

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: 2009-10421

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 14, 2009

Berrien 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, April 14, 2009. The claimant personally appeared and testified with his ex-wife, [REDACTED] as a witness.

ISSUE

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

FINDINGS OF FACT

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

(1) On September 12, 2008 and October 1, 2008, the claimant applied for MA-P and retroactive MA-P to July 2008.

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

(3) On November 17, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On December 8, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On January 26, 2009, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to back pain and mood disorder. He is 49 years old and has an 11th grade education with a history of skilled work. The claimant did not meet applicable Social Security listings. The claimant is capable of performing other work that is light work per 20 CFR 416.967(b) under Vocational Rule 202.19.

(6) During the hearing on April 14, 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 April 14, 2009 and forwarded to SHRT for review on April 16, 2009.

(7) On May 4, 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 back pain. He is 49 years old and has an 11th grade education with a history of skilled work. The claimant did not meet applicable Social Security listings. The claimant is capable of performing other work that is light work per 20 CFR 416.967(b) under Vocational Rule 202.19.

(8) The claimant is a 50 year-old man whose date of birth is [REDACTED]. The claimant is 5' 9" tall and weighs 168 pounds. The claimant has lost 30 pounds in the past year because of his back problems and depression. The claimant completed the 11th grade high school, but has his GED. The claimant can read and write and do basic math. The claimant was last employed as a laborer in October 2003 at the light level. The claimant was previously employed as a forklift operator at the medium to heavy level.

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 October 2003. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means, the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant was given an independent medical examination by an independent medical consultant at [REDACTED]. The claimant has had a history of back pain for 10 years where a MRI and myelogram have revealed bulging discs. The claimant denied having surgery. On examination, the claimant did exhibit diminished range of motion in the lumbar spine, decreased motor strength in the left lower extremity, and moderate difficulty with orthopedic maneuvers. The claimant also exhibited a mild left limp with gait. The claimant is currently not using an assistive device for ambulation. The claimant's blood pressure was 160/100 where he was instructed to contact his primary care physician as soon as possible. There was no obvious bony deformation. Peripheral pulses were easily palpated and symmetrical. There was no edema. There was no evidence of varicose veins. Range of motion was decreased in the lumbar spine, but there was no tenderness, erythema, or effusion of any joint. Grip strength was normal. The claimant's hands had full dexterity, but the claimant exhibited moderate difficulty with squatting and had a mild left limp with gait. Motor strength was decreased in the left lower extremity to 4/5. Sensory function remained intact where reflexes were present and symmetrical. There was no disorientation noted. (Department Exhibit A9-11)

On [REDACTED], the claimant was given an independent medical examination by [REDACTED]. The claimant was given a diagnosis of adjustment disorder with mixed anxiety and depressed mood. The claimant was given a GAF of 55 with a guarded prognosis. The claimant would be able to manage his own benefit funds. The claimant had adequate contact with reality during the interview. The claimant moved cautiously and appeared to be very uncomfortable throughout the appointment. The claimant did not appear to be

attempting to exaggerate or minimize his symptoms. The claimant's stream of mental activity was spontaneous and adequately organized. The claimant denied hallucinations, persecutions, obsessions, thoughts controlled by others, unusual power, suicidal ideation or attempt. The claimant did admit to having a problem sleeping. He was also trying to keep his weight down because of his back. The claimant felt that he was depressed and worried about the situation with his back. The claimant was oriented x3 with appropriate memory, information, calculations, abstract thinking, similarities and differences, and judgment. The claimant was capable of understanding, retaining, and executing work tasks and making judgments and decisions regarding work-related matters. His current adjustment disorder with mixed anxiety and depressed mood may cause mild to moderate difficulties with respect to interacting with others in the workplace and in public, but his primary disability appears to be related to his chronic medical condition. (Department Exhibit C-I)

On [REDACTED], the claimant's treating physician submitted a progress report on behalf of the claimant. The claimant was having severe pain in the lower back radiating down into the legs. The claimant had epidural steroid injections. He had a CT and a CT myelogram done which showed significant spondylolisthesis at L4-L5. The claimant had bulging discs at the level of L3-L4, L4-L5, L5-S1, and spinal stenosis at the level of L5-S1. The claimant was involved in an accident in [REDACTED] where he had arthritis in the back before, but after the accident his pain has gotten worse. (Department Exhibit Q)

The claimant received the following x-rays from [REDACTED]:

- [REDACTED] – lumbar myelogram. The radiologist's impression was inadvertent epidural contrast injection, L3-L4, L4-L5, and L5-S1 protruding discs of variable degrees, mild spinal stenosis at level L5-S1. (Department Exhibit J-K)

- [REDACTED] – myelogram CT of the lumbar spine. The radiologist's impression was circumferential protruding discs at the level of L3-L4 and L4-L5 with bilateral intervertebral neural foraminal encroachment at these levels, more so at the level of L4-L5. There was a large central posterior and bilateral posterior lateral protruding disc at L5-S1 with bilateral intervertebral neural foraminal encroachment and mild spinal stenosis. Advanced facet arthropathy of the L5-S1 was noted. (Department Exhibit L-M)
- [REDACTED], the claimant underwent a MRI of the lumbar spine without contrast, where the radiologist's impression was that the changes described at the pedicle and lamina could be post traumatic and/or congenital, consider calcifications anteriorly and posteriorly at the pedicle of the L4 on the left, narrowing of the thecal sac at the L4-L5 on the left, and sclerosis of the right and left sacral wing. (Department Exhibit N-O)

On [REDACTED], the claimant had a lumbar epidural steroid injection as the result of lumbar degenerative disc disease. The claimant tolerated the procedure very well and no complications were noted. (Department Exhibit P)

On [REDACTED], the claimant's treating physician submitted a progress note on behalf of the claimant. The claimant was complaining of problems related to pain in the lower back with some radiation of the pain into the right lower extremity and the right groin area. The claimant's blood pressure was under good control. Peripheral pulses were 2+. There was some positive straight leg raising test on the right side. The treating physician's analysis was right-sided sciatica with possible spinal stenosis and hypertension, controlled. (Department Exhibit Q)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant has spinal stenosis and degenerative disc disease as well as bulging discs as documented in the x-rays, MRI, and CT scans that were done at [REDACTED]. The claimant has diminished range of motion in the

lumbar spine, decreased motor strength in the left lower extremity, and moderate difficulty with orthopedic maneuvers. The claimant walked with a mild left limp with gait on an independent medical examination on [REDACTED]. The claimant's independent psychiatric exam stated that the claimant had a diagnosis of adjustment disorder with mixed anxiety and depressed mood that was a result of his chronic medical condition on [REDACTED]. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

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

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant has a driver's license and does drive, but has a hard time sitting for long periods of time. The claimant cooks with no problem. He does not grocery shop, clean his own home, or do any outside work. The

claimant likes watching TV with NASCAR racing. The claimant stated that he thinks his condition has worsened in the past year because he is losing strength in his legs and he has an increase in back pain. The claimant stated that he has depression where he is taking medication, but not in therapy.

The claimant wakes up at 10:00 a.m. He takes his medication and watches TV. He waits for his medication to kick in. He vacuums and washes dishes. He lies back down. He watches TV. The claimant works on his paperwork for his Social Security application. He attends any appointments that he has to. He goes to bed at 11:00 p.m.

The claimant stated that he can walk 10-15 yards. The longest he felt he could stand was 15 minutes. The longest he felt he could sit was 35-40 minutes. The claimant did not feel that he could lift any weight and walk. The claimant stated that his level of pain on a scale of 1 to 10 without medication was a 10 that decreases to an 8 with medication.

The claimant does smoke a half a pack of cigarettes a day. The claimant does not or has ever drunk alcohol. The claimant stopped smoking marijuana 30 years ago. The claimant stated that there was no work that he thought 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 as a laborer at the light level, but would require a lot of standing, bending, and lifting; and as a forklift operator at the medium level. The claimant would have a difficult time performing the requirements for these types of employment with his degenerative disc disease. 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 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 he has depression where he is currently taking medication, but not in therapy. The claimant underwent an independent psychiatric evaluation from [REDACTED] where he was diagnosed with adjustment disorder with mixed anxiety and depressed mood. However, the independent medical consultant licensed psychologist felt that the claimant's primary disability appeared to be related to his chronic medical condition and not mental. He was given a GAF of 55 with a guarded prognosis. As a result, there is sufficient medical evidence that the claimant does not have a severe mental impairment, but rather a chronic medical condition.

At Step 5, the claimant would not be able to meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a closely approaching advanced age 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. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00.

Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant cannot perform a wide range of light activities and that the claimant does 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 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 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 eligible for retroactive Medical Assistance to July 2008 with a medical review required September 2010 where the claimant is to show that he had surgery, participated in physical therapy, and stopped smoking.

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

Date Signed: August 31, 2009

Date Mailed: August 31, 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:

