

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: 2008-31422

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 11, 2008

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on Thursday, December 11, 2008. The claimant personally appeared and testified with 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 8, 2008, the claimant applied for MA-P with retroactive MA-P to November 2007.

(2) On April 7, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant's impairments lack durational requirement of 12 month per 20 CFR 416.909.

(3) On May 13, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On August 26, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On October 1, 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 39 years old with 12 years of education and an unskilled work history. The claimant alleges disability due to abdominal injury, colon removal, lower extremity numbness, and left foot injury. The claimant did not meet applicable Social Security Listings 5.05, 11.08, 1.02, or 1.04. The claimant lacks the durational requirements per 20 CFR 416.909. The claimant's condition is improving with treatment and is not expected to prevent all work for 12 months from time of injury or surgery.

(6) During the hearing on December 11, 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 February 23, 2009 and forwarded to SHRT for review on March 4, 2009.

(7) On March 13, 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 abdominal injury, colon removal, lower extremity numbness, and left foot injury. The claimant is 40 years old and has a 12th grade education with a history of unskilled work. All listings in CFR 404, Subpart P, were considered in the decision.

The claimant sustained multiple gunshot injuries in [REDACTED]. He had a small bowel injury and right pelvic bone fracture. He is noted to have pain and weakness in the right lower extremity and a partial foot drop clinically. There was a residual functional capacity form in file, but it was not signed or dated. The objective evidence in file indicates the claimant would be capable of sedentary work.

(8) The claimant is a 41 year-old man whose date of birth is [REDACTED]. The claimant is 6' 2" tall and weighs 250/255 pounds. The claimant has gained 20 pounds in the past year because he can't get around. The claimant has a GED and certificate. The claimant was last employed as a qualify inspector at the light level in December 2006. The claimant has also been employed as a chore provider.

(9) The claimant's alleged impairments are two gunshot wounds [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 December 6, 2006. 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 his treating physician at [REDACTED] [REDACTED] with a chief complaint of right leg pain, abdominal pain, and back pain. The claimant had a normal physical examination where the claimant had normal bowel sounds in all four quadrants with no masses noted. The abdomen was soft with no tenderness. The claimant had no hernia present and no hepatomegaly. The claimant had reduced knee extension, reduced knee flexion with no anterior knee tenderness with lateral knee tender, but no medial knee tenderness and posterior knee tender of the right lower extremity. Neurologically, the claimant’s reflexes were 0+/4+ right Achilles and 2+/4+ left Achilles, and 1+/4+ right patellar. The claimant had reduced touch sensation in the right lower extremity with right foot drop. The claimant’s power was 1/5 in plantar flexion and grade 2/5 in the dorsi flexion diminished sensations in these areas and also in the right posterior thigh up to the knee joint. The claimant had a history of gunshot wound causing injury to small bowel on the right side of the abdomen and fracture of the right pubic bone causing moderately severe lumbar radiculopathy and a possible right foot drop. The claimant could not do any job which requires prolonged standing, walking, or climbing. The claimant still has paresthesia and pain in the right

foot clinically. The claimant has a partial foot drop on the right side where he wears an ankle-foot brace and also uses a cane to walk. (Department Exhibit A-B)

On [REDACTED], the claimant's treating physician submitted a progress note on the claimant. The claimant was complaining of significant pain in his hip that radiates down to his foot. The claimant was not able to afford his pain medication. The claimant was experiencing significant neurogenic pain that seems to be dysesthetic in nature. (Department Exhibit 1-2)

On [REDACTED], the claimant was admitted to [REDACTED] as a result of gunshot wound with subsequent small bowel injury and right iliac fracture. The claimant was discharged on [REDACTED]. Claimant had an exploratory laparotomy with small bowel resection as well as right hemicolectomy on [REDACTED]. The claimant was shot twice with subsequent small bowel injury and right iliac fracture. The claimant was subsequently admitted to ICU and in the immediate post op period he had weakness in his right lower extremity which gradually subsided throughout his stay. The claimant subsequently progressed well throughout his stay and was subsequently discharged in good condition. (Department Exhibit L)

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 a victim of two gunshot wounds in [REDACTED]. The claimant's treating physician submitted a progress note on [REDACTED] [REDACTED] stating that the claimant still had some residual effects with his knee and a right foot drop. The claimant was limited in his ability to stand, walk, or climb. The claimant's abdomen seemed to have recovered where he had normal bowel sounds in all four quadrants with no masses noted. The claimant's abdomen was soft with no tenderness, hernia, or hepatomegaly. The claimant still seems to have a problem walking as the result of the gunshot wound that fractured his right pubic

bone causing moderately severe lumbar radiculopathy and possible foot drop. The claimant wears an ankle foot brace and uses a cane. 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 not have a driver's license and does not drive as the result of a speeding ticket. The claimant does not cook because he can't stand long. The claimant grocery shops with help using an Amigo cart. The claimant doesn't clean his own home, but makes his bed. The claimant has a problem bending and losing his balance. The claimant doesn't do any outside work. His hobbies are playing cards, using the computer, and reading. The claimant felt that his condition has worsened in the past

year because he has chronic low back pain, right leg pain, and pain in the right side of his stomach.

The claimant does a lot where he wakes up in pain. The claimant wakes up between 4:00 a.m. to 7:30 a.m. He takes care of his personal needs. He looks up on his daily planner. He runs errands and goes to church. He stays to himself. He goes to bed between 9:00 p.m. and 12:00 a.m.

The claimant went from using a walker to using a cane. He felt he could walk 100 yards with his cane. The claimant stated he could stand 6 to 7 minutes with his cane. The longest he felt he could sit was 20 to 30 minutes. The claimant felt he could carry and walk 10 to 15 pounds. The claimant stated that his level of pain on a scale of 1 to 10 without medication was an 8-1/2 to a 9. The claimant is only taking over-the-counter medication, no prescription medication for pain. The claimant smokes one to two cigars a week. He drinks occasionally. He stopped smoking marijuana in June 2008. The claimant stated that there was no work that he felt he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant was previously employed at the light level as a quality inspector which required him to inspect parts. The claimant was also employed as a chore provider which required him to take care of a person by providing for their daily needs. With the claimant's current impairments, the claimant would be unable to provide the level of care as a chore provider. 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).

The claimant has submitted sufficient 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.

At Step 5, the claimant cannot 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 considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.20. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical impairments, the Administrative Law Judge finds that the claimant cannot perform a wide range of light activities and that the claimant does meet the definition of disabled under the MA program. The claimant is eligible for MA benefits retroactive to November 2007 through November 2011.

The department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or

- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.

- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

Because the claimant does meet the definition of disabled under the MA program and because the evidence in the record does establish that the claimant is unable to work for a period exceeding 90 days, the claimant does meet the disability criteria for SDA. The claimant is eligible for SDA based on his January 8, 2008 application until November 2009. The claimant is required to enroll in the [REDACTED] program in order to continue receiving SDA benefits after October 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department was not acting in compliance with department policy when it denied the claimant's application for MA-P, retroactive MA-P, and SDA. The claimant is not able to perform light work. The department has not established its case by a preponderance of the evidence.

Accordingly, the department's decision is **REVERSED**. The claimant is approved for retroactive MA to November 2007 with a medical review date required November 2011. SDA is approved based on his January 2008 application to November 2009. The claimant is eligible for continued [REDACTED] benefits if he participates with the [REDACTED] program beginning December 2009. The department is order to initiate a medical review November 2011.

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

Date Signed: May 26, 2009

Date Mailed: May 27, 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:

[REDACTED]