

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: 2007-30846
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 5, 2008
Eaton 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, an in-person hearing was held on Wednesday, March 5, 2008. The claimant personally appeared and testified with her authorized representative, [REDACTED].

ISSUE

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

FINDINGS OF FACT

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

(1) On April 13, 2007, the claimant applied for MA-P with retroactive MA-P to March 2007.

(2) On June 4, 2007, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant's impairments lacks the duration of 12 months per 20 CFR 416.909.

(3) On June 6, 2007, the department caseworker sent the claimant a notice that her application was denied.

(4) On August 29, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On January 3, 2008, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P. The SHRT report reads in part:

Her condition is expected to improve postoperatively. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied.

(6) During the hearing on March 5, 2008, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on and April 24, 2008 forwarded to SHRT for review on May 5, 2008.

(7) On May 30, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and retroactive MA-P. The SHRT report reads in part:

The claimant has a history of gastric bypass surgery in 2003 and she reportedly lost 150 pounds. In [REDACTED], she had a hernia repair related to the gastric bypass surgery. However, following the hernia surgery, she had GI bleeding and loss of quite a bit of blood. She eventually had removal of the mesh from the hernia surgery and total gastrectomy of the stomach remnant and placement of a duodenostomy tube. She ended up being intubated but was later extubated without difficulty. Even though she had a complicated recovery from the surgery, she did continue to improve. In [REDACTED], she was seen about swelling in her feet, but that also improved by [REDACTED]. In [REDACTED], she had more hernia repair without any further complications.

The medical evidence of record indicates that the claimant's condition was improving or was expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied.

(8) The claimant is a 52 year-old woman whose date of birth is [REDACTED].

The claimant is 5' 5" tall and weighs 142 pounds. The claimant has gained 70 pounds because of fluid retention and lost 34 pounds in the past year. She has a high school diploma. The claimant can read and write and do basic math. The claimant is currently employed part-time as a stock clerk working 12 hours per week at a pay rate of [REDACTED] an hour, where from October 2005 to February 2007 she had limitations. The claimant has also been self-employed as an engraver from 1992 to 2007.

(9) The claimant's alleged impairments are hernia repair surgeries, gastrointestinal bleed, blood clots, and fluid retention in the right leg.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department

of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"Disability" is:

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

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

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

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

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

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

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

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

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

...Medical reports should include --

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

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

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

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

Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

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

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

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

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

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

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

“Disability” is:

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

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

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity, and only working part-time with a gross income of [REDACTED] per month. 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 had a surgical pathology report from [REDACTED]. The microscopic diagnosis was ventral hernia sac – portion of fibro-connective tissue with focal multinucleated giant cell reaction, consistent with hernia sac wall. The abdominal skin portion of the skin and subcutis showed no pathological changes.

(Department Exhibit 7)

On [REDACTED], the claimant was given a pre and post operative diagnosis of ventral hernia for an operation for ventral hernia repair with mesh times five. Her discharge date was [REDACTED] at [REDACTED]. The claimant tolerated the procedure well

and was transferred to PACU in stable condition. Estimated blood loss was minimal. The Gore-Tex dual mesh utilized to fix hernia defects time 5, 15 x 19 cm. (Department Exhibit 5-6)

On [REDACTED], the claimant had an office visit with her treating surgeon at the [REDACTED]. The claimant had normal vital signs where the claimant developed a ventral hernia after losing weight as the result of a gastric bypass procedure, which was repaired with mesh. Earlier in the year, the claimant developed a GI bleed from a marginal ulcer and required emergency surgery for this at which time her mesh was removed or divided. The claimant once again had problems with ventral hernias. At this time, she has two hernias in the upper right and the upper left abdominal quadrants. These have always been reducible but have been painful on occasion and have given her intermittent constipation. The claimant had a normal physical examination. The treating surgeon noted that the claimant had abdominal wall lax with two palpable facial defects in the right upper quadrant and in the left upper quadrant of the abdomen. The claimant had two large ventral hernias in the upper abdomen that were reducible, but intermittently painful. The plan was an open ventral herniorrhaphy with mesh repair. (Department Exhibit 1-4)

On [REDACTED], the claimant was seen at [REDACTED] [REDACTED] as the result of venous reflux testing. The claimant had bilateral venous varicosities and lower extremity swelling. The claimant did have bilateral varicosities that were more uncomfortable and problematic on the right although the major problem was foot swelling which had improved during the past five weeks. Dedicated venous imaging failed to show significant reflux on the left. There were some varicosities entering the competent greater saphenous vein on

the left with some perforator connections. On the right side, the claimant had some chronic thrombus in the anterior accessory branch, which has only approximately 7 cm of the straight segment, which might be ablatable. The main greater saphenous vein was incompetent and probably amenable to ablation in the mid-thigh with the entry point probably in a larger branch. There were perforator connections below the knee with multiple branches. Since then the claimant had demonstrated some improvement and because of concerns, the claimant decided to temporarily stop. (Department Exhibit 11-12)

On [REDACTED], the claimant's treating surgeon completed a Medical Examination Report, DHS-49, for 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 s/p resection of gastric remnant and duodenostomy tube placement, and cholecystectomy on [REDACTED] with episode of GI bleed. The claimant's current diagnosis was postoperative recovery where she continued to have drainage tubes and associated discomfort. The claimant had a normal physical examination. (Department Exhibit 17)

The treating surgeon's clinical impression was that the claimant was improving and she had a temporary disability and she would be expected to go back to work [REDACTED]. The claimant had limitations that were not expected to last 90 days or more. The claimant could frequently lift less than 10 pounds. She could use both hands/arms and feet/legs for repetitive action. The medical findings that support the above physical limitations were post recovery with healing incision and d-tube. The claimant had no mental limitations and could meet her needs in the home. (Department Exhibit 18)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant was discharged two days prior to coming in and being admitted on [REDACTED]. She was again complaining of having bloody stools and feeling faint, short of breath, and weak. The claimant was admitted to ICU and had a central line placed for monitoring as well as a left radial arterial line for monitoring her blood pressure. Because of her history of gastric bypass surgery, it was felt that the bleed was most likely coming from the stomach remnant that had been stapled off. The following operations were performed: exploratory laparotomy, removal of Gore-Tex mesh from the recent ventral hernia repair, control of bleeding duodenal ulcer, esophagogastroduodenoscopy, on table enteroscopy, and total gastrostomy of the stomach remnant and placement of a duodenostomy tube. The claimant was brought back two days later on [REDACTED] as a result of a suspected bile leak, as well as reexploration of her abdomen. The operations performed at the second operation were exploratory laparotomy, open cholecystectomy with intraoperative cholangiogram, and replacement of duodenostomy tube. The claimant did well overnight and was extubated without difficulty. The claimant remained in ICU for two days following the second surgery and was transferred out to the floor on [REDACTED]. The claimant did well on the floor and was discharged on [REDACTED] with a VNA for JP drain care as well as duodenostomy tube care. The claimant was also to receive physical therapy secondary to debilitation from her recent hospitalization and surgeries. (Department Exhibit 57-58)

On [REDACTED] the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant had a colonoscopy, which was negative for any colon bleeding. At this time, it was deduced that the most likely source of the bleeding was the

remnant stomach from the gastric bypass and the claimant was given supportive measures. The claimant was discharged home in stable condition. (Department Exhibit 55-56)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant had multiple surgeries as the result of bleeding where she underwent several procedures and was expected to improve. The claimant also had bilateral venous varicosities that she was being treated for on [REDACTED]. In addition, she had two hernias that she was being treated for. 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 have a driver's license and drives with no problem. The claimant cooks three times a week with no problem, if she didn't work that day. The claimant grocery shops once every ten days with no problem. The claimant cleans her own home by doing laundry. The claimant doesn't do any outside work. Her hobby is reading. The claimant felt that her condition has worsened in the past year because she has a decrease in energy and strength and she can't lift. The claimant stated that she did not have any mental impairment.

The claimant stated that she wakes up at 9:00 a.m. She reads, has prayer time, and has coffee. She puts in a load of laundry. She talks on the phone regarding her medical bills. She works six hours two times a week. She has some soup for lunch. She finishes her laundry. Her kids may call and she talks on the phone. She goes to bed at 10:30 p.m.

The claimant felt that she could walk two blocks. The longest she felt she could stand was two hours. The claimant didn't have a problem sitting. The heaviest weight she felt she could carry was 8 pounds. The claimant stated that her level of pain on a scale of 1 to 10 without medication was a 3 that decreases to a zero unless she lifts something heavy. The claimant stopped smoking in 1988 where before she smoked two packs a day. The claimant drinks alcohol occasionally. She does not or has ever taken any illegal or illicit drugs. The claimant stated that there was no work that she thought she could do.

This Administrative Law Judge finds the claimant is current working part-time as a stock clerk working 12 hours per week at a pay rate of [REDACTED] per month. The claimant was previously self-employed as an engraver, which is her pertinent work history. Engraving is a sedentary position, which the claimant should be able to perform. The claimant is currently a stock clerk

where she stocks shelves part-time. The claimant had surgery and was treated where she would be expected to improve within 12 months from date of onset or from date of surgery. 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 her 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 she lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. The claimant's testimony as to her limitation indicates her limitations are exertional.

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, an approaching advanced age individual, with a high school education and a skilled and unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.21. 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 is capable of performing her past work as an engraver that was sedentary to light and that the claimant does not meet the definition of disabled under the MA program.

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 and retroactive MA-P. The claimant is capable of performing her past relevant work that was sedentary to light. The department has established its case by a preponderance of the evidence.

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

/s/

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

Date Signed: September 2, 2009

Date Mailed: September 2, 2009

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

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

CGF/vmc

cc:

