

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: 2008-31216

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 15, 2009

Clare 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 Thursday, January 15, 2009. The claimant personally appeared and testified on her own behalf.

ISSUE

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

FINDINGS OF FACT

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

(1) On June 23, 2008, the claimant applied for MA-P without filing an application for retroactive MA-P.

(2) On August 19, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P stating that the claimant was capable of past relevant work per 20 CFR 416.920(E).

(3) On August 26, 2008, the department caseworker sent the claimant a notice that her application was denied.

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

(5) On September 25, 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 fibromyalgia, osteoarthritis, high blood pressure, and high triglycerides. The claimant is 53 years old with 12 or more years of education and a history of skilled and semi-skilled work. The claimant did not meet applicable Social Security Listings 4.02, 4.404, 1.02, and 1.04. There was insufficient evidence where a complete independent physical consultative examination by an internist in narrative form was required.

(6) During the hearing on January 15, 2009, 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 March 20, 2009 and forwarded to SHRT for review on March 20, 2009.

(7) On April 8, 2009, 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 fibromyalgia, osteoarthritis, high blood pressure, and high triglycerides. The claimant is 54 years old and has 14 years of education and a skilled work history. The claimant did not meet applicable Social Security Listing CFR 404, Subpart P. The claimant is capable of performing past work as a legal secretary where medical opinion was considered in light of CFR 416.927.

(8) The claimant is a 55 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 3-1/2" tall and weighs 185 pounds. The claimant has lost 10 pounds because of no appetite. The claimant has a high school diploma and associate's degree as a legal secretary. The claimant can read and write and do basic math. The claimant was last employed as an assistant manager in January 2004. The claimant has also been employed as a [REDACTED]. The claimant's pertinent work history is as a legal secretary for 17 years.

(9) The claimant's alleged impairments are fibromyalgia, osteoarthritis, high blood pressure that's controlled by medication, and high cholesterol.

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 January 2004. 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’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 fibromyalgia with reduced strength bilaterally in upper and lower extremities. The claimant’s current diagnosis was hypertension, fibromyalgia, and osteoarthritis. The claimant had a normal physical examination where the claimant was withdrawn with increased pain with ambulation. The claimant had decreased range of motion in the bilateral shoulders with internal rotation and decreased range of motion with cervical spine rotation where strength was 4/5 bilaterally in the upper extremities. (Department Exhibit B9)

The treating physician’s clinical impression was that the claimant was deteriorating with limitations that were expected to last more than 90 days. The claimant could occasionally lift less than 10 pounds, but never 10 pounds. The claimant could stand and/or walk less than two hours

in an eight hour workday and sit less than six hours in an eight hour workday. There were no assistive devices medically required or needed for ambulation. The claimant could use both hands/arms for simple grasping and fine manipulation, but neither hands/arms for reaching and pushing/pulling. The claimant could use both feet/legs for operating foot/leg controls. The medical findings that support the above physical limitation was reduced grip strength in the bilateral hands. The claimant was limited mentally in sustained concentration. In addition, the claimant could meet her needs in the home. (Department Exhibit B8)

On [REDACTED], the claimant was given an independent medical evaluation by [REDACTED]. The claimant had chronic shoulder, neck, and back pain which appeared to be due to poor posture and myofascial pain. The claimant had minimal difficulty doing orthopedic maneuvers. Her range of motion was well preserved as well as her grip strength. At this point, posture mechanics, training, and continued pain management would be of help. The claimant does not appear to require surgical intervention. She would be remedial with appropriate treatment. Motivation does appear to be playing a role. The claimant did have diminished range of motion in the left shoulder, but there was no palpable tenderness today. Musculoskeletally, there was no evidence of joint laxity, crepitation, or effusion. The claimant's grip strength remains intact with dexterity unimpaired. The claimant could pick up a coin, button clothing, and open a door. There was tenderness over the mid trapezius area. Her shoulders were rotated anteriorly. She had tenderness in both sacroiliac joints. The claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, mild difficulty squatting, and was unable to hop. Straight leg raise was negative. There was no paravertebral muscle spasm. The claimant basically had normal range of motion in all extremities. Neurologically, the claimant's cranial nerves were intact with motor strength and tone being

normal. Sensory was intact to light touch and pinprick. Reflexes were 2+ and symmetrical. Romberg testing was negative. The claimant walks with a small, stepped gait without the use of an assistive device. (Department Exhibit B2-B6)

On [REDACTED], the claimant was seen for a rheumatology evaluation by [REDACTED]. The claimant's chief complaint was pain in the upper and lower extremities. The maximum CK was apparently 260 in [REDACTED]. Most recent sedimentation rate in July was only mildly elevated at 25 with a normal C-reactive protein. The claimant's LDH was also normal. The claimant had a mild elevation of CK in [REDACTED] prior to starting any HMG-CoA inhibitor drugs. The claimant had generalized tenderness over the neck and shoulder girdle, pectoral region, brachialis radialis, low back, gluteal region, trochanteric, iliotibial band, medial knee, and distal medial leg soft tissues. There were hypertrophic changes in the thumbs and great toes as well. The neurological exam revealed normal muscle strength at 5/5 including neck flexors and finger flexors. The treating rheumatologist concluded that the claimant had fibromyalgia in addition to osteoarthritis. The treating specialist did not think that the claimant had myopathy or an inflammatory disorder. The treating specialist's strongest recommendation was for the claimant to increase her level of fitness. (Department Exhibit 33)

On [REDACTED], the claimant was given an arterial Doppler by [REDACTED] for testing of the lower extremities with treadmill performed including pulse volume recordings, segmental pressures, Doppler waveform evaluation, and exercise testing if appropriate. The reason for the study was arterial Doppler lower extremities to evaluate persistent bilateral leg pain. The radiologist's conclusion was that the study showed normal findings both at rest and following exercise. The radiologist

would not expect rest pain or non-healing ulceration. Claudication symptoms due to arterial insufficiency would seem unlikely based on the nearly normal findings of this exam both at rest and following exercise. (Department Exhibit 3-4)

On [REDACTED], the claimant was given a regular stress test at [REDACTED]. The radiologist's impression was that the claimant was placed on the treadmill and a regular Bruce protocol was used. The total minutes exercised were 6 minutes and 34 seconds where the reason for termination was calf pain. The claimant developed a very transient chest pain, but no cold sweats. The claimant's exercise tolerance for age was good. The claimant reached stage 2 and achieved 7 METS. The claimant reached more than 85% of her maximum predicted heart rate, maximum heart rate was 145, and maximum blood pressure was 156 systolic. There were no significant arrhythmias seen in the electrocardiogram monitoring. There was no definite electrocardiographic evidence of exercise-induced ischemia at level of exercise performed. (Department Exhibit 1-2)

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 fibromyalgia and osteoarthritis. However, the claimant's condition would improve if she increased her level of fitness as stated by her treating rheumatologist on [REDACTED]. The claimant's range of motion was well preserved as well as her grip strength where point, posture mechanics, training, and continued pain management would be of help based on an independent medical examination done on November 12, 2008. The claimant's treating physician on [REDACTED] stated that she had decreased range of motion in the bilateral shoulders with internal rotation and cervical spine rotation where her strength was 4/5 bilaterally in the upper extremities. The claimant could

occasionally lift less than 10 pounds, stand and/or walk for two hours in an eight hour workday and sit for less than six hours in an eight hour workday. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant does have a driver's license and does drive short distances, but long distances bother her legs, arms, and back. The claimant cooks once a day, but has a problem lifting pans. The claimant grocery shops once or twice a month, but has a problem lifting the heavy bags and walking. The claimant cleans her own home by vacuuming, washing dishes, and picking up. The claimant doesn't do

any outside work or have any hobbies. The claimant felt that her condition has worsened in the past year because of an increase in pain and she has gotten weaker in her arms. The claimant stated that she had no mental impairments.

The claimant wakes up between 7:00 to 8:00 a.m. She makes coffee and watches the news. She does her chores. She cooks dinner. She lies down and takes a nap for a half an hour to one and a half hours. She spends time with her husband. She plays cards. She goes to bed at 11:00 p.m.

The claimant felt that she could walk less than a quarter of a mile. The longest she felt she could stand was 15 minutes. The longest she felt she could sit was 30 minutes. The heaviest weight she felt she could carry was 10 pounds. The claimant stated that her level of pain on a scale of 1 to 10 without medication was a 10 that decreases to a 5 with medication.

The claimant smokes seventeen cigarettes a day. The claimant stopped drinking in 2005 where she drank socially. The claimant does not or has ever taken any illegal or illicit drugs. The claimant stated that there was no work that she thought she could do.

This Administrative Law Judge finds that the claimant has not established that she cannot perform any of her prior work. The claimant was previously employed as a 911 dispatcher which is a sedentary job. The claimant was also employed as a legal secretary and assistant manager which are jobs that are performed at the light level. Therefore, the claimant is disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

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

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

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

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

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

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

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

The claimant has submitted insufficient evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. The claimant's testimony as to her limitation indicates her limitations are exertional 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 did not have any mental limitations. However, the claimant's treating physician on [REDACTED] stated that she was mentally limited in 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 working 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, an advanced age individual, with a high school education and a skilled and unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.07. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as sustained concentration. 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 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: July 21, 2009

Date Mailed: July 21, 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:

