

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: 2008-13078
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2008
Shiawassee County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on Tuesday, July 1, 2008. The claimant was not present, but was represented by 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 as material fact:

(1) On January 3, 2008, the claimant applied for MA-P and retroactive MA-P to November 2007.

(2) On January 10, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant's impairments lacks the duration of 12 months per 20 CFR 416.909.

(3) On January 14, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On January 18, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On July 8, 2009, 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 22 years old and alleges disability due to/or has received treatment for multiple injuries due to a motor vehicle accident. The claimant has a limited education and a history of unskilled work. This claimant is noted to have records under three different names: [REDACTED]. Since all these records involve conditions consistent with the claimant's allegations, they were considered in the medical decision of [REDACTED]. The claimant has done remarkably well regarding his physical function. The claimant was noted to have a history of substance abuse which appears to have contributed to an earlier accident. P.L. 104-121 is incorporated herein. 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 medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from the date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 as the impairment(s) would not preclude all work for 90 days.

(6) During the hearing on July 1, 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 1, 2008 and forwarded to SHRT for review on July 1, 2008.

(7) On July 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 motor vehicle accident. He is 22 years old and has a limited education with a history of unskilled work. The claimant did not meet applicable Social Security Listing found in 1.02 and 12.02. The claimant's impairment lacks duration per 20 CFR 416.909. The new information does not change the fact that the claimant lacks duration per 20 CFR 416.909. If his injuries persist after November 2008, the claimant should reapply.

(8) The claimant is a 24 year-old man whose date of birth is [REDACTED]. The claimant was not present at the hearing and his authorized representative deferred to the record in eliciting testimony. The claimant completed the 9th grade of high school. The claimant has no steady work history.

(9) The claimant's alleged impairments are a motor vehicle accident on [REDACTED]

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 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 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 x-ray of the cervical spine, lateral view only, in flexion and extension. There was a chip fracture coming off from the anterior aspect of the inferior endplate of C2, which was old. There was bony bridging of the anterior margins of C6 and C7. The interspinous distance was normal and the prevertebral soft tissues were normal. (Department Exhibit 13-14)

On [REDACTED], the claimant was seen by a treating orthopedist for multiple facial fractures secondary to an automobile accident on [REDACTED]. The claimant was status post open reduction fracture of right orbital floor, closed reduction of nasal fracture and septoplasty on [REDACTED]. The claimant complained of mild facial pain, loss of taste, and numbness. The claimant had a normal physical examination where his weight was 140 pounds and his height was 66 inches. The nasal septum was straight and healing well. The

treating specialist's assessment was status post open reduction fracture of right orbital floor, closed reduction of nasal fracture, and septoplasty. (Department Exhibit C)

On [REDACTED], the claimant was seen at [REDACTED] with a discharge date of [REDACTED]. The claimant was seen for a follow-up to his accident on [REDACTED] [REDACTED] where he was being seen for an anterior inferior avulsion fracture of the C2 vertebral body that was treated non-operatively in a cervical collar. The claimant had no numbness, tingling, or paresthesias. The claimant had no loss of bowel or bladder control. He had no pain in his neck. After the cervical collar was removed, there was no tenderness to palpation posteriorly on his neck. The claimant had slow range of motion, exercise revealed that he had no tenderness, numbness, tingling, or paresthesias with flexion or extension of the neck; nor did he have any pain, paresthesias, or concerning symptoms with lateral bending and rotation in both directions of the cervical spine. The claimant had good strength in his bilateral upper and lower extremities and was neurovascularly intact to light touch at C5-T1 upper extremities and L2-S1 lower extremities. The claimant had brisk capillary refill and distal pulses were present.

(Department Exhibit 3-4)

On [REDACTED], the claimant's treating physician submitted a Medical Examination Report, FIA-49, for the claimant. The claimant was first examined on [REDACTED] [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment of rollover motor vehicle accident with closed head injury, cervical spine issues, and right leg third degree burns. The claimant had a current diagnosis of motor vehicle accident with closed head injury, cervical spine issues, right leg third degree burns that required grafting, and post traumatic confusion. (Department Exhibit 3)

The claimant's treating physician's clinical impression was the claimant was improving and his prognosis was remediable by treatment. The claimant did have limitations, but could occasionally lift up to 5 pounds. The claimant could not stand and/or walk in an 8-hour workday, but could sit for 8 hours. The claimant could use his right leg for operating leg controls. The claimant was limited mentally as a result of post traumatic confusion. (Department Exhibit 4)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's discharge diagnosis was closed head injury status post motor vehicle accident, post traumatic confusional state status post motor vehicle accident, third degree burns right leg status post motor vehicle accident, cervical spine two fractures, history of probable bipolar disorder and attention deficit disorder, and left median nerve fracture. After recovering from his acute illness, the claimant was sent to rehab for physical and occupational therapy. The claimant's concentration and sensorium improved. The claimant's third degree burns on his right leg was reported to be healing very well. The claimant was on daily dressings before discharge. The claimant's tracheostomy tube was removed and the claimant did well after removing it. For his cervical spine fracture, the claimant was kept in a cervical collar. The claimant was also found to have a fracture of the left mid ulna. The claimant was advised to wear a splint. The claimant was found to have low hemoglobin of 7.9. From a neuropsychological point of view, the claimant was okay to be discharged and to follow up as an outpatient at CMH. (Claimant Exhibit 12-14)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant was status post motor vehicle accident where the vehicle was engulfed in flames with the claimant's legs trapped under the vehicle. The claimant had facial swelling and broken bones with lacerations. The claimant had third degree

burns to the right leg, mid thigh. The claimant was admitted to the burn unit for treatment of his burns and pain control. The claimant was monitored until he was deemed strong enough to be discharged where the claimant was ready for rehabilitation and evidentially to be discharged home. The claimant was discharged to the rehabilitation unit from the burn unit in stable condition. (Claimant Exhibit 10-11)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant was in a motor vehicle accident on [REDACTED] where he had trauma to his head and face with fractures and lacerations. The claimant had a third degree burn to his right leg, mid thigh, and was also found to have a broken left arm, and a closed head injury. The claimant was hospitalized from [REDACTED] through [REDACTED]. From [REDACTED] to [REDACTED], the claimant was in rehab. The claimant was released and continued to improve where his prognosis was remediable by treatment as stated by his treating physician on [REDACTED]. The claimant continued to improve on [REDACTED]. He also continued to improve on an x-ray that was performed on [REDACTED]. The claimant's treating orthopedic specialist stated that the claimant's nasal septum was straight and healing well. 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). The claimant was not present at the hearing and his authorized representative stated that he wanted a decision based on the existing medical records. The claimant’s application was filled out while he was in the hospital and not performing his daily living activities.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The application shows that the claimant has not had a steady job, but has done daily laborer work. The claimant’s condition continues to improve since his post status motor vehicle accident in [REDACTED]. The claimant should be able to perform simple, unskilled, light work. The claimant may not be able to perform his laborer activities because they may be performed at the medium to heavy level, but the claimant should be able to perform light work. 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).

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 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 was not present at the hearing and the authorized representative stated to let the objective medical evidence submitted in the packet stand. The claimant had a history of probable bipolar disorder and attention deficit disorder as cited by his treating physician during his hospitalization and rehabilitation from [REDACTED] to [REDACTED]. The claimant was treated with medication and appropriate behavioral management and was doing well and was released. The claimant also only completed the 9th grade of education and did not have a pertinent work history, but was a laborer doing pickup work. As a result, there is sufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from performing skilled, detailed work, but the claimant should be able to perform simple, unskilled work.

At Step 5, the claimant should be able to meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger

individual with a limited or less education, and an unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.17. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as bipolar disorder and attention deficit disorder. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of simple, unskilled, light activities and that the claimant does not meet the definition of disabled under the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P. The claimant should be able to perform simple, unskilled, light work. The department has established its case by a preponderance of the evidence.

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

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

Date Signed: January 25, 2010

Date Mailed: January 25, 2010

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

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

CGF/vmc

cc:

