

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: 2008-15537
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 27, 2008
Branch 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, a telephone hearing was held on Tuesday, May 27, 2008. The claimant personally appeared and testified with her coworker [REDACTED] as a witness.

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 23, 2008, the claimant applied for MA-P with retroactive MA-P to October 2007.

(2) On February 12, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was capable of performing other work per 20 CFR 416.920(f).

(3) On February 20, 2008, the department caseworker sent the claimant a notice that her application was denied.

(4) On March 3, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On April 30, 2008, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to colon cancer, shortness of breath, and thyroid problems. She is 45 years and has a high school education with a history of unskilled work.

The evidence showed that the claimant had a possible colon tumor. She underwent a colonoscopy, which was negative for a tumor or cancer. Thus, there was no evidence of a colon cancer or treatment of colon cancer. She was merely worked up for a tumor that was spotted on a CT scan. She also complained of shortness of breath and coughing and was found to have asthma. There was no medical reason given for her gait disturbance. Based on the evidence presented she can do medium 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 medium work. Therefore, based on the claimant's vocational profile (younger individual, high school graduate, and an unskilled work history), MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) During the hearing on May 27, 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 and August 20, 2008 forwarded to SHRT for review on August 29, 2008.

(7) On September 9, 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 colon cancer, shortness of breath, and thyroid problems. She is 45 years old and has a high school education with a history of unskilled work.

The newly submitted evidence does not significantly alter the recommendation. The evidence showed that the claimant had a possible colon tumor. She underwent a colonoscopy, which was negative for a tumor or cancer. Thus, there was no evidence of a colon cancer or treatment of colon cancer. She was merely worked up for a tumor that was spotted on a CT scan. She also complained of shortness of breath and coughing and was found to have asthma. There was no medical reason given for her gait disturbance. The newly submitted information does not report a gait disturbance. Based on the evidence presented, she can do medium 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 medium work. In lieu of a detailed work history, a denial to other work will be proposed. Therefore, based on the claimant's vocational profile (younger individual, high school graduate, and an unskilled work history), MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied.

(8) The claimant is a 46 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 5" tall and weighs 236 pounds. The claimant has gained 25-30 in the past year as a result of her illness, steroids, and medication. The claimant has a high school diploma. The claimant can read and write and do basic math. The claimant was last employed as a janitor in November 2007 at the medium level. The claimant has also been employed as a waitress and prep cook.

(9) The claimant's alleged impairments are colon tumor, asthma, GERD, and thyroid tumor that she had surgery for in [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 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 November 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 seen by her treating specialist based on symptoms from acid reflux although the claimant has apparently refused to have allergy testing secondary to insurance purposes. The claimant was very hoarse and she had severe pain and acid reflux. The claimant was asked to lose weight, which would improve her symptoms. The claimant weighed 248 pounds at the physical exam where before she weighed 242 pounds. The claimant’s lungs were clear with no wheezes, rales, or rhonchi. The claimant’s abdomen was obese and soft.

There was mild epigastric discomfort. The treating specialist would like the claimant to improve her activity, particularly with walking. (Department Exhibit C)

On [REDACTED], the claimant saw a treating specialist at [REDACTED]. The claimant was seen for probable bronchial asthma and possible gastroesophageal reflux disease. The claimant was not in any acute distress. She had a normal physical examination except she was obese at 245 pounds and 65 inches. The treating specialist's impression was mild persistent bronchial asthma/vocal cord dysfunction. The claimant was probably experiencing some onset of shortness of breath or wheezing which may be related to vocal cord dysfunction. Acid reflux may cause cough and bronchial spasms where studies have shown that vocal cord dysfunction can be a result of acid reflux also. The claimant also had possible allergic rhinoconjunctivitis. The claimant's medication was changed and she was continued on some of her other medications. (Department Exhibit I2-I2A)

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 had a history of impairment and chief complaint of abdominal pain, shortness of breath, laryngitis, and GERD. The claimant's current diagnosis was tumor of the colon, GERD, and thyroid disorder. The claimant had a normal physical examination except for her obesity. The treating physician noted gait disturbance with an increase in thyroid gland dysphagia. The claimant had abdominal pain with a colon mass. The claimant musculoskeletally was unbalanced. Neurologically, she had forgetfulness. (Department Exhibit 3)

The treating physician's clinical impression was the claimant was deteriorating with limitations that were expected to last more than 90 days. The claimant could occasionally lift 10

pounds and stand and/or walk less than 2 hours of an 8-hour workday. The claimant could use both hands/arms for simple grasping and reaching, but not for pushing/pulling or fine manipulation. The claimant could use neither foot/leg for operating foot/leg controls. The medical findings that support the above physical limitations were CT exam of the colon and thyroid exam enlarged. The claimant had a mental limitation of sustained concentration and memory. The finding that supports the above mental limitation was being unable to concentrate. However, the claimant could meet her needs in the home. (Department Exhibit 4)

On [REDACTED], the claimant's treating physician completed a Medical Needs form, DHS-54A, for the claimant. Treatment would be required for 5 months. The claimant was ambulatory, did not need special transportation, or anyone to accompany her to her appointment. The claimant did not need any assistance with her personal care activities. The claimant could not work her usual job or any job for 6 months. (Department Exhibit 15)

On [REDACTED], the claimant's treating physician completed a progress note on the claimant. The claimant was previously hospitalized for almost 8 days for severe hoarseness where it was felt to be gastroesophageal reflux disease. Upper GI endoscopy at that time showed minimal esophagitis and gastritis. Her biopsies were benign. The claimant was given medication. The claimant's only complaint on exam was in the right neck thyroid area. The claimant's voice was back and her hoarseness had completely resolved. The claimant did have some epigastric discomfort. The workup in the hospital was normal except for a slightly high chromogranin A. The claimant's physical examination was normal except for the mild to moderate epigastric discomfort with no guarding, rebound, or rigidity. The claimant was to be taken off her steroids but to be continued on her other medication. (Department Exhibit 23)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. A colonoscopy was performed. The transverse colon was examined carefully and was normal. The sigmoid and descending colon and the transverse colon back to the ascending colon were completely normal. There was no pathology found, polyps, or masses. The claimant tolerated the procedure well and she was taken back to recovery in stable condition. With this normal examination, the claimant's treating physician will continue to monitor her laryngeal edema. (Department Exhibit 24)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's discharge diagnosis was shortness of breath and hypoxia secondary due to acute reactive bronchitis, acute reactive bronchitis, acute asthmatic exacerbation, and anxiety disorder. The claimant was given breathing treatments where she improved, but was admitted. She continued to have a cough where she was given medication. The claimant's chest x-ray was negative and her labs were also negative. The claimant's oxygen saturation was 94% on room air. The claimant was discharged home in stable condition with medication. (Department Exhibit 99-100)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant has GERD that led to severe coughing and hoarseness and abdominal pain. The claimant was treated and released in improved condition. The claimant improved on [REDACTED] she was no longer hoarse, but her symptoms were exacerbated again on [REDACTED]. 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 cooks with no problem. The claimant grocery shops as needed with no problem. The claimant cleans her home with no problem. The claimant mows the lawn 2 ½ hours on a riding lawnmower, but she has problems breathing and gets congested. The claimant's hobby is being a [REDACTED] leader. The claimant felt that her condition is getting better since [REDACTED]. The claimant stated that she has depression where she is currently taking medication, but not in therapy.

The claimant wakes up at 6:00 a.m. She gets her daughter on the bus. She does housework. She sits around the house. She watches TV, listens to the radio, and reads the newspaper. The claimant sits with her husband and daughter and watches TV. She goes to bed at 9:00 p.m.

The claimant doesn't have a problem walking, standing, or sitting. She stated that she doesn't have the same strength where the most she could carry and walk was 35 pounds. The claimant stopped smoking 5-6 years ago where she would smoke occasionally. The claimant stopped drinking a year ago where she would drink once a month. The claimant does not or has ever taken illegal or illicit drugs. The claimant was no sure what work she could do.

This Administrative Law Judge finds that the claimant has established that she cannot perform any of her prior work. The claimant was previously employed as a janitor, which would require her to be around chemicals for cleaning and disinfectants, which may exacerbate her breathing condition. The claimant was also employed as a waitress, which she may have a difficult performing with her current level of abdominal pain and GERD she may not be able to lift the trays and do the duties required of a waitress. 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 her prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work.

20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium,

heavy, and very heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

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 depression where she is currently taking medication, but not in therapy. The claimant's treating physician on [REDACTED] stated the claimant was mentally limited in her memory and sustained concentration. As a result, there is insufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from performing at any job.

At Step 5, the claimant should be able to meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual with a high school education and an unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.20. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of light activities and that the claimant does not meet the definition of disabled under the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P. The claimant should be able to perform any level of 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: May 6, 2010

Date Mailed: May 6, 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:

