

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: 2009-12882

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 14, 2009

Iosco 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 Thursday, May 14, 2009. The claimant personally appeared and testified.

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 October 15, 2008, the claimant applied for MA-P and SDA without filing an application for retroactive MA-P.

(2) On December 12, 2008, 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 under Medical-Vocational Grid Rule 202.19 per 20 CFR 416.920(f) and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On December 19, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On January 12, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On March 4, 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 herniated disc, degenerative disc disease, chronic osteoarthritis, depression, and anxiety. He is 33 years old and has a limited education with a history of unskilled and semi-skilled work. The claimant did not meet applicable Social Security listings in CFR 404, Subpart P. The claimant is capable of performing light, unskilled work per Vocational Rule 202.17.

The claimant underwent a lumbar laminectomy at L4 in [REDACTED]. He later was involved in an automobile accident and has chronic back pain. An MRI in [REDACTED] was essentially unchanged from [REDACTED] and showed no focal disc herniation, but there was scar tissue. The claimant has no gait abnormality. He has tenderness and muscle spasms, but no evidence of significant neurological abnormalities.

(6) During the hearing on May 14, 2009, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on May 15, 2009 and forwarded to SHRT for review on May 21, 2009.

(7) On May 27, 2009, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA. The SHRT report reads in part:

The claimant is alleging disability due to degenerative disc disease, arthritis, diabetes mellitus, depression, and anxiety. He is 34 years old and has a limited education with a history of unskilled work. The claimant did not meet applicable Social Security listings in CFR 404, Subpart F. The claimant is capable of performing light work that is unskilled per Vocational Rule 202.17.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. Therefore, based on the claimant's vocational profile (younger individual with a limited education), MA-P is denied using Vocational Rule 202.17 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(8) The claimant is a 34 year-old man whose date of birth is [REDACTED]. The claimant is 5' 8" tall and weighs 150 pounds. The claimant has lost 10 pounds in the past year as the result of his diabetes, plus no appetite because of his depression. The claimant completed the 10th grade. The claimant wasn't special education where he can read and write and do basic math as far as addition, subtraction, multiplication, but no division. The claimant was last employed as a chef in 2008. The claimant has also been employed as a cook, laborer, and carpenter.

(9) The claimant's alleged impairments are degenerative disc disease, chronic osteoarthritis, bone spurs, depression, anxiety, diabetes, and insomnia.

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 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’s neurosurgeon submitted a letter on behalf of the claimant. The claimant had been a patient since [REDACTED]. The treating neurosurgeon stated that at his [REDACTED] visit that the corresponding MRI showed a collapse of the L4-5 disc where there was also changes at the 3-4 and L5-S1. The claimant was referred to have epidural steroid injections where he completed two of the three injections without relief. The

claimant's treating neurosurgeon stated that the claimant was on five-pound weight restrictions with no bending, twisting, pushing, or pulling. (Department Exhibit 96)

On [REDACTED], the claimant had a report of outpatient treatment at [REDACTED]. The claimant referred himself for treatment and it was decided that the claimant was appropriate for treatment; is attending treatment and is cooperative. The claimant has kept three out of three appointments. The claimant was seeking outpatient on his own for chronic depression and anxiety related to a possible bipolar disorder and post traumatic stress disorder from childhood experiences. The claimant has experienced loss of work and ability to compete in the workforce, which has required medical treatment and the use of psychotropic medications. The note was submitted by the claimant's licensed therapist. (Department Exhibit 91)

On April 23, 2009, the claimant's treating physician submitted a note on behalf of the claimant. The claimant has been under his treating physician's care for about one year for diabetes mellitus type 1, which was newly diagnosed and for chronic back pain for which he has had a L4 laminectomy in the remote past. The claimant has been suffering from chronic back pain, which limits his ability to sit, stand, carry, tug, or pull for any amount of time over twenty minutes. The claimant was taking pain medication, which seemed to help. The claimant had failed back injections with facet and epidurals. The claimant had also failed physical therapy. The claimant was currently working on a further workup on his chronic back pain, which seems to be due to an early degenerative joint and degenerative disc disease. (Department Exhibit 90)

On [REDACTED], the claimant's treating pain specialist submitted a note on his behalf. The claimant did well following a lumbar laminectomy in [REDACTED] in regards to right lower extremity pain, experiencing near resolution of that particular discomfort. The claimant

continues to have some right lumbosacral pain radiating into the buttock and in and around the right hip. This discomfort was made worse with sitting or standing in one position for any length of time. Recent MRI studies revealed enhancing scar involving the right lumbar five nerve root. The physician exam does reveal tenderness over the spinous process at L5 with mild paraspinous muscle spasm in the lower lumbar segments on the right side. There was sciatic notch tenderness on the right side and straight leg raising produced right lumbosacral discomfort at thirty degrees elevation on the right. The treating pain specialist believed that the enhancing scar in and around the right L5 nerve root was most probably associated with the claimant's current pain problem. A caudal epidural steroid injection was planned for the afternoon of [REDACTED] (Department Exhibit 85)

On [REDACTED], the claimant's treating physician completed a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined on [REDACTED] [REDACTED]. The claimant had a history of impairment and chief complaint of low back pain and stiffness with syncopal episodes. The claimant had a current diagnosis of DMI, chronic low back pain with degenerative joint disease of the lumbar spine, hyperkalemia, and hypercalcemia. The claimant had a normal physical examination. Musculoskeletally, the claimant had decreased range of motion, forward flexion, and tight promo spinal muscles. The claimant had mild depression. (Department Exhibit 34)

The treating physician's clinical impression was the claimant was stable, with physical limitations that were expected to last more than 90 days. The claimant could occasionally lift twenty pounds, but never twenty-five pounds. The claimant could stand and/or walk less than two hours of an eight-hour workday. There were no assistive devices medically needed or required for ambulation. The claimant could use both hands/arms for simple grasping and fine

manipulation, but neither for reaching and pushing/pulling. The claimant could use both feet/legs for repetitive actions. The medical findings that support the above physical limitation was tight promo spinal muscles, pain with palpation over posterior promo spinal muscles, and abnormal MRI of the lumbar spine. The claimant reported an inability to sit and stand for long periods of time. The claimant had no mental limitations. In addition, he could meet his needs in the home. (Department Exhibit 33)

On [REDACTED] the claimant's treating specialist submitted a consultation note. The claimant had been in an auto accident; then worked construction. He herniated the disc and had radiculopathy. The claimant underwent surgery, but continues to have back and leg pain, but predominantly back pain. The claimant could not function because of the pain where he feels weak in his back. The claimant had palpable muscle spasms; straight leg raising showed some back pain particularly on the left side. There was not a significant radicular component. It is predominantly mechanical back pain. A review of the claimant's MRI scan showed a collapse of the L4-5 disc. There were also changes at 3-4 and L5-S1. (Department Exhibit C)

On [REDACTED], the claimant was given an MRI of the thoracic spine without contrast at [REDACTED]. The radiologist's impression was changes of osteoarthritis involving the thoracic spine with posterior disc osteophyte complex identified at T11-T12. A smaller disc osteophyte complex paracentral on the left was identified at T9-T10. There was no evidence of spinal stenosis or cord compression at the above two levels. There were changes of osteoarthritis involving multiple levels of the thoracic spine. There was no focal disc herniation identified. (Department Exhibit 7)

On [REDACTED], the claimant was given an MRI of the lumbar spine with and without contrast. The radiologist's impression was enhancing epidural scar tissue on the right of the L4-L5 surrounding the right L5 nerve root as it extends into the right neural foramina. Findings were essentially unchanged when compared to the prior examination dated [REDACTED]. There was no evidence of focal disc herniation or spinal stenosis. There was normal alignment of the lumbar vertebral bodies and discs. Loss of T2 disc signal was seen at the L3-L4, L4-L5, and L5-S1 discs. No bone marrow signal abnormality was identified. Once again, at the L4-L5 level, enhancing epidural scar tissue was identified anterior and to the right of the thecal sac. This scar tissue surrounds the L5 nerve root. No residual or recurrent disc herniation was identified. The remaining levels showed no evidence for disc bulge, herniation, or spinal stenosis. The neural foramina were patent. When compared to the prior examination, there has been no interval change. No other areas of abnormal enhancement were identified. (Department Exhibit 6)

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 being treated for mental health services at [REDACTED] on an outpatient basis. The claimant does have diabetes mellitus type 1. His major issue is chronic back pain where the claimant does have osteoarthritis, but no spinal stenosis or cord compression or disc herniation was identified of the thoracic spine based on an MRI of [REDACTED]. The claimant's lumbar spine does show epidural scar tissue surrounding the right L4-L5 nerve root as it extends into the right neural foramina, but there was no evidence of focal disc herniation or spinal stenosis on [REDACTED]. The claimant's treating physician as cited on [REDACTED] showed a collapse of the L4-5 disc, but the submitted MRI dated [REDACTED] does not reflect a collapsed disc. Therefore, the claimant is not disqualified from

receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

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

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant does not have a driver's license and does not drive as the result of drunk driving eleven years ago where he has to pay \$500 to the Secretary of State. The claimant does cook once a day, but he doesn't cook more because some cooking requires a lot of prep resulting in a lot of standing. The claimant grocery shops with his sister once a month. The claimant stated it's painful to stand and walk. The claimant does not clean his own home, but he does wash dishes in short intervals for 10-15 minutes at a time. The claimant doesn't do any outside work. His hobbies are video games, watching TV, and reading books. The claimant stated that his condition has worsened in the past year because the increase in his pain has gotten worse. The claimant stated that has mental

impairments of depression and anxiety where he is taking medication and in therapy at [REDACTED]

The claimant stated that he can walk 100 yards. The longest he felt he could stand was 10-15 minutes. The longest he felt he could sit was 10-15 minutes. The heaviest weight he felt he could carry was 5 pounds. The claimant stated that he is right-handed. His level of pain on a scale of 1 to 10 without medication was a 9; that decreases to a 6/7 with medication.

The claimant stated that he smokes three cigarettes a day. He stopped drinking in 2007 where he has been sober for the past two years as a recovering alcoholic. The claimant stopped smoking marijuana in 2008. The claimant stated that there was no work that he thought he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant was previously employed as a chef, cook, laborer, and carpenter, which are all jobs that require a certain amount of standing, lifting, and bending in order to get the job done. The claimant has osteoarthritis of his back and chronic back pain. In addition, the claimant is being treated on an outpatient basis at [REDACTED]. The claimant's weight restrictions have been from five pounds by his treating neurosurgeon to twenty pounds from his treating physician. The claimant should be able to perform simple, unskilled, light work. Therefore, the claimant is not disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

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

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

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

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

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

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

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a

short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The claimant has submitted 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 exertional and non-exertional.

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

In the instant case, the claimant stated that he has depression and anxiety where he is currently taking medication and in therapy. The claimant is receiving therapy on an outpatient basis from [REDACTED]. The claimant has kept three of his last three appointments. 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 limited or less education, and a skilled and unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.18. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression and anxiety. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and

after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant 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 2, 2009

Date Mailed: October 2, 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:

