

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: 2008-6930

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 22, 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 claimant's request for a hearing. After due notice, an in-person hearing was held on Thursday, May 22, 2008. The claimant personally appeared and testified with her daughter, L. M., and authorized representative, [REDACTED]

ISSUE

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

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 March 30, 2007, the claimant applied for MA-P.

(2) On July 16, 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 past relevant work per 20 CFR 416.920(e).

(3) On July 26, 2007, the department caseworker sent the claimant a notice that her application was denied.

(4) On October 16, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On February 6, 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:

The claimant is 59 years old and alleges disability due to receiving treatment for pneumonia. The claimant has a high school education and a history of semi-skilled work in childcare.

There was no indication of COPD with all the imaging studies performed in the hospital. She was successfully treated for pneumonia and the acute renal failure resolved. The evidence in file does not demonstrate any other impairments that would pose a significant limitation. She was reportedly working in her usual position at a childcare center.

The medical evidence of record does not document a mental/physical impairment(s) that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(e). Retroactive MA-P was considered in this case and is also denied.

(6) During the hearing on May 22, 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 July 14, 2008 and forwarded to SHRT for review on July 21, 2008.

(7) On July 23, 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 pneumonia. She is 60 years old and has a high school education with a history of semi-skilled work. The claimant did not meet applicable Social Security Listing 3.02, 3.03, and 1.04. The claimant has a non-severe impairment condition per 20 CFR 416.920(c).

(8) The claimant is a 61 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 4" tall and weighs 215 pounds. The claimant has a high school diploma. She can read and write and do basic math. The claimant was last employed as a childcare provider in February 2007. The claimant has also been employed as a cashier, gas station attendant, direct care provider, and fitness trainer.

(9) The claimant's alleged impairments are COPD, pinched nerve in lower back, herniated disc in neck, arthritis, and gastric polyps.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative

Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"Disability" is:

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

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

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

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

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

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

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

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

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

...Medical reports should include --

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

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

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

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of 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 2007. 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 admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant was discharged home with diagnosis of pneumonia, acute renal failure, improved, dehydration, gastric filling defect, and fatty liver. A CT scan was obtained the second day of admission that showed right upper lobe pneumonia. The claimant continued to be hypostic throughout the course of her hospital stay, but has improved. One subsequent white blood cell count failed to improve as anticipated when a repeat CT scan was obtained which showed a small area in the right upper lobe of developing cavity, possible future abscess. However, clinically, the claimant was improving significantly at this time where she was ambulating and saturating approximately 95% of room air. White blood cell count decreased to 14.2. A consultant with pulmonary specialist was obtained. The claimant was stable for discharge home, but needed close follow-up in case of formation of a future abscess. Department Exhibit 32-34.

On [REDACTED], the claimant was given a chest x-ray at [REDACTED] that was compared to a previous x-ray of [REDACTED]. The radiologist’s impression was marked improvement of the right upper lobe pneumonia. There was still some mild opacity. The left lung was clear and the heart size was normal. In the [REDACTED] x-ray, there was a large area opacity in the right middle lobe. Although this was most consistent with pneumonia, given

its large mass-like area, a recommended follow-up film was recommended in two to three weeks until resolution. Department Exhibit E and F.

On [REDACTED], the claimant was seen at [REDACTED] [REDACTED] for an internal medicine evaluation. The claimant's chief complaint was pneumonia, arthritis, and gastric polyps. The claimant is a 50 year-old female who stated that she was hospitalized in [REDACTED] for about one week because of pneumonia. The claimant works in a childcare center and is still working. The claimant stated that she had suffered from arthritis in her left knee for about a month. The claimant had a herniated disc in the neck in the past, but it is not bothering her now. The claimant complains of shortness of breath on exertion. The claimant had polyps in the stomach, where she is scheduled for upper endoscopy tomorrow. In the past the claimant has had work for a possible clot in the lower extremities, but the venous Doppler was negative. The claimant stated that she has a pain in her left ankle that goes up to the thigh and that she is known to have degenerative arthritis in the pedia. The claimant had a normal physical examination. She was overweight at a weight of 220 and height of 5' 5". Her blood pressure was slightly elevated at 142/90. The claimant's lungs were clear but no rales or rhonchi. The claimant's abdomen was soft, non-tender with no organomegaly and bowel sounds were normal active. The claimant had generalized pain in the left knee with normal range of motion and normal peripheral pulses and no pitting edema. Neurologically, the claimant was grossly intact. A PFT was done that showed moderate obstructive lung disease. The independent medical consultant's clinical impression was degenerative joint disease, exacerbation of the left knee, history of gastric polyps, Chronic Obstructive Pulmonary Disease (COPD), status-post pneumonia, and degenerative disc disease, neck, stable. The claimant is apparently working without difficulty and she may continue to do so. Department Exhibit 66-67.

On [REDACTED], the claimant was seen by a treating specialist at [REDACTED]. The claimant was a 59 year-old female who was hospitalized for right upper lobe pneumonia. A follow-up CT scan revealed cavitory lesion. Currently, the patient feels well with no chest pain, cough, or sputum production. The physical exam and chest x-ray was negative. The treating specialist's impression was resolve right upper lobe pneumonia. Department Exhibit I-J.

On [REDACTED], the claimant was seen by a treating specialist at the [REDACTED]. The claimant was found to have gastric polyps where the biopsy on the polyps came back as benign, fundal polyps. The claimant had numerous fundal polyps, but none of these were adenomatous, which means the malignant potential for these was extremely low. The claimant was also checked for pernicious anemia. The claimant had a normal B-12, gastrin, and CBC. Her C reactive protein level was very good at .5. Department Exhibit G and H.

On [REDACTED], the claimant's treating physician completed a Medical Examination Report 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 lumbar back pain that radiates down the right leg. The claimant had a current diagnosis of lumbar back pain and sciatica. The claimant had a normal physical examination except that the treating physician noted that the claimant had a positive straight leg test, right. Exhibit C.

The treating physician's clinical impression was that the claimant was deteriorating where she could occasionally lift less than 10 pounds, but never 10 pounds. The claimant could stand and/or walk less than 2 hours of an 8-hour workday and sit less than 6 hours of an 8-hour workday. The claimant could use both hands/arms and feet/legs for repetitive action. There were no assistive devices medically required and needed for ambulation. The medical findings that

support the above physical limitations are lumbar pain and a +EMG. The claimant had no mental limitations. In addition, the claimant could meet her needs in her home. Department Exhibit B.

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 a diagnosis of pneumonia in [REDACTED] that was essentially resolved by the date of her discharge on [REDACTED]. A follow-up performed on [REDACTED] showed that the claimant was doing well with no chest pains, cough, or sputum production with a negative chest x-ray. The claimant had a history of gastric polyps, where she saw a specialist on [REDACTED] and the polyps were benign with the chances of malignancy being extremely low. The claimant did not have pernicious anemia. She had a normal B-12, gastrin, and CBC. Her C reactive protein was very good at .5. The claimant's treating physician completed a Medical Examination Report on [REDACTED], where she had a chief complaint of lumbar back pain that radiates down the right leg in addition to sciatica. The claimant's condition was deteriorating as far as the lumbar back pain with a positive EMG. The claimant had no mental limitations. The claimant could occasionally lift less than 10 pounds. The claimant could stand and/or walk for 2 hours in an 8-hour workday and could sit less than 6 hours in an 8-hour workday. 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. She does have a problem driving long distances because her back bothers her and her leg hurts. The claimant cooks once a week, but cannot stand long. The claimant grocery shops once a week with help. She is able to shop for 15 to 20 minutes and then her daughter finishes. The claimant does clean her own home by dusting. The claimant doesn't do any outside work. Her hobbies are reading, watching TV, and doing crossword puzzles. The claimant felt her condition has worsened because her health has deteriorated in the past year.

The claimant wakes up at 7:30 a.m. She takes care of her personal needs. She has breakfast and watches the news. She goes back to bed. She watches TV. She visits with friends or talks on the phone. She goes to bed at 10:00 p.m.

The claimant felt that she could walk one to two blocks. The longest she felt she could stand was 15 to 20 minutes. The longest she felt she could sit was one hour. The heaviest weight she felt she could carry was 10 pounds. The claimant's level of pain on a scale of 1 to 10 was an 8, but she takes no pain medications. The claimant does not or has never smoked, drank alcohol, or 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 that the claimant has not established that she cannot perform any of her prior work. The claimant was previously employed as a childcare worker. In

her testimony, she cited that the position ended in February 2007, but the independent examiner cited that in June 2007 the claimant was apparently working without difficulty and she may continue to do so. The claimant should be able to perform the job responsibilities of a childcare worker or cashier. The claimant may have difficulty performing the duties of a gas station attendant, direct care provider, and fitness trainer with her current back limitations and moderate COPD. 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 your 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 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 202.07. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical impairments, the Administrative Law Judge finds that the claimant is able to perform any level of light work. In addition, the claimant is capable of performing her past relevant work as a cashier or childcare worker.

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 retro MA-P. The

claimant is able to perform any level of light work. In addition, the claimant is capable of performing her past relevant work.

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

/s/

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

Date Signed: March 29, 2010

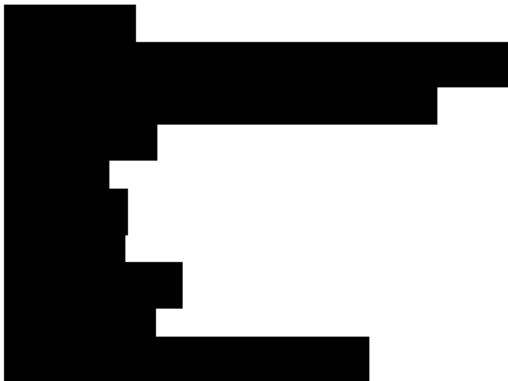
Date Mailed: March 29, 2010

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/vmc

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