

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: 2009-1044
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 on his own behalf with his grandmother, [REDACTED], and 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 June 20, 2008, the claimant applied for MA-P and retroactive MA-P to May 2008.

(2) On July 14, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive Medical Assistance stating that the claimant's impairments lack the durational requirement of 12 months.

(3) On July 23, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On September 17, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On October 16, 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 suffered injuries as the result of an apparent assault. His condition has improved significantly and appears largely healed. It is anticipated he will have no significant limitation after 12 months. Medical opinion was considered in light of CFR 416.927. The evidence in file does not demonstrate any other impairment that would pose a significant limitation.

The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied.

(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 January 30, 2009 and forwarded to SHRT for review on February 6, 2009.

(7) On March 2, 2009, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA. The SHRT report reads in part:

The claimant suffered injuries as the result of an apparent assault in [REDACTED]. His condition has improved significantly. In [REDACTED] he had no dysarthria, aphasia or other focal neurological deficits. The new information submitted does not significantly change or alter the previous decision. His condition is not expected to prevent all types of work for 12 months in a row.

The new information submitted does not significantly change or alter the previous decision. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from date of onset or from the date of surgery. Therefore, MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied.

(8) The claimant is a 34 year-old man whose date of birth is [REDACTED]. The claimant is 6' tall and weighs 170 pounds. The claimant has lost 40 pounds in the past year but doesn't know why. The claimant has a high school diploma and a certificate. The claimant can read and write and do basic math. The claimant was last employed as a carpenter in May 2008. The claimant has also been employed as a housing repair worker.

(9) The claimant's alleged impairment is an assault [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 May 2008. 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 specialist at [REDACTED]. The treating specialist’s impression was that the claimant had a closed head injury with post-concussion syndrome and pseudo cognitive dysfunction. The claimant complained of an occasional depressed mood. At times he feels like he is all alone and other times he gets agitated and mad at individuals including his family. The claimant’s affect was flat today. The claimant is without dysarthria, aphasia, or other focal deficits. (Department Exhibit A-1)

On [REDACTED], the claimant was seen by an independent medical consultant at [REDACTED] for a psychiatric evaluation. The claimant was diagnosed with a mild cognitive disorder NOS, alcohol and other substance abuse per hospital with no diagnosis on Axis II. The claimant had a traumatic brain injury and headaches. The claimant was given a GAF of 63. The claimant’s prognosis was guarded. The claimant was cognitively able to manage his benefit funds, but may have issues with his substance abuse. The independent medical consultant psychologist’s subjective impression was that the claimant was under representing his abilities during the exam. The claimant had a very high E-score of 34 on the Dot Counting Test which also suggests under representation of abilities and is found in a person engaging in a high degree of embellishment or symptom magnification. The treating independent medical consultant

psychologist's impression was that the claimant's psychological condition would mildly impair his ability to perform work-related activities. The claimant seemed to be in contact with reality throughout the examination. His gait, posture, and motor activity appeared to be normal. The claimant seemed to under represent his functional ability where his self-esteem was described to be "in the dumps". The claimant's speech was unimpaired where his mental activity was spontaneous and organized. The claimant spoke quietly and minimally. There was no evidence of hallucinations, delusions, prosecutions, obsessions, thoughts controlled by others, or unusual powers. The claimant stated that he has had bad dreams. He denied suicidal or homicidal ideation. The claimant has never attempted suicide, but reported problems sleeping. The claimant's affect was appropriate to mood. His mood seemed subdued during the exam where he did not laugh or smile. The claimant was oriented to time, person, and place. (Department Exhibit C-F)

On [REDACTED], the claimant was seen by his treating physician at [REDACTED]. [REDACTED] The claimant was found to be in acute distress. The claimant was a pleasant, well-developed male. The claimant had a neck exam that revealed normal range of motion with no meningeal signs and no tenderness on palpation of the cervical spine or cervical paraspinal muscles. There were no carotid bruits on auscultation. The cardiac exam revealed regular rate and rhythm without murmur, rub, or gallops. The claimant was found to be awake, alert, and oriented to person and place, but not to time. The claimant's affect was flat with marked psychomotor slowing. The cranial nerve examination showed sharp discs with normal vasculature on funduscopy. Visual fields were full. Pupils were equal, round, and reactive to light and accommodation. The claimant's tongue protruded in the midline without evidence of atrophy or fasciculation. The claimant's strength on motor examination was 5/5 in the upper and

lower extremities in a symmetrical fashion with normal tone and bulk throughout. Reflexes were 2+ and symmetric throughout with both plantars are flexor. Gait was normal without evidence of ataxia and negative Romberg. The claimant had an EEG of an electromyographic report. The conclusion was an abnormal study with electrodiagnostic evidence of a left radial sensory mononeuropathy. There was no electrodiagnostic evidence of left upper extremity plexopathy or radiculopathy. (Department Exhibit A-B)

On [REDACTED], the claimant had a clinic date at [REDACTED]. The claimant was admitted to [REDACTED] and discharged on [REDACTED]. The claimant arrived by [REDACTED] after being allegedly assaulted and punched multiple times in his face with unclear details of the event. The claimant suffered blunt facial trauma with a closed head injury, infra-alveolar ridge fracture, right maxillary hematoma, and polysubstance abuse. The radiology studies in the [REDACTED] consisted of CT of the head which showed left facial scalp hematoma, CT of the face showed inferior anterior alveolar ridge fracture and right maxillary sinus. CT of the neck showed no fracture or subluxation. CT of the abdomen and pelvis was negative. Chest x-ray was negative. The claimant was operated on where he underwent an open reduction with internal fixation and application of arch bars and closure of multiple tongue lacerations. The claimant was on the rehabilitative services from [REDACTED] [REDACTED]. Today, the claimant was fully alert, oriented, and ambulating with a cane. Vital signs were normal. He had no complaints of fever, chills, nausea, vomiting, or diarrhea. The claimant has tolerated a normal diet and has normal bowel and bladder function. The claimant is currently not taking any medication. On examination today the claimant revealed all lacerations to the claimant's facial were completely closed. All sutures had been removed prior to the appointment. There were no signs of cellulitis. The claimant was alert and oriented

x3. The claimant is mentating with clear speech. The claimant was ambulating with a cane.

(Department Exhibit I-J)

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 assaulted on [REDACTED] where he suffered trauma to his face and was unconscious for a period of time. The claimant was hospitalized from [REDACTED] where he received subsequent treatment. The claimant's condition has continued to improve as reflected in his treating specialist's notes from [REDACTED]. The claimant was diagnosed with a cognitive disorder that was mild and alcohol and other substance abuse per the hospital with a traumatic brain injury and headaches with a GAF of 63 on [REDACTED]. [REDACTED], the claimant still had a closed head injury with post-concussion syndrome with a pseudo cognitive dysfunction. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will still 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 because his license is suspended. The claimant does not cook, just little stuff because he scared he might forget that he was cooking. The claimant does not grocery shop even he is physically able because he does not have any money. The claimant does clean his own home by vacuuming, straightening up, and washing dishes. The claimant does do outside work of shoveling and using the deicer. The claimant does not have any hobbies. The claimant felt that his condition has worsened in the past year because he can't walk and his motor skills are not getting better. He's frustrated because he can't everything that he used to do. The claimant's mental impairments were a closed head injury and depression where he is taking medication, but not in therapy.

The claimant wakes up at 10:00 a.m. He watches TV and talks to his grandmother. He does house work and runs errands. He has bad dreams so he can't sleep where he stays up all night sometimes. He does take naps during the day.

The claimant could walk with a cane one block. He wasn't sure how long he could stand. He could sit was one hour. The claimant felt he could carry and walk 10 to 20 pounds.

The claimant smokes a pack of cigarettes a day. He stopped drinking in May 2008 where before he drank socially. He stopped smoking weed in May 2008. There was no work that the claimant 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 assaulted on [REDACTED]. He was previously

employed as a carpenter and housing repair worker. The claimant still has had some residual from his assault on [REDACTED] in [REDACTED] where his treating specialist stated that he still had a closed head injury with post-concussion syndrome and pseudo cognitive dysfunction. The claimant would have a hard time fulfilling the responsibilities of a carpenter and housing repair worker with his impairments. 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 your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

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

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

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

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

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 insufficient 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 a closed head injury and depression. He is currently taking medication, but not in therapy. The claimant was physically assaulted on [REDACTED] where he was comatose for a period of time. The claimant has improved since his examination, but still had some evidence of left radial sensory mononeuropathy on [REDACTED]. He was diagnosed with a cognitive disorder that was mild with a GAF of 63 which showed

moderate symptoms or moderate difficulty in social, occupational, or school functioning on [REDACTED] by an independent medical consultant psychologist. On [REDACTED] the treating specialist stated that he had a closed head injury with post-concussion syndrome and pseudo cognitive dysfunction. As a result, there is sufficient evidence of a mental impairment that is so severe that it would prevent the claimant from working at a skilled, detailed job, but the claimant should be able to perform simple, unskilled work.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P. The claimant should be able to perform any level of simple, unskilled, light work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

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

Date Signed: June 9, 2009

Date Mailed: June 9, 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:

