

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: 2009-5055
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 17, 2009
Calhoun 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 Tuesday, March 17, 2009. The claimant personally appeared and testified on his own behalf with his friend, [REDACTED] as a witness.

ISSUE

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

FINDINGS OF FACT

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

(1) On April 16, 2008, the claimant applied for MA-P and SDA with retroactive MA-P to January 2008.

(2) On May 14, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant's impairments were non-exertional and that the claimant was able to do unskilled work and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On May 16, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On May 30, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On December 5, 2008, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to degenerative disc disease and depression. The claimant is 40 years old with 12 years of education and an unskilled work history. The claimant did not meet applicable Social Security Listings 1.02, 1.04, 12.04, 12.06, 12.08, and 12.09.

The claimant is capable of performing other work that is medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) under Vocational Rule 203.28. 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 based on a Vocational Rule will be used.

(6) During the hearing on March 17, 2009, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on March 31, 2009 and forwarded to SHRT for review on April 17, 2009.

(7) On May 1, 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 and depression. The claimant is 41 years old with 12 years of education and an unskilled work history. The claimant did not meet applicable Social Security Listings 1.02, 1.04, 12.04, 12.06, 12.08, and 12.09.

The claimant is capable of performing other work that is medium work per 20 CFR 416.967(c) and unskilled work per 20 CFR 416.968(a) under Vocational Rule 203.28. 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 based on a Vocational Rule will be used.

(8) The claimant is a 41 year-old man whose date of birth is [REDACTED]. The claimant is 5' 9" tall and weighs 217 pounds. The claimant has lost 42 pounds in the past year because of severe depression. The claimant has a high school diploma. The claimant can read and write and do basic math. The claimant last worked as an unlicensed mechanic in 2005/2006, which is the claimant's pertinent work history.

(9) The claimant's alleged impairments are degenerative disc disease, depression, high blood pressure, high cholesterol, bipolar disorder, and intermittent explosive disorder.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"Disability" is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions

(including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months ... 20 CFR 416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since 2005/2006. 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 adult mental status examination by [REDACTED]. The independent medical consultant licensed psychologist diagnosed the claimant with major depressive disorder, recurrent, severe without psychosis, intermittent explosive disorder, and nicotine dependence. The claimant was given a GAF of 50. The independent medical consultant licensed psychologist’s prognosis was that the mental status examination revealed an individual with some immediate and recent memory problems. This could be due to a combination of his psychiatric condition and medical issues.

The claimant was limited in the activities he can do because of his back, shoulder, and neck problems. The claimant does have discrete, violent outbursts that involve property destruction. These are usually participated by minor annoyances. The claimant seems to feel remorse after these incidents. The claimant was able to manage his benefit funds. The claimant drove himself to his appointment where his walk was unaided, but slow. The claimant's grooming was indifferent and he smelled of industrial oil. The claimant showed adequate reality testing with slowed motor activity and no symptom exaggeration. The claimant's thoughts were organized, coherent, and associated to topics. The claimant's speech was clear and understandable. The claimant did not report any history of hallucinations, delusions, or unusual thinking. The claimant may entertain passive thoughts of wanting to die. The claimant displayed a broad and normal affect. The claimant was oriented to time, person, place, and circumstance. The claimant was able to repeat five digits forward and four digits backward. The claimant retained two of the four words after three minutes and twenty-five seconds. The claimant had normal past, information, calculations, abstract thinking, similarities and differences, and appropriate judgment. (Department Exhibit L-O)

On [REDACTED], the claimant was given a physical examination by an independent medical consultant from [REDACTED]. The independent medical consultant's conclusion was back pain. The claimant did have some scoliotic disease on exam with diminished range of motion in his lumbar spine, but there was no point tenderness. There was no myopathy or neuropathy. The claimant only had mild difficulty doing orthopedic maneuvers. He did complain of numbness in the right leg but the independent medical consultant could not reproduce this. This may be masked by his Neurontin medication. At this point, the claimant's gait was guarded but stable. He was not undergoing any management other than pain control. His

long-term prognosis was fair. The claimant has a history of asthma, but his lung fields were clear on exam. He may have some impairment due to his kyphotic posture. The claimant is on Albuterol as needed. The claimant also had a history of neck and shoulder pain and bipolar disorder. These all do appear to be stable as well and his upper extremities were normal. The claimant was cooperative in answering questions and following commands. The claimant's immediate, recent, and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant provided a good effort during the exam. The claimant had a normal physical examination. The claimant had normal range of motion in his spine. The claimant walked with a small stepped gait without the use of an assist device. Romberg testing was negative. Reflexes were 2+ and symmetrical. Motor strength and tone were normal. Sensory was intact to light touch and pinprick. (Department Exhibit D-J)

On [REDACTED], the claimant was given a patient note from [REDACTED]. The claimant was given a diagnosis of depressive disorder, NOS. Claimant's depression and feelings of anxiousness were discussed. At times, coping strategies were helpful. However, stressors in his life remain constant and therefore symptoms continue. The claimant was oriented to person, place, time, and circumstances/situations. The claimant was neutral and friendly with appropriate affect. The claimant's thought processing was lucid/rational. The claimant's affect was congruent. The claimant's appearance was neutral where he did appear older. The claimant had no perceptual disturbances noted. The claimant on a risk assessment for suicide and homicide was not present. (Department Exhibit 245-247)

On [REDACTED], the claimant was seen by his treating pain specialist at [REDACTED]. [REDACTED] The claimant was alert and oriented x3. He ambulated without difficulty. The claimant's neck range of motion was intact with a Spurling's sign. There was

minimal paraspinal tenderness in the thoracic and lumbar spine. There was moderate paraspinal tenderness; however, minimal reproduction with facet loading. His strength and sensation in his upper and lower extremities were intact. He had no Hoffman's sign and his toes were downgoing. The claimant had no sacroiliac joint tenderness. His straight leg raise was negative bilaterally. As he ambulated, he reported some pain radiating from his low back into his hips. The treating pain specialist's assessment was questionable disc degeneration, questionable lumbar radiculitis, lumbago, and thoracic pain. The recommendation was lumbar epidural steroid injections at L1-L2 and medical management. The claimant was given a lumbar epidural steroid injection that he tolerated well without any apparent complications. (Department Exhibit 253-254)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant has degenerative disc disease, with some lumbar radiculitis, with lumbago and thoracic pain as verified by his pain specialist on [REDACTED]. The claimant was being treated at [REDACTED] for depressive disorder, NOS as documented by a patient note on [REDACTED]. The independent medical consultant for his physical examination on [REDACTED] stated that the claimant had normal range of motion in his extremities but showed some scoliotic disease with diminished range of motion in the lumbar spine, but with no point tenderness from normal of 25 to 20 degrees. The claimant had no myopathy or neuropathy with only mild difficulty doing orthopedic maneuvers. 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 driver's license and does drive, although driving around the city makes him nervous. The claimant cooks once a day. If he cooks more than one course, something gets burned. The claimant grocery shops two to three times a month. He has a hard time dealing with crowds. The claimant does not clean his own home because of severe pain where he is not capable and not flexible. The claimant mows grass using a riding lawnmower for a half an hour. The claimant doesn't have any hobbies. The claimant felt that his condition has worsened in the past year because he has an increase in pain and mental issues. The claimant stated that for his mental impairments he is taking medication, but not in therapy. He did attend behavioral health in the past.

The claimant stated that he wakes up 11:30 a.m. He takes his medication and sits in a recliner. He has a hard time walking. He watches TV. He eats and cooks. He goes to bed between 12:30 a.m. and 3:30 a.m. The claimant stated that he has a hard time sleeping.

The claimant felt that he could walk 50 years. The longest he felt he could stand was 10 minutes. The longest he felt he could sit was 60 minutes. The heaviest weight he felt he could carry and walk was 20 pounds. The claimant stated that his level of pain on a scale of 1 to 10 without medication was a 10; that decreases to a 7/8 with medication. The claimant smokes a pack of cigarettes a day. He stopped drinking alcohol 18 years ago because he was an alcoholic. The claimant stated that he smokes marijuana occasionally. 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 an unlicensed mechanic. This job would expect him to bend, stoop, and crawl to fix cars and he would be required to lift a certain amount of weight that is medium to heavy in removing and replacing parts. The claimant with his current level of impairment with his back would have a difficult time performing those duties. (See analysis in Step 2.) 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 your limitations?” 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

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

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

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

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

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, bipolar disorder, and intermittent explosive disorder. The claimant is currently taking medication, but not in therapy. The claimant was given an independent mental status examination on [REDACTED] where he was given a GAF of 50, which is serious symptoms or any serious impairment in social, occupational, or school functioning. His diagnosis was major depressive disorder, recurrent, severe without psychosis, and intermittent explosive disorder. On [REDACTED], the claimant underwent individual therapy at [REDACTED] for depression but there was no evidence of a thought disorder. As a result, there is insufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from working at any job. Giving the claimant the benefit of the doubt with his diagnosis of depression, the claimant will be limited to 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, 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 bipolar

disorder, depression, and intermittent explosive 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: September 9, 2009

Date Mailed: September 9, 2009

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

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

CGF/vmc

cc:

