

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: 2010-9827

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 27, 2010

Genesee 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 Wednesday, January 27, 2010. The claimant personally appeared and testified. His attorney was not present, but was sent a notice of the hearing date and time.

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 July 7, 2009, the claimant applied for MA-P and SDA without filing an application for retroactive MA-P.

(2) On September 23, 2009, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant is capable of performing past work under Medical Vocational Grid Rule 203.26 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 October 5, 2009, the department caseworker sent the claimant a notice that his application was denied.

(4) On October 16, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On December 23, 2009, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to bipolar disorder and back problems. He is 50 years old and an 11<sup>th</sup> grade education with a history of no reported work. The claimant did not meet applicable Social Security Listings 1.04 and 12.04. The claimant is capable of performing other work that is medium work per 20 CFR 416.967(c) under Vocational Rule 203.18.

(6) On June 27, 2009, the Social Security Administration Retirement, Survivor's and Disability Insurance sent the claimant a notice that he did not qualify for benefits because he had not worked long enough under Social Security so a determination was not made as to whether or not the claimant was disabled.

(7) The claimant is a 50 year-old man whose date of birth is [REDACTED]. The claimant is 6' tall and weighs 190 pounds. The claimant completed the 11<sup>th</sup> grade of high school where he was Special Education in all subjects. The claimant can read and write and do basic math. The claimant has no pertinent work history because he was in jail from [REDACTED].

(8) The claimant's alleged impairments are bipolar disorder, back pain, pinched nerve, and spinal compression fracture.

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 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 no pertinent work history. 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 (6<sup>th</sup> Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant was given an independent psychiatric/psychological medical evaluation for the [REDACTED]

[REDACTED] The independent medical consultant licensed psychologist's diagnosis was the claimant had bipolar disorder, NOS, per [REDACTED] with a history of cocaine abuse. The claimant had a current GAF of 67. The claimant's prognosis was guarded. The claimant was able to cognitively able to manage his benefits funds, but the claimant does have a history of substance abuse. The independent medical consultant licensed psychologist was under the subjective impression that the claimant was underrepresenting his abilities and exaggerating symptoms during the exam. The Dot Counting Test was administered where the claimant's e-score was 29 suggesting underrepresentation of abilities and found that the person was engaging in a high degree of embellishment or symptom magnification. The independent medical consultant licensed psychologist's impression was that the claimant's mental ability to understand, remember, and carry out instructions were not significantly impaired. The claimant's ability to respond appropriately to coworkers and supervisors and to adapt to change and stress in the workplace were mildly impaired. Overall, the independent medical consultant licensed psychologist's clinical impression was that the claimant's psychological condition would mildly impair his ability to perform work-related activities. (Department Exhibit 8-11)

On [REDACTED], the claimant's treating psychologist at [REDACTED] submitted a Mental Residual Functional Capacity Assessment, DHS-49E, on behalf of the claimant. The claimant was markedly limited in the understanding and memory in the ability to understand and remember detailed instructions. The claimant was markedly limited in the sustained concentration and persistence and his ability to carry out detailed instructions, the ability to

maintain attention and concentration for extended periods, the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, and the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The claimant was markedly limited in his ability to interact appropriately with the general public, the ability to accept instructions and respond appropriately to criticism from supervisors, the ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes. The claimant was markedly limited in adaption in his ability to respond appropriately to changes in the work setting, the ability to be aware of normal hazards and take appropriate precautions, and the ability to set realistic goals or make plans independently of others. (Department Exhibit 27-27A)

On [REDACTED], the claimant's treating psychologist at [REDACTED] submitted a Psychiatric/Psychological Examination Report, DHS-49D. The claimant was not given a primary diagnosis. The claimant was given a GAF of 45 compared to a GAF of 45 last year. The claimant was incarcerated for 22 years where the treating psychologist felt that the claimant had been traumatized for many years. The claimant came in by himself where he was oriented x3. He was dressed appropriately, but forgetful of forms to be completed. The claimant's current medications are psychotherapy and psychotropic. The claimant has periods of racing thoughts with poor concentration. The claimant was depressed and anxious around people. The claimant was oriented x3 with no delusions or hallucinations. The claimant had a poor recall of recent involvement. (Department Exhibit 28, 28A, and 29)

On [REDACTED], the claimant's treating physician completed a Medical Examination Report, DHS-49, on behalf of the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment and chief complaint of back pain with left radiculopathy. The claimant had a current diagnosis of low back pain. The claimant had a normal physical examination except that the claimant's treating physician noted that musculoskeletally, the claimant had chronic low back pain. Mentally, the claimant was under psychiatric care. The treating physician's clinical impression was the claimant was stable with limitations that were expected to last more than 90 days. The claimant could occasionally lift up to 20 pounds. The claimant could stand and/or walk at least 2 hours of an 8-hour workday and sit less than 6 hours of an 8-hour workday. There were no assistive devices medically required or needed for ambulation. The claimant could use both hands/arms and feet/legs for repetitive action. The medical finding that supports the above physical limitation was that the claimant has chronic low back pain where he is currently taking opiates. The claimant was limited in his ability to follow simple directions. The claimant can meet his needs in the home. (Department Exhibit 30, 38, and 31)

On [REDACTED], the claimant underwent an independent medical examination at [REDACTED]. The independent medical consultant determined that the claimant was a well-developed, well-nourished man whose height was 5' 11" and weighed 194 pounds. The claimant walks and moves without apparent difficulty where he does not have a limp or use a handheld walking aid. The claimant had a good full curve indicating the absence of muscular spasm or significant limitation of motion. The claimant had no radicular complaints into any of the four extremities. Deep tendon reflexes were 2+ and equal at the knees and ankles were SLRs were fully negative at 90 degrees bilaterally. The claimant was able to do tandem walk, heel

walk, toe walk, squat fully, arise under his own power, and get on and off the examining table.

The claimant stated he avoids climbing stairs, which are painful for him. The claimant complained of left-sided lower back, buttock, and posterior pain in performing this motion and recovering. Spinal extension of back bending was done to 20 degrees with complaints with right lateral flexion of 20 out of an expected 25 degrees on the left side. The claimant had a normal physical examination. The claimant showed good facility with his hands in picking up coins, first with one hand then the other. His Jamar dynamometer grip strengths were considered strong at 80 pounds per square inch in the dominant right hand and 95 pounds per square inch in the left. (Department Exhibit 13-19)

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 a mental impairment where he is taking medication and in therapy. The claimant was given a GAF that ranged from 45 to 67. The claimant has a history of chronic back pain with left radiculopathy, but walks unassisted. 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 because his license expired and he has no money to renew it. The claimant cooks twice a day with no problem. The claimant grocery shops once a month with no problem where he makes and keeps a list. The claimant does clean his own home by sweeping, mopping, and washing dishes. The claimant doesn't do any outside work or have any hobbies. The claimant felt that his condition has worsened in the past year because he has had an increase in pain. The claimant stated for his mental impairment that he is taking medication and in therapy.

The claimant gets up 8:00 a.m. He takes care of his personal needs. He fixes and eats breakfast. He keeps his appointments. He watches TV and reads the paper.

The claimant felt that he could walk a block and a half. The longest he felt he could stand was 20-30 minutes. The longest he felt he could sit was 20 minutes. The claimant was not sure what the heaviest weight was that he could carry and walk. The claimant stated that his level of pain on a scale of 1 to 10 without medication was an 8 that decreases to a 5 with medication.

The claimant smokes a half a pack of cigarettes a day. He stopped drinking alcohol 27 years ago where he would drink 2-3 forties. The claimant stopped using illegal and illicit drugs in 1988 where he did cocaine and marijuana. The claimant stated that there was no work that he felt he could do.

This Administrative Law Judge finds that the claimant has not established that he cannot perform any work. The claimant has no pertinent work history since he has been incarcerated from [REDACTED]. The claimant should be able to perform simple, unskilled, light work with his mental and physical impairments. Therefore, the claimant is disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

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

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

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

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

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

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

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

**Unskilled work.** Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The 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 bipolar disorder. He is currently in therapy and taking medication. The claimant was given a GAF of 67 on [REDACTED] by an independent medical licensed psychologist and a GAF of 45 by his treating psychologist on [REDACTED] that shows serious to moderate symptoms or serious to moderate difficulty in social, occupational, or school functioning. The claimant was diagnosed with bipolar disorder

with a history of cocaine abuse. The independent medical consultant's impression was that the claimant was engaged in a high degree of embellishment or symptom magnification. The independent medical consultant licensed psychologist's impression was that the claimant's ability to understand, remember, and carry out instructions were not significantly impaired, but his ability to respond appropriately to coworkers and supervisors and adapt to change and stress was mildly impaired. The independent medical consultant licensed psychologist's impression was that the claimant's psychological condition would only mildly impair his ability to perform work-related activities. In comparison, the claimant's treating psychologist found him markedly limited in several areas and thought that he had periods of racing thoughts and poor concentration. The claimant did not have delusions or hallucinations. 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 closely approaching advanced age individual with a limited or less education, and no pertinent work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.10. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as bipolar 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: April 1, 2010

Date Mailed: April 1, 2010

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

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

CGF/vmc

cc:

