

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: 2007-21506
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 20, 2007
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 December 20, 2007.

ISSUE

Did the department properly deny the claimant's application for 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 May 15, 2007, the claimant applied for SDA benefits.
- (2) On June 22, 2007, the Medical Review Team (MRT) denied the claimant's application for SDA stating that the claimant's physical and mental impairment does not prevent

employment for 90 days or more. The claimant was capable of performing one-handed work under Vocational Rule 202.11 in performing light work.

(3) On July 2, 2007, the department caseworker sent the claimant a notice that his application had been denied.

(4) On July 13, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On October 10, 2007, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P eligibility for the claimant. The SHRT report reads in part:

The claimant suffered a crush injury. He will retain some function with the right hand. However, it will be significantly diminished from normal function. After healing of the hand, he should be capable of performing light work with addition of some limitation in grasping and significant limitation in fingering with the right hand.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. Therefore, based on the claimant's vocational profile (closely approaching advanced age, high school education, and a history of unskilled work), MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case is also denied.

(6) During the hearing on December 20, 2007, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. The additional medical information was received from the local office on January 14, 2008 and forwarded to SHRT for review on January 18, 2008. This Administrative Law Judge notes that the October 10, 2007 SHRT decision considered the claimant incorrectly for MA-P and retroactive MA-P but not for SDA that was the basis for the hearing request.

(7) On January 28, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of SDA eligibility for the claimant. The SHRT report reads in part:

The treating physician reported that claimant could do no work of any kind for six months from the [REDACTED] right hand injury, and as of [REDACTED] he did not need any medical assistant with personal care needs. The claimant reported on [REDACTED] that he vacuums, makes his bed, and sweeps. It appears that the claimant retains the residual functional capacity to perform at least unskilled, light work as of at least [REDACTED] as reported by the claimant.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant condition is improved or is expected to improve and not prevent all work for 90 days or more. SDA is denied per PEM 261. The provisions of 20 CFR 416.909 are used as a guide.

(8) The claimant is a 54 year-old man whose date of birth is [REDACTED]. The claimant is 6' tall and weighs 175 pounds. The claimant has lost 15 to 20 pounds in the past year because of stress and worry. The claimant completed the 11th grade of high school. The claimant was last employed as a machine operator on [REDACTED]. The claimant has also been employed as a washer, stock person, assembly worker, and maintenance worker.

(9) The claimant's alleged impairment a right hand injury at work on [REDACTED] where he is missing his index and ring finger.

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 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.

Although the claimant does not meet the definition of disabled under the MA program, the evidence on the record does establish that the claimant is unable to work for a period exceeding 90 days where the claimant meets the disability criteria for SDA. The claimant meets the eligibility criteria for SDA from May 2007 to November 2007. The claimant should get a referral to [REDACTED] to be retrained and seek different types of employment. The claimant has a worker's comp claim that is currently being processed because he was hurt while performing his job.

"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). In this case, the claimant is not engaged in substantial gainful employment and has not worked since [REDACTED]. 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 seen by his treating physician. His diagnosis was amputation of the index and ring finger. The claimant has only gone to therapy once. The claimant had a hard time getting his physical therapy approved through [REDACTED]. The treating physician noted that the claimant’s hand was still stiff. The physical examination showed that the claimant has stiff digits in the remaining middle finger and less in the small finger. The amputation sites have healed. One site that retained a suture, the suture was removed. (Department Exhibit A)

On [REDACTED], the claimant was seen by his treating physician where he was status post amputation of right index and ring finger. The claimant’s hand is somewhat stiff mostly in the digits. The amputation sites looked good. (Department Exhibit B)

On [REDACTED], the claimant's treating physician stated that the claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a crush injury to the hand on [REDACTED]. The claimant's current diagnosis is traumatic amputation of fingers complication. The general exam showed complete amputation of the right index and middle fingers. Laboratory and x-ray findings showed the amputation to the right index finger proximal phalanx and right middle finger proximal phalanx. (Department Exhibit 14)

The treating physician's clinical impression was that the claimant was stable but limitations are expected to last more than 90 days. The claimant could never lift any weight. The claimant had no limitation as far as standing, walking, and sitting. There were no assistive devices medically required or needed for ambulation. The claimant can use his hands/arms on the left side and both feet. The medical findings that support the above physical limitations were traumatic amputation of middle and index finger. In addition, the claimant could meet his needs in the home. (Department Exhibit 15)

On [REDACTED], the claimant's treating physician completed a Medical Needs form, (DHS-54A), for the claimant. The claimant was diagnosed with traumatic amputation of the fingers complicated. It was not a chronic ongoing illness, but required one office visit per month for approximately three months. Medical treatment will be required as needed. The claimant was ambulatory, did not need special transportation, and anyone to accompany him to his appointment. The claimant did not need any assistance with his personal care needs. The claimant could not work his old job for one year and he could not work any job for one year. (Department Exhibit 16)

On [REDACTED], the claimant's orthopedic surgeon stated that the claimant sustained a altercation at work of the right middle and index finger on [REDACTED]. (Department Exhibit C)

On [REDACTED], the claimant was admitted as the result of a right hand injury where there was significant injury to his right hand with partial amputation secondary to a crush injury in a machine at work. The claimant underwent a completion of the amputation of the right index and ring fingers without any intra operative complications. The claimant did quite well overnight where he remained comfortable and afebrile. (Department Exhibit 26-28)

At Step 2, the objective medical evidence on the record indicates that claimant has established that he has a severe impairment. The claimant was injured at work on [REDACTED] where he had to have his index and ring finger amputated. 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 was suspended because of tickets. The claimant cooks two to three times a day, but has a hard time using his hands. The claimant grocery shops once a month. He has a hard time lifting things off of the shelves, it's awkward. The claimant does clean his own home with his left hand, which is awkward. The claimant doesn't do any outside work. His hobbies are reading, music, and movies. The claimant does not think his condition has worsened in the past year. However, his hand swells and aches when he overdoes it. The claimant is currently taking no meds.

The claimant wakes up between 9:00 a.m. to 12:00 p.m. He listens to music. He takes care of business. He watches TV. He goes to bed between 8:00 p.m. to 12:00 a.m. He has trouble sleeping because of his stress and worries.

The claimant hand swells if he walks too much. The heaviest weight he could carry with his right hand was 5 pounds and his left hand has no problem carrying weight. The claimant is right handed, which is the hand that was injured where his right index and ring fingers were amputated. The claimant's pain on a scale from 1 to 10 was a five. The claimant is currently not taking any medication for pain. The claimant smokes three to five cigarettes a day. He occasionally drinks alcohol. He stopped smoking marijuana in [REDACTED].

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant was previously employed as a machine operator, washer, stock person, assembly worker, and maintenance worker, which requires the use of both his hands, which was injured resulting in amputation of his right index and ring finger. The claimant's dexterity and fine manipulation has been compromised in his right hand. Therefore, the claimant is not disqualified from receiving disability at Step 4. However, the Administrative

Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

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

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

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

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

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

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

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or

she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

The claimant has submitted insufficient evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior 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.

At Step 5, the claimant cannot meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a closely approaching advance age individual, with a limited or less education, and a skilled and unskilled work history, who is limited to light work, is considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.10. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical impairments, the Administrative Law Judge finds that the claimant cannot still perform a wide range of light activities and that the claimant does meet the definition of disabled under the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not appropriately established that it was acting in compliance with department policy when it denied the claimant's application for SDA. The claimant should be eligible for SDA until November 15, 2007 and referred to [REDACTED] [REDACTED] for retraining. The department has not established its case by a preponderance of the evidence.

Accordingly, the department decision is **REVERSED**. The department is ordered to determine the claimant's financial eligibility for SDA from May 2007 through November 2007 with a referral to [REDACTED].

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 23, 2009

Date Mailed: February 24, 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:

[REDACTED]