

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: 2008-4238

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 19, 2008

Macomb 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, February 19, 2008. The claimant personally appeared and testified on her own behalf with her husband, [REDACTED] and daughter [REDACTED] as witnesses.

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 April 18, 2007, the claimant applied for MA-P.

(2) On August 8, 2007, the Medical Review Team (MRT) denied the claimant's application for MA-P stating that the claimant was capable of performing other work per 20 CFR 416.920(f).

(3) On August 23, 2007, the department caseworker sent the claimant a notice that her application was denied.

(4) On August 30, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On January 14, 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 53 years old and alleges disability due to breast cancer, heart problems with balloon surgery, and cholesterol. The claimant has a limited education and a history of unskilled work.

The claimant has a history of angioplasty, with a recent exam indicating her chest pain was not suggestive of ongoing angina pectoris. There was no evidence of cardiomegaly or cardiac failure. The claimant had radial modified mastectomy in [REDACTED] followed by chemotherapy and radiation therapy. All treatments were finished in [REDACTED]. There was no evidence of recurrence or spread. There was no evidence of significant neurological abnormalities. She did have pain and crepitation of the knees, but normal gait. Grip strength was good, but she did have lymphadema of the right upper extremity. The claimant would be able to do light work. The claimant's treating physician has given sedentary work restrictions based on the claimant's physical impairment. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence and per 20 CFR 416.927(c)(2)(3)(4) and 20 CFR 416.927(d)(3)(4)(5) will not be given controlling weight. The selected objective medical evidence shows that the claimant is capable of performing light 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 light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the

claimant's vocational profile (closely approaching advanced age at 53, limited education, and history of unskilled work), MA-P is denied using Vocational Rule 202.10 as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) During the hearing on February 19, 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 September 16, 2008 and forwarded to SHRT for review on September 25, 2008.

(7) On October 6, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and retroactive MA-P. The SHRT report reads in part:

The claimant is a 54 year-old and alleges disability due to breast cancer, heart problems with balloon surgery, and cholesterol. The claimant has a limited education and a history of unskilled work.

The newly submitted information does not significantly alter the previous recommendation. The claimant has a history of angioplasty, but the recent exam indicated her chest pain was not suggestive of ongoing angina pectoris. There was no evidence of cardiomegaly or cardiac failure. The claimant had a radical modified mastectomy in 2005, followed by chemotherapy and radiation therapy. All treatments were finished in [REDACTED]. There was no evidence of recurrence or spread.

There was no evidence of significant neurological abnormalities. She did have pain and crepitation of the knees, but normal gait. Grip strength was good, but she did have lymphadema of the right upper extremity. The claimant would be able to do light work. The claimant's treating physician has given sedentary work as a restriction based on the claimant's physical impairments. However, this medical source opinion (MSO) is inconsistent with the great weight of the objective medical evidence, and per 20 CFR 416.927(c)(2)(3)(4) and 20 CFR 416.927(d)(3)(4)(5), will not be given controlling weight. The collective objective medical evidence shows that the claimant is capable of performing light 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 light work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile (closely approaching advanced age at 53, limited education, and history of unskilled work), MA-P is denied using Vocational Rule 202.10 as a guide. Retroactive MA-P was considered in this case and is also denied.

(8) The claimant is a 55 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 4" tall and weighs 143 pounds. The claimant completed the 9th grade of high school. The claimant can read, but can't write. She can do basic math. The claimant was last employed in September 2005 as an auto parts molder at the light to medium level. The claimant has also been employed as an inspector at the medium level, packager at the light level, and produce worker at the light to medium level.

(9) The claimant's alleged impairments are blocked arteries in the heart and high cholesterol that is controlled with medication. The claimant testified that her breast cancer was treated.

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 September 2005. 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 specialist at [REDACTED] submitted a letter on behalf of the claimant. The claimant came in after modified radical mastectomy from aggressive, bulky, high grade, infiltrating ductal carcinoma of the breast, with vascular invasion, and multiple auxiliary lymph node metastasis (T3 N2MO). Her tumor had ER and PR positive and her 2 NEU negative. The claimant received intensive adjuvant chemotherapy consisting of dose—stent Adriamycin-Cytoxan followed by Taxol. The claimant subsequently received post-operative radiation therapy and is presently maintaining on Arimidex. The claimant was last seen at the clinic on [REDACTED], where she had problems with neck pain, mild lymphadema, and had an abnormal chest CT demonstrating left lower lobe testing that needed further follow up. The claimant is at high risk of tumor recurrence and needs at least to undergo further testing to evaluate for cancer recurrence at four to six month intervals. If she is found to have cancer recurrence or metastasis, this would result in further visits to the clinic as she undergoes care. Department Exhibit 4.

On [REDACTED], the claimant's treating physician submitted a Medical Examination Report, DHS-49, on behalf of the claimant. The claimant was first examined in [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairments and chief complaint of neck and shoulder pain, cancer of the right breast, ischemic heart disease, and angioplasty. The claimant had a recurring diagnosis of cancer of the breast resulting in right mastectomy, angioplasty, and hyperlipidemia. The claimant had a normal physical examination except that the claimant's treating physician noted musculoskeletally that she had limited motion of the cervical spine. Department Exhibit 78.

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

10 pounds, and occasionally up to 50 pounds or more. There were no assistive devices medically required and needed for ambulation. The claimant could use both hands/arms for simple grasping, but neither for reaching, pushing/pulling, and fine manipulation. The claimant could use neither foot/leg for repetitive action. The claimant had no mental limitations and could meet her needs in the home. Department Exhibit 77.

On [REDACTED], the claimant was sent for an independent medical evaluation from the [REDACTED]. The independent medical consultant's diagnosis and impression was status-post coronary angioplasty for coronary artery disease. The claimant has a history of chest pain that is suggestive of angina pectoris. Clinically, there was no cardiomegaly or cardiac failure. Fundi was normal. The claimant was status-post radical mastectomy for cancer of the breast. The claimant has lymphadema of the right upper extremity. She has some functional limitations from this as she cannot do heavy housework. The claimant has osteoarthritis of the knee joints with some functional limitations orthopedically. Otherwise, the claimant had a normal physical examination. There was tenderness over the right anterior chest wall. In addition, there was swelling of the right arm and forearm. All movements of the cervical spine were painful, but with no limitation of movement. All movements of lumbar spine were pain free and normal range. SLR was 9 degrees on both sides with no complaint of pain over the lower back. The claimant ambulated fairly well without any walking aid, where she can walk tip-toe, on the heel, and tandem gait. The claimant cannot squat more than 60% due to pain in the knee joints. The claimant can get up from a supine position, and on and off the examination table without help. She can dress, undress, and open a door. There was no loss of dexterity or movement of the fingers. Department Exhibit 33-35.

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant is a breast cancer survivor, where she

completed treatment in [REDACTED]. The claimant does still have some swelling and back issues as cited by her treating physician on [REDACTED]. The claimant's cancer treating specialist requested that the claimant have continuing cancer testing at four to six month intervals on [REDACTED]. The claimant's independent medical consultant's exam on [REDACTED] cited angioplasty for coronary artery disease, but with no cardiomegaly or cardiac failure. The claimant did have lymphadema of the right upper extremity from her mastectomy, where she does have some functional limitations. The claimant does have osteoarthritis of the knee joints.

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, but has a pain in her neck. The claimant does cook twice a week,

but she can't move her neck because of the pain in her neck and shoulder. The claimant does grocery shop with her family, where she selects what she wants or needs, every three to four weeks. The claimant does not clean her own home or do any outside work. The claimant's hobbies are watching TV and reading magazines. The claimant felt her condition has worsened as a result of the increase in pain.

The claimant wakes up between 10:00 a.m. to 11:00 a.m. She sits and watches TV and reads. She goes to bed between 12:00 p.m. to 1:00 a.m.

The claimant felt she could walk one block. The longest she felt she could stand was two to three minutes. The claimant did not have a problem sitting. The claimant didn't feel that she could carry any weight and walk because her hand hurts. The claimant stated that her level of pain on a scale of 1 to 10 without medication was an 8, that decreases to a 5/7 with medication. The claimant does not or has ever smoked, drank alcohol, or taken any illegal or illicit drugs. The claimant felt there was no work that she could do because of the language barrier and education.

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 an auto parts molder, inspector, packager, and produce worker, which were jobs that were performed at the light to medium level, but required lifting of between 20 to 50 pounds on a consistent basis. The claimant currently has some lymphadema in her right upper extremity as a result of her mastectomy. She also has coronary artery disease and arthritis of her knees. The claimant would be unable to perform the duties of her prior occupations with her current physical limitations.

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).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The claimant has submitted sufficient 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.

At Step 5, the claimant should not 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 limited or less education and an unskilled work history, who is capable of light work, is considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.01. 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 meets the definition of disabled under the MA program based on her April 18, 2007 application through April 2012.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not 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 cannot perform any level of simple, unskilled, 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 eligible for MA based on her April 18, 2007 application through April 2012.

Therefore, the department is **ORDERED** to redetermine the claimant's eligibility for MA benefits.

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

Date Signed: May 10, 2010

Date Mailed: May 10, 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/cv

cc:

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