

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: 2008-8184

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 26, 2008

Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on Wednesday, March 26, 2008. The claimant personally appeared and testified with her attorney, [REDACTED]

ISSUE

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

FINDINGS OF FACT

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

(1) On February 27, 2007, the claimant applied for MA-P and retroactive MA-P to November 2006.

(2) On August 1, 2007, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant had a non-severe impairment per 20 CFR 416.920(c).

(3) On August 8, 2007, the department caseworker sent the claimant a notice that her application was denied.

(4) On November 1, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On February 19, 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 has white matter lesions that have been present on MRIs on the brain. However, her physical exam was within normal limits. The claimant does have a flat affect, but no evidence of a thought disorder. The claimant would be able to do at least simple, unskilled work.

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 simple, unskilled work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile (advanced age at 57, limited education, and an unknown work history), MA-P is denied using Vocational Rule 204.00(H) as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) During the hearing on March 26, 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 28, 2008 and November 14, 2008 and forwarded to SHRT for review on August 6, 2008 and November 26, 2008.

(7) On August 8, 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 breathing problems, diabetes, and low back pain. She is 58-years-old and has a limited education with a history of unskilled work. The claimant did not meet applicable Social Security Listings 9.08, 3.03, 3.02, 1.02, and 1.04. There was insufficient evidence to determine the claimant's eligibility for MA and retroactive MA. Additional information was required to assess the severity of the claimant's impairment(s) through a complete physical examination by a licensed physician in narrative format. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. Retroactive MA-P was considered in this case and is also denied.

(8) On December 3, 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 a 58-year-old with 11 years of education and an unknown work history. The claimant is alleging disability due to arthritis, back pain, breathing problems, diabetes, headaches, brain lesions, anxiety, dysthymic disorder and dependent personality disorder. The claimant did not meet applicable Social Security listings. The claimant was capable of performing other work that was unskilled per 20 CFR 416.968(a).

The additional objective information received does not significantly affect the claimant's capacity to function.

(9) The claimant is a 59 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 2-1/2" tall and weighs 195 pounds. The claimant completed the 11th grade of high school. The claimant was not special education. The claimant can read and write and do basic math. The claimant has no pertinent work history.

(10) The claimant's alleged impairments are chronic headaches, high blood pressure, arthritis, back pain, anxiety, dependent personality disorder, and dysthymia.

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 has no pertinent work history. 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 by an independent medical consultant at [REDACTED]. The independent medical examiner’s assessment was that the claimant had polyarthralgia where the claimant had generalized discomfort in the shoulders, neck, knees, and back. There was no evidence of any acute synovitis. The claimant had no impingement of the shoulders. The claimant did not have any classic radiculopathy. The claimant had hypertension. The claimant appeared to have some low level element of depression, but denied any suicidal or psychotic ideation. The claimant’s physical examination revealed a well-developed, well-nourished, obese female in no acute distress. The claimant was 63” tall with a weight of 198 pounds. The claimant’s blood pressure was 164/79 with a pulse of 77 and a pulse oximetry of 97%. The claimant had a normal physical examination. The claimant did have some tenderness over both shoulders, but had no significant

impingement musculoskeletally. The claimant had mild tenderness over both knees, but there was no evidence of synovitis. The claimant did have some mild restrictions both pre and post Albuterol without any significant changes with or without bronchodilator and the claimant's variability was under 5%, which the independent medical examiner deemed acceptable.

(Department Exhibit 1-4)

On [REDACTED], the claimant was given a MRI of the spinal cord at [REDACTED] [REDACTED] that showed multiple T2 hyperintense lesions in the cervical cord. Some were with contrast enhancement and suggesting activity and inflammation.

(Department Exhibit C12)

On [REDACTED], the claimant was given a MRI of the cervical, thoracic, and lumbar spine with and without contrast at [REDACTED]. The radiologist's impression was that there was T2 hyperintensity in multiple areas of the cervical cord between the C3-4 and C5-6 level with no focal cord expansion. The findings would be consistent with demyelination at C5-6. There was associated contrast enhancement with a T2 hyperintense focus, which could relate to an active MS plaque. There were minimal multilevel degenerative changes in the cervical spine with no major central canal stenosis and borderline neural foraminal stenosis at C5-6. The thoracic cord appeared grossly unremarkable. There were degenerative changes in the thoracic and lumbar spine with no major central canal or neural foraminal stenosis. (Department Exhibit C13-14)

On [REDACTED], the claimant was seen by a treating specialist at [REDACTED] [REDACTED]. The claimant's neurological examination was normal. Her reflexes were slightly brisk, but there were symmetric. The independent treating specialist did not find any pathologic reflexes. The brisk reflexes may be anxiety. The treating specialist did not find

any physical findings to correlate with the claimant's MRI white matter abnormalities or any typical story of exacerbations and remissions to go along with typical MS. White matter lesions can be seen in a number of conditions, including chronic headaches, hypertension, diabetes, aging, etc. The treating specialist did not think there was enough at this time to make a diagnosis of MS and begin treatment. (Department Exhibit A-C)

On [REDACTED], the claimant's treating physician completed a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant has dealt with headaches for many years where consecutive MRIs show white matter lesions increasing over time, which may indicate MS. The claimant was treated for hypertension, hyperlipidemia, and depression, which was also her current diagnosis. The claimant had a normal physical examination except that the claimant's treating physician noted that the claimant had a flat affect. The laboratory and x-ray findings were MRI with white matter lesions. (Department Exhibit 7-1)

The treating physician's clinical impression was that claimant was deteriorating with no physical limitations. The claimant could frequently lift 50 pounds or more. The claimant could use both hands/arms and feet/legs for repetitive actions. The claimant did not have any mental limitations. In addition, the claimant could meet her needs in the home.

On [REDACTED], the claimant was given an independent psychological evaluation by [REDACTED]. The independent medical consultant licensed psychologist's diagnostic impression was that claimant had generalized anxiety disorder and dysthymic disorder with an Axis II diagnosis of dependent personality disorder. The claimant was given a GAF of 52. The claimant's prognosis was guarded where the claimant could benefit by involvement in outpatient psychological treatment and evaluation by a psychiatrist for the

possible use of psychotropic medication. The claimant exhibited significant levels of anxiety, low self-esteem, self doubt, and fright. The claimant seemed very fearful of making any incorrect response and seemed extremely timid in her interactions with the world. The claimant did not exhibit evidence of illogical, bizarre, or circumstantial ideation. The independent medical consultant licensed psychologist did not see any evidence of a thought disorder, hallucinations, delusions, or obsessions. The claimant denied suicidal ideations. As a result of testing, the claimant had moderately severe levels of anxiety, self-doubt, fear of the world, social discomfort, social isolation, and depression. The claimant seemed to have a very limited internal psychological mechanism for being able to mediate her internal affective state or cope effectively with the external world. The claimant tends to shy away from the world and has isolated herself throughout her adulthood. The claimant exhibited evidence of entrenched patterns of functional and psychological dependence, and has relied on other people to provide for her throughout the years. The claimant was oriented to time, place, and person. The claimant had appropriate memory, information, and calculations. The claimant also exhibited appropriate abstract reasoning, similarities and differences, and exhibited average capabilities for social judgment and comprehension. (Department Exhibit 6-9)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant did have white matter lesions on her brain and spinal cord, as a result of an x-ray and ultrasound dated [REDACTED] and [REDACTED]. The claimant went to see a treating specialist on [REDACTED] who could not make a definitive determination of MS, but stated that the claimant's test results could be the result of the claimant's headaches, high blood pressure, diabetes, or aging. The claimant's treating physician on [REDACTED] stated that the claimant had no physical or mental

limitations and could frequently lift up to 50 pounds or more and was able to use hands/arms and feet/legs for repetitive actions. The claimant did have a GAF of 52 when examined by an independent medical consultant licensed psychologist for a psychological evaluation which stated that the claimant would benefit from mental health therapy and medication. 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 with no problem. The claimant does cook four times a week with no problem. The claimant grocery shops twice a week with her sister with no problem. The claimant cleans her own home, but it takes longer. The claimant does do outside work of

gardening. Her hobbies are reading and going to church. The claimant stated her condition has worsened in the past year because she has headaches everyday, she's slower moving, she hurts a lot, she has ringing and dizziness. The claimant stated that for her mental impairment that she is taking medication, but not in therapy.

The claimant wakes at 10:00 a.m., but doesn't sleep well at night. She has coffee. She reads the news. She takes care of her pets. She fixes breakfast. The claimant does housework. She takes her sister to her appointments. She has her granddaughter visit. She goes to bed at 11:30 p.m.

The claimant felt that she could walk a quarter of a mile slowly. The longest she felt she could stand was one hour. The longest she felt she could sit was 30 minutes. The heaviest weight she felt she could carry was 18 pounds. The claimant is right-handed. The claimant stated that her level of pain on a scale of 1 to 10 without medication was an 8 that decreases to a 2/3 with medication. The claimant has not or is currently smoking or using illegal or illicit drugs. The claimant stopped drinking in 1999 where before she would drink on the weekends. 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 work. The claimant has no pertinent work history. Therefore, the claimant is disqualified from receiving disability at Step 4 where she will be returned to other work. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled work. The claimant does have a history of being a homemaker in the home. 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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 dependent personality disorder, anxiety, and dysthymia. The claimant is currently taking medication, but not in therapy. The claimant was given an independent psychological evaluation on [REDACTED] that showed that the claimant had a GAF of 52 which shows serious symptoms or any serious impairment in social, occupational, or school functioning. The claimant was diagnosed with generalized anxiety disorder, dysthymic disorder, and an Axis II diagnosis of dependent personality disorder. The claimant did not have any significant thought disorders, but the independent medical licensed

psychologist stated that the claimant's prognosis was guarded where she would benefit from outpatient psychological treatment and evaluation by a psychiatrist for the possible use of psychotropic medication. 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.

At Step 5, the claimant should be able to meet the physical requirements of medium work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, an advanced aged individual, with a limited or less education and no work history, who is limited to medium work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.10. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as dependent personality disorder, anxiety, and dysthymia. 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, medium 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, medium 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: July 8, 2009

Date Mailed: July 8, 2009

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

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

CGF/vmc

cc:

