

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No. 200821520  
Issue No. 2009  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: August 7, 2008  
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 the claimant's request for a hearing. After due notice, an in-person hearing was held on Thursday, August 7, 2008. The claimant personally appeared and testified on his own behalf with his 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 a material fact:

1. On October 30, 2007, the claimant applied for MA-P and retroactive MA-P to July 2007.
2. On February 12, 2008, 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 under Medical Vocational Grid Rule 202.20 per 20 CFR 416.920(f).

3. On February 27, 2008, the department caseworker sent the claimant a notice that his application was denied.
4. On March 20, 2008, the department received a hearing request from the claimant, contesting the department's negative action.
5. On July 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 eligibility for the claimant. The SHRT report reads in part:

The claimant is 47 years old and alleges disability due to/or has received treatment for hypertension, shortness of breath, congestive heart failure, diabetes, chronic renal failure, and obesity. The claimant has a high school education and a history of unskilled work.

The claimant has a history of CHF and shortness of breath which are treated medically and somewhat controlled. His blood pressure is poorly controlled and as such is elevated. He is a diabetic and does have renal failure. However, his creatinine levels were much better than listing severity requirements. He is slightly obese with a BMI of 33. As a result of his conditions, the claimant would have difficulty performing heavy work. Medical opinion was considered in light of CFR 416.927. The evidence in file does not demonstrate any other impairment that would pose a significant limitation.

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 (younger individual, high school education, and history of unskilled work), MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied.

6. During the hearing on August 7, 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 October 3, 2008 and forwarded to SHRT for review on October 21, 2008.

7. On October 22, 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 is alleging disability due to congestive heart failure, diabetes, renal failure, and hypertension. He is 47 years old and has a high school education with a history of unskilled work.

The claimant did not meet applicable Social Security Listings 9.08, 4.02, and 6.08. The claimant is capable of performing other work that is light work per 20 CFR 416.967(b) under Vocational Rule 202.20.

8. The claimant is a 49 year-old man whose date of birth is [REDACTED]. The claimant is 6' tall and weighs 243 pounds. The claimant has gained 25-30 pounds as a result of his medication. The claimant has a high school diploma and one year of college. The claimant stated that he has trouble reading, but can write. The claimant stated that he cannot do basic math. The claimant was last employed in September 2005 at the heavy level as a maintenance worker at [REDACTED] seasonal football. The claimant has also been employed as a security guard at the heavy level for the past 15 years, which is his pertinent work history.
9. The claimant's alleged impairments are high blood pressure, chronic heart failure, diabetes, sleep apnea, and Stage III chronic renal failure.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"Disability" is:

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

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

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

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

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

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

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

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

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

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);

- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

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

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

(a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

(c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

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

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

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

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

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

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

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

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

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

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

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

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

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

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

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

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

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

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

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



“Disability” is:

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

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

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since September 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 (6<sup>th</sup> Cir, 1988). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

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

On [REDACTED], the claimant was seen by his treating specialist at [REDACTED]. The claimant was seen for an evaluation of his chronic kidney disease. The claimant is a 47 year-old African American male with a history of morbid obesity, type 2 diabetes, and hypertension. The claimant had a serum creatinine of 2.2 with potassium of 5.5. The claimant was diagnosed as having type 2 diabetes two years ago. The claimant had a normal physical examination. He does have some history of some tinnitus, but no hearing impairment. The claimant has degenerative arthritis, but does not use non-steroidal anti-inflammatory drugs. The claimant does have some tingling and numbness in his lower extremities suggestive of peripheral neuropathy. The claimant has chronic kidney disease, Stage III, secondary to diabetic neuropathy. The claimant also has hyperkalemia secondary to type 4 renal tubular acidosis. The claimant was placed on a low potassium diet and his medication was adjusted accordingly. (Claimant Exhibit A1-A2)

On [REDACTED], the claimant underwent an echocardiogram at [REDACTED]. The radiologist’s impression was that the left ventricular cavity was normal with normal left ventricular function. The estimated left ventricular ejection fraction was greater 70% with moderate concentric left ventricular hypertrophy. The claimant had impaired relaxation patterns of the LV diastolic filling with mildly dilated left atrium, with moderate increase in LA volume at 37 ml. The claimant’s aortic valve was sclerotic with mild mitral annular calcification. (Claimant Exhibit C6-C7)

On [REDACTED], the claimant’s treating cardiologist at the [REDACTED] submitted a progress note on the claimant. The claimant was seen in the treating specialist’s office for a coronary artery disease evaluation and also uncontrolled hypertension. The claimant had been complaining of shortness of breath. The claimant’s functional capacity according to NYHA is Class I. The claimant was also complaining of his left hand falling asleep off and on without any chest pain. The claimant had a normal physical examination. The claimant had grade 3 hypertension with a history of dyslipidemia with an abnormal EKG. The claimant’s medication was changed. (Claimant Exhibit 1-4)

On [REDACTED], the claimant was seen by his treating physician at [REDACTED]. The claimant’s blood pressure was moderately elevated at 160/100. The claimant had a normal physical examination. His treating physician’s impression was hypertension, uncontrolled; diabetes mellitus, poorly controlled; chronic kidney disease, stage III; obesity; and dyslipidemia. The claimant was encouraged to check his

blood pressure daily and monitor his readings at home. His medication was adjusted accordingly and he was asked to cut the salt in his diet. The claimant had been eating a lot of canned food and was told it also contains a lot of salt and he should avoid canned food. For the claimant's diabetes, his medication was adjusted and he was given a pamphlet about diabetic teaching to know which food to avoid and all about diabetes that he should know. The claimant was asked to lose weight because of his diabetes and he agreed to that and will gradually meet the goal of losing weight. (Department Exhibit 45-46)

On [REDACTED], the claimant's treating physician submitted a Medical Examination Report, DHS-49, for the claimant. The claimant was last examined on [REDACTED]. The claimant had a history of impairment and chief complaint of dizziness. His current diagnosis was dyslipidemia, chronic heart failure with an ejection fraction of 47%, diabetes mellitus 2, and chronic kidney disease, stage III. The claimant had a normal physical examination except once again his blood pressure was moderately elevated at 140/100. The claimant was in a slightly depressed mood. (Department Exhibit 40)

The treating physician's clinical impression was that the claimant was stable with no physical limitations. The claimant could occasionally lift 10 pounds. There were no assistive devices medically required or needed for ambulation. The claimant could use both hands/arms and feet/legs for repetitive action. The medical findings that support the above physical limitations are the claimant had chronic heart failure and limitations for working. The claimant had no mental limitations and could meet her needs in the home. (Department Exhibit 41)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's admitting diagnosis was dizziness and sleepiness, congestive heart failure, diabetes mellitus type 2, hypertension, chronic kidney disease stage III, and accelerated junctional rhythm. The claimant's discharge diagnosis was dizziness, resolved; congestive heart failure, stable; diabetes mellitus type 2; hypertension, controlled; and chronic kidney disease. The claimant had an ejection fraction of 47% with normal wall motion and moderately sized, mostly fixed area of decreased activity involving the arterial wall with a small reversible component in the periphery. The recommendation was to continue medical management and follow-up as an outpatient. The claimant's kidney function improved and the creatinine went down to 1.7 from 2 at admission. His baseline a few months before was 1.5. The claimant's glucose levels were under fair control with levels between 107 and 160. The claimant was advised to keep a strict 1800 ADA diet and to monitor the blood sugars at home. The claimant was discharged in stable condition with recommendations to follow-up with his primary care physician and his cardiologist in 1-2 weeks. (Department Exhibit 9-10)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant has chronic renal failure at stage IV with uncontrolled high blood pressure. The claimant also has chronic heart failure with an ejection fraction of 45%. The claimant has poorly controlled type 2 diabetes mellitus. 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 but it is expired and he does not drive. The claimant does not cook because he's not a good cook and he falls asleep a lot. The claimant does not grocery shop or clean his own home where he passed out the last time he went to the grocery store and he is not physically able to clean. The claimant does straighten up his bed. The claimant doesn't do any outside work or have any hobbies. The claimant felt that his condition has worsened in the past year because his illnesses have progressed. The claimant stated that he has depression where he not taking medication, but is in therapy where he was referred to [REDACTED].

The claimant stated that he wakes up between 8:00 to 9:00 a.m. He takes his medication. He exercises by going for a walk. He takes his blood pressure. He monitors his sugars. The claimant stated that he doesn't sleep well at night. He eats for his diabetes and sits around the house. He has dinner. The claimant stated he goes to bed between 10:00 to 10:30 p.m.

The claimant felt that he could walk 1½ blocks. The longest he felt he could stand was 5-10 minutes. The longest he felt he could sit was 5-10 minutes. The heaviest weight he felt could carry and walk was less than 10 pounds. The claimant's level of pain on a scale from 1 to 10 without medication is a 7.5 that decreases to a 5/6 with medication.

The claimant stopped smoking cigarettes a year and a half ago where before he would smoke 2 packs a day. The claimant does not or has ever drunk alcohol or taken illegal or illicit drugs. The claimant stated that there was no work he thought he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant was previously employed at the heavy level as a maintenance worker and security guard. With the claimant's current medical issues of chronic heart failure, uncontrolled high blood pressure, type 2 diabetes, and chronic

renal failure, the claimant would have a hard time performing the roles and responsibilities of those previous levels of employment. 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 sufficient evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitation indicates his limitations are exertional and non-exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the claimant stated that he has depression. He is currently not taking medication, but is in therapy. As a result, there is insufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from working at any job.

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 younger individual with a high school education, and an unskilled work history, who is limited to light work, is 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 depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant cannot perform a wide range of light activities and that the claimant does meet the definition of disabled under the MA program. The claimant is eligible for MA retroactive to July 2007 with a medical review required in August 2013.

### **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 cannot perform any level of light work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **REVERSED**. The claimant is eligible for MA-P retroactive to July 2007 with a medical review required August 2013.

/s/

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

Date Signed: July 29, 2010

Date Mailed: July 29, 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 / vc

cc:

