't do any outside work. Her hobby is reading. The claimant felt that her condition has worsened in the past year because she has an increase in headaches and a decrease in strength in her right arm and her depression was worsened. The claimant stated that she is taking medication for mental impairments and in therapy at [REDACTED].

The claimant gets up from 2:00 to 3:00 a.m. She sits in the recliner. She gets up and takes her meds. She doesn't sleep well. She watches TV and tries to read. She uses the bathroom. The claimant goes to bed between 11:30 p.m. to 12:00 a.m.

The claimant felt that she could walk one block. The longest she felt she could stand was 20 minutes. The longest she felt she could sit was 30 minutes. The heaviest weight she felt she could carry was 5 pounds. The claimant stated that she is right-handed. Her level of pain on a scale from 1 to 10 without medication is a 10+ that decreases to an 8 with medication.

The claimant smokes 3 cigarettes a day. She stopped drinking in 1999 where before she would have one drink a month. The claimant stated she does not or has ever taken illegal or illicit drugs. The claimant stated that there was no work she could do because of her headaches and pain.

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 cashier at the medium level and as a shipping and receiving clerk, which is performed as light to sedentary and simple, unskilled work in the national economy. 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 bipolar disorder, depression, and borderline personality disorder. She is currently taking medication and in therapy. See MA analysis, 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 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 work history, who is limited to light work, is not 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 depression, bipolar disorder, and borderline personality disorder. 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: August 11, 2010

Date Mailed: August 12, 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:

