

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: 2007-17541

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 6, 2007

Isabella 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 Tuesday, November 6, 2009. The claimant personally appeared and testified on her own behalf. [REDACTED] was not present, but requested a copy of the decision.

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 November 30, 2006, the claimant applied for MA-P and retroactive MA-P to August 2006.

(2) On March 22, 2007, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was capable of performing other work per 20 CFR 416.920(f).

(3) On April 10, 2007, the department caseworker sent the claimant a notice that her application was denied.

(4) On June 27, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On October 3, 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 is 43 years old and alleges disability due to chronic back pain, irritable bowel syndrome, carpal tunnel syndrome, migraines, and seizures. The claimant has a high school education and a history of unskilled work. The claimant appears to have significant limitations. However, there is no current medical other than the 49 form completed by a nurse practitioner. Additional information was suggested to determine the claimant's actual level of functioning.

Additional medical information is suggested to assess the severity of the claimant's impairments. Please obtain a complete physical examination by a licensed physician, M.D. or D.O., in narrative format and a mental status exam with a psychiatrist or psychologist in narrative format. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P was considered in this case is also denied. SDA is denied per PEM 261 because the information in file is inadequate to ascertain whether the claimant is or would be disabled for 90 days.

(6) During the hearing on November 6, 2007, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. The record was left open for additional medical information as required by SHRT to determine eligibility for MA-P.

(7) On December 9, 2008, the department caseworker sent the Administrative Law Judge an e-mail stating that the claimant had missed her appointment for her mental status examination. In addition, the claimant had not gone to see her physicians in order to have updated medical records provided. As a result, the record was closed on November 1, 2009.

(8) The claimant is a 46 year-old woman whose date of birth is [REDACTED]. The claimant is 4' 11-3/4" tall and weighs 171 pounds. The claimant has gained 20 pounds in the past years as the result of hepatitis C. The claimant has a high school diploma where she was special education in all classes. The claimant can read and write and do basic math. The claimant was last employed as a caregiver in February 2005. The claimant has also been employed as a cook, cashier, sales clerk, and waitress.

(9) The claimant's alleged impairments are chronic back pain, irritable bowel syndrome, chronic obstructive pulmonary disease, deep vein thrombosis, knee pain, manic depression, panic attacks, hepatitis C, rheumatoid arthritis, carpal tunnel syndrome, migraines, and seizures.

(10) SHRT required an additional medical physical examination and mental examination, but the claimant refused to attend the appointments where she missed the psychological exam, which would result in a medical not being scheduled. As a result, the determination of medical eligibility will be determined by the existing medical in the packet.

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 has not worked since February 2005. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities means the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

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

On [REDACTED], the claimant was given an independent medical examination at [REDACTED]. The claimant had a chief complaint of fracture of the neck, back, migraines, arthritis, hepatitis C, fibromyalgia, seizures, and carpal tunnel syndrome. The independent medical consultant stated that it was an extremely difficult evaluation because of an extremely difficult examination because the independent medical examiner was not 100% sure whether or not the claimant’s effort was truly 100%. The claimant was so incapable of any type of movement, required so much external help from her companion, and yet she seemed to be interested in attempting requests that were made. The claimant’s limitations appeared to be

severe and all encompassing and yet there appeared to be so many problems physically that the independent medical examiner would have felt more comfortable to have the benefit of imaging and other studies to confirm that her physical ability was as poor as it seemed. The claimant's migraines seemed to be more a tension type of headache rather than true migraines. The claimant was tender to the right upper quadrant of the abdomen although the independent medical consultant did not feel a discrete liver edge. The claimant was under treatment with some improvement for seizures. The claimant had a blood clot present and was tender in the left upper medial leg and groin with another one in the popliteal area. She is currently taking medication. The claimant had symptoms suggesting carpal tunnel syndrome although with the history of a quadriplegia for the greater part of three years made the independent medical consultant wonder if there was a relationship. The claimant did not have an EMG done to confirm the existence of carpal tunnel syndrome. The claimant has a three-history of quadriplegia, but the records were not available to confirm the accuracy of her history. Neurologically, the claimant's cranial nerves were intact with motor strength at 1/5 in the bilateral upper and lower extremities. Sensory was intact to light touch and pinprick. Reflexes were intact and symmetrical. Romberg testing was negative. The claimant walked with an ataxic gait without the use of an assist device. Tinel's sign was negative. There was decreased grip with decreased fist bilaterally with 30% grip remaining. The claimant could not get on and off the examining table, heel and toe walk, squat, or hop. Straight leg raising was to 20 degrees bilaterally. Standing straight or undergoing any form of range of motion or other maneuver. The claimant appeared cooperative, but appeared unable to demonstrate motor function in any capacity. The claimant was slow and would lose her balance and fell one time and in the end the independent medical consultant was able to examine range of motion as best possible in the supine position. The claimant was unable to get on or off

of the table. She was able to lie down in the supine position, but complained about the intensity of pain in that position. The claimant was well-developed, overweight, and in no obvious distress when sitting in her wheelchair. The claimant was incapable of walking and standing up straight. The claimant was alert, well-oriented, and cooperative. Affect and effort were all appropriate where memory appeared intact. The claimant had normal vital signs and a normal physical examination except for the limitations previously listed. (Department Exhibit 35-41)

On [REDACTED], the claimant was given an x-ray of the claimant's lumbar spine. The claimant's vertebral height was satisfactory. There was a grade I pseudo spondylolisthesis at L5. There was mild narrowing of the lumbosacral disc space without secondary spurring or eburnation. Remaining disc spaces were well maintained. There was relatively advanced facet arthrosis at L5-S1 bilaterally with lesser changes of a similar nature at L4-5. There was no evidence of segmental instability on the stress projections. (Department Exhibit 41)

On [REDACTED], the claimant underwent an ultrasound peripheral limited venous Doppler as the result of left swelling at [REDACTED]. The radiologist's impression was non-obstructing thrombus noted in the left common femoral vein. Findings were consistent with deep venous thrombosis. There was evidence of non-obstructing thrombus seen in the left common femoral vein near the junction with the greater saphenous vein. The remainder of the deep venous system as imaged including superficial femoral vein, popliteal vein, posterior tibial vein, and peroneal veins appeared patent without evidence of clot. (Department Exhibit 33)

On [REDACTED], the claimant underwent an independent psychiatric/psychologist medical report at [REDACTED]. The claimant was diagnosed with dysthymic disorder and borderline personality disorder. The claimant was given a GAF of 48. Her prognosis

was guarded. The independent medical examiner licensed psychologist did state that the claimant would be able to manage her benefit funds. The claimant was somewhat overweight where she walked very slow using a cane. The claimant's clothing and hygiene were appropriate. The claimant denied any difficulty finding the location and arrived at the appointment on time. The claimant appeared to have contact with reality. There was no unusual motor activity of hyperactivity. The claimant did not appear to have a tendency to minimize or exaggerate symptomology. The claimant's mental activity could best be described as somewhat impaired. The claimant often would stare off and not hear the examiner's question. Her daughter-in-law often had to repeat the question to her. Speech can best be described as clear. The claimant denied the presence of any auditory or visual hallucinations. Although, the claimant reported that when she has a seizure she hears whispers and feels that she can see stuff happening, but was unable to elaborate, other than to say that she can visualize herself in a coffin. Rather than being a visual hallucination, the independent medical examiner stated that it appeared to be that the claimant was thinking of those things. The claimant denied the presence of any delusions, obsessions, persecutions, or unusual powers. The claimant indicated some feelings of worthlessness and reported that she can't do what she used to. The claimant reported some suicidal ideation, but did not have any current intent or plan to end her life. The claimant did admit to a couple of past suicide attempts. The claimant indicated some sleep disturbances and recent weight gain. The claimant's emotional reaction could best be described as depressed. She had a flat affect, was tearful, and spoke in a monotone voice. The claimant was oriented x3. The claimant had appropriate memory. At this time, the claimant meets the criterion for borderline personality disorder and dysthymic disorder. (Department Exhibit 42-46)

On [REDACTED] the claimant was given a hepatic ultrasound as the result of a history of hepatitis C, to rule out hepatoma. The radiologist's impression was slightly increased liver echogenicity consistent with fatty infiltration and/or hepatocellular disease. No hepatic mass was identified. The liver evaluation showed overall normal size and shape of the liver. Liver echogenicity was slightly increased with mild attenuation. This may indicate fatty infiltration and/or hepatocellular disease. There was no focal hepatic masses seen or ductal dilatation.

(Department Exhibit 32)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant has hepatitis C as stated by an ultrasound on [REDACTED]. The claimant also underwent a psychiatric evaluation on [REDACTED] [REDACTED] where she was diagnosed with dysthymic disorder and borderline personality disorder with a GAF of 48 and a guarded prognosis. The claimant's physical examination by an independent medical examiner showed several limitations, but the independent medical examiner wasn't sure whether or not her effort was truly 100%. The corresponding lumbar spine x-ray showed grade I pseudo spondylolisthesis at L5 with mild narrowing of the lumbar disc space without secondary spurring or eburnation. The claimant had well-maintained disc spaces. There was relatively advanced facet arthrosis at L5-S1 bilaterally with lesser changes of a similar nature at L4-5. The claimant was positive for DVT as confirmed by an ultrasound peripheral limited venous Doppler on [REDACTED]. SHRT required an additional medical physical examination and mental examination, but the claimant refused to attend the appointments where she missed the psychological exam, which would result in a medical not being scheduled. As a result, the determination of medical eligibility will be determined by the existing medical in the packet. 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 does drive when she has to. She does have a problem seeing and is nervous about her seizures and night blindness. The claimant cooks three times a week, but has a problem standing because her feet swell and her back hurts. The claimant grocery shops once a month with her daughter using the electric cart and she can't see. The claimant cleans her own home with help. She is able to dust, wash a few dishes, and sweep at her own pace where she can't stand for long. The claimant's hobbies are doing crosswords and playing with her grandchildren. The claimant felt that her condition has worsened in the past year because she can't walk as far

where she loses her breath and has a hard time breathing. The claimant stated that she is currently taking medication, but not in therapy.

The claimant wakes up at 9:00ish a.m. She watches TV and has coffee. She tidies up. She states that she hurts bad in the morning. She eats breakfast. She reads. She stated she has fatigue where she has no energy. She talks on the phone and goes to visit with family. She goes to bed at 10:00 p.m.

The claimant felt that she could walk 20 feet. The longest she felt she could stand was 20 minutes. The longest she felt she could sit was 20 minutes. The heaviest weight she felt she could carry and walk was 10 pounds. The claimant stated that her level of pain on a scale of 1 to 10 without medication was a 10 that decreases to a 3/4 with medication.

The claimant smokes 2-3 cigarettes a day. She stopped drinking alcohol in 2002 where before she would drink occasionally. The claimant stopped using heroin on March 13, 2001. The claimant stated that there was no work that she thought she could do.

This Administrative Law Judge finds that the claimant has not established that she cannot perform any of her prior work. The claimant was previously employed as a sales clerk and cashier, which are jobs that are simple and unskilled and performed at the light to sedentary level in the national economy. The claimant does have some physical limitations as stated on her physical exam, but to the extent that they impair her ability to work is not known because the claimant did not cooperate to provide the additional medical evidence required to ascertain her current level of functioning. 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).

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 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 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 she has manic depression and panic attacks. The claimant is not in therapy, but is taking medication. The claimant was diagnosed by the independent medical examiner licensed psychologist with dysthymic disorder and borderline personality disorder. She was given a GAF of 48 which shows serious symptoms or any serious impairment in social, occupational, or school functioning. 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 younger individual with a high school education and an unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.20. The

Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as dysthymic disorder and borderline personality 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.

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 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: February 1, 2010

Date Mailed: February 2, 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:

