STATE OF MICHIGAN

MICHIGAN ADMINISTRATIVE HEARING SYSTEM ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Reg. No: 2010-35240 Issue No: 2009; 4031 Case No:

Hearing Date: June 22, 2010

Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notic e, a telephone hearing was held on Tuesday, June 22, 2010. Claimant personally appeared and testified on his own behalf, with his case manager and authorized representative, from

ISSUE

Did the department properly de ny the claimant's applicat ion 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 a material fact:

- 1. On December 1, 2009, the claimant applied for MA-P and SDA.
- On February 16, 2010, t he Medical Rev iew Team (M RT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was cap able of performing other work under Medical/Vocational Grid Rule 202.10 per 20 CF R 416.920(f) and for SDA that t he claimant's physical and mental impairment does not prevent employment for 90 days or more
- 3. On March 11, 2010, the department casework er sent the claimant a notice that his application was denied.

- 4. On May 4, 2010, the department received a hearing request from the claimant, contesting the department's negative action.
- 5. On May 26, 2010, the State Hearing Review T eam (SHRT) considered the submitted objective medical evidence in making its determination of MA-P, SDA, and retroactive MA-P for the claimant. The claimant is 52 years old with a limited education and a history of uns killed work. He alleges disabilit y due to chronic pain, arthritis, hepatitis c, and renal insufficiency. The claimant's impairments do not meet/equal the int ent or severity of a Social Security listing. The claimant is capable of performing other work of medium work per 20 CF R 416.967(c) and unskilled work per 20 CFR 416.968(a) under Vocational Rule 203.18.
- 6. During the hearing on June 22, 2010, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was not received from the authorized representative and the record was closed.
- 7. The claimant is a 54 year-old man whose date of birth is claimant is 5'5" tall and weighs 143 pounds. The claimant hhas a 6 grade education and was special education in reading and math. The claimant channel and write and do basic math. He stated that he could write his name. The claimant was last employed as a dishwasher at the light level in 2003. He has also been employed as a racker, assembler, and line worker.
- 8. The claim ant's alleged impair ments are chronic pain, arthritis, Hepatitis C, depression, and renal insufficiency.

CONCLUSIONS OF LAW

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

The Medic al Assistance (MA) program is est ablished by the Title XIX of the Socia I 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 Independenc e Agency) administers the MA program pursuant to MCL 400.10, et seq., and MC L 400.105. Department polic ies are found in the Program Admini strative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"Disability" is:

...the inability to do any substant ial 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 y ou 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 m edical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expect ed 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 m edical 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 re cord 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 (suc h 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 med ical evidence...mus t 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 c onsist of symptoms, signs, and laboratory findings:

- (a) **Sy** mptoms 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 clinic al diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behav ior, mood, thought, memory, orientation, development, or perception. They must al so 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 ac ceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psy chological tests. 20 CFR 416.928.

It must allow us to determine --

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

Information from other sour ces may also help us to understand how y our 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 ment al 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 t han 12 months. See 20 CFR 416.905. Your impairment must result from anatomical, physiologi cal, or psyc hological abnormalities which are demonstrable by medically acceptable clinical and laborat ory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain may contain medical opinions. Medical op inions are statements from physicians and psyc hologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), includ ing 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 alway s 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 evi dence 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 re ceive, inclu ding a II medica I 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 CF R 416.927(c)(1).

...If any of the evidence in y our 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 ab out whether you meet the statutory definition of disability. In so doing, we review all of the medic al 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 t hat we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an im pairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find y ou disabled wit hout 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 CF R 416.920(e).

If you cannot do any work you have done in the past because you have a severe impai rment(s), we will consider your residual functional capacit y and your age, educ ation, 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 capacit y 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), (conto) 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 im pairment(s).... 20 CF R 416.945(a).

...In determining whether you ar e disabled, we will conside r all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as cons istent with objective medical eviden ce, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, inc luding pain, we will cons ider 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 allege diffunctional 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 dem ands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Resi dual 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 lim itations and then determine your residual functional capacity for work activity on a regular and continuing bas is. 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 r equire 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 indiv idual is disabled, 20 CFR 4 16.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual f unctional c apacity, and vocational factors (i.e., age, education, and work experience) are ass essed in that order. When a determination that an individual is or is not disable document and at any step in the sequentia levaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if t he 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 2003. 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 CF R 416.920(c). A sev ere impair ment is an impairment which significantly limits an in dividual'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 objective medical evidence on the record further substantiates the Administrative Law judge findings:

On January 26, 2010, the claimant's treating physician c ompleted a Medical Examination Report, DHS-49, for the claim ant. The claimant was first examined on December 18, 2009 and last examined on January 18, 2010. The claim ant had a history of impairment, curr ent diagnosis, and chief complaint of dizziness due to hypertension, renal insufficiency, back pain, depression, edema, hepatitis c, and polysubstance abuse. The claimant had an essentially normal physical examination with no mental limitations. He could meet his needs in the home. Department Exhibit 171-172.

On December 4, 2009, the claim ant was admitted to date of December 6, 2009. The claimant discharge diagnosis was bilateral leg pain and edema sec ondary to proteinuria/ chronic kidney disease, cocaine abuse, uncontrolled hypertension, dyspnea and chest pain. The claimant had an essentially normal physical exam. His VQ scan showed low probability of pulmonary embolism. His chronic kidney disease was most likely related to cocaine abuse. The claimant was advised to stop using cocaine. Department Exhibit 204-206.

At Step 2, the objective medica I evidence in the record indic ates that the claimant has established that he has a severe impairment. The claimant had chronic renal failure related to his cocaine abuse, which caused other health problems for the claimant. His physical examination by his treating physician was essentially unremarkable. 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 sequentia I 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 Ap pendix 1 of Sub part 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 impairment is 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 sequent ial consideration of a disability claim, the trier of fact must determine if the claimant's impairment (s) prevents claim ant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Admini strative Law Judge, based upon the medical eviden ce and objective, physical and psychological findings that the claimant testified t hat he does perform his daily living activities. The claimant does feel that his condition has worsened because everything is swollen. The claimant stated that he had depr ession, where he was taking m edications and in therapy. The claimant does smoke a pack of cigarettes a day. He does drink alcohol oc casionally. The claimant stopped us ing illegal or illicit drugs of crack about October 2009. The claimant did not feel there was any work he could do.

At Step 4, this Administrative Law Judge finds that the claimant has not established that he cannot perform any of his prior work. The claimant was previously employed as a dishwasher at the light level in 2003. His pa st employment was at the light level. The claimant has uncontrolled hyper tension and ch ronic kidney failure as a result of his cocaine use. His condition resolved while he was hospitalized. In addition, his treating physician noted that he had a normal physic al examination. The claimant is capable of performing at least medium work. Therefore, the claimant is disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacit y defined simply as "what can you still do despite you lim itations?" 20 CF R 416.945;
- (2) age, educ ation, and wo rk experience, 20 CF R 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 published by the pub

Sedentary w ork. Sedentary work involves lifting no more than 10 pounds at a time and occa sionally 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 wa lking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light w ork. 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 walk ing or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

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

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

Unskilled work. Unskilled work is work which needs little or no judgment to do s imple 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 sufficient that the claimant lacks the residual functional capacity to perform so me other I ess 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 ar e assessed using the criteria in paragraph (B) of the listings for mental di sorders (descriptions of restrict ions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated wit h competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the inst ant case, the claimant testifi ed that he has depres sion. He was taking medications and in therapy. See MA analysi s step 2. There were no therapeutic records submitted on behalf of the claimant. The claimant only completed the 6th grade of school and was special education in reading and math. The claimant stated that he stopped using crack in October 2009. The medical evidence on the record is sufficient to support a mental impairment that is so sever e to prevent the claimant from performing skilled, detailed work, but the claimant should be able to perform simple, unskilled work.

At Step 5, the claimant can meet the physical requirements of medium work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a closely approaching advanced aged individual with a limited or less education, and unskilled work history, who is limited to meedium work, is not considered discabled. 20 CFR 404, Subpart P, Appendix 2, Rule 203.18. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant could perform simple, unskilled medium work and that the claimant does not meet the definition of disabled under the MA program.

The department's Program Eligib ility Manual provides the following policy s tatements 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 <u>no</u> 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 S pecial Living Arrangement facility, or
- is certified as unable t o work due to mental or physical disability f or at least 90 d ays from the onset of the disability.
- . is diagnos ed as hav ing Ac quired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so t hat the ba sis of his/her disability is no longer valid, determine if he/she meets any of the other disability crit eria. Do NO T simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

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

- . Retirement, Survivors and Disa bility 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 blindn ess 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 Disabilit y Termination," does not qualify a person as disable d 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 Serv ices (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 ser vices from the local intermediate school district. To qualify, the person may be:
 - attending s chool under a spec ial education plan approved by the local I ndividual Educ ational Planning Committee (IEPC); or
 - not attending under an I EPC approved plan but has been certified as a special education student and is attending a sc hool program leading to a high sc hool diploma or its equivalent, and is under age 26. The pr ogram does not have to be designated as "special education " as long as the person has been certified as a special education student. Elig ibility on this bas is continue s until the person completes the high s chool 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 di sabled under the MA program and because the evidence in the record does not establish that the claimant is unable to work for a period exc eeding 90 days, the claimant does not me et the disability criteria for SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusion sof law decides that the department has appropriately established that it was acting in compliance with department policy when it denied the chain laminary application for MA-P, SDA, and retroactive MA-P. The claimant is capable of performing simple, unskilled, medium work. The department has established its case by a preponderance of the evidence.

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

Carmen G. Fahie Administrative Law Judge For Maura D. Corrigan, Director Department of Human Services

Carmon J. Sahie

Date Signed: January 30, 2012

Date Mailed: January 30, 2012

NOTICE: Administrative Hearings may or der a re hearing 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 Hear ings will not orde rarehearing 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CGF/tg

CC:

