

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: 2009-21977
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 14, 2009
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 Tuesday, July 14, 2009. The claimant personally appeared and testified.

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 November 20, 2008, the claimant applied for MA-P and retroactive MA-P to August 2008.

(2) On December 23, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was denied under the Social Security Administration.

(3) On December 30, 2008, the department caseworker sent the claimant a notice that her application was denied.

(4) On March 23, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On May 22, 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, arthritis, and mental capacity. She is 44 years old and has a 12th grade education with a history of semi-skilled work.

According to the activities of daily living, she cooks and performs household chores. She reads and knits. The claimant's condition is stable with the help of counseling and medication. She has normal range of motion of all joints. The claimant would be able to do simple, unskilled, medium 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 unskilled, medium work. Therefore, based on the claimant's vocational profile (younger individual, high school graduate, and an unskilled work history), MA-P is denied using Vocational Rule 203.29 as a guide. Retroactive MA-P was considered in this case and is also denied.

(6) The claimant is a 44 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 4" tall and weighs 250 pounds. The claimant has gained 100 pounds in the past year as the result of her medication. The claimant completed the 9th grade of high school and subsequently got her GED. The claimant can read and write and do basic math. The claimant was

last employed as a certified nursing assistant in 2002 at the heavy level. The claimant has also been employed as a mail woman.

(7) The claimant's alleged impairments are bipolar disorder, schizophrenia, and arthritis in the back and arms.

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 2002. 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 underwent a psychological/psychiatric medical report at [REDACTED] where she was referred for a State of Michigan disability determination evaluation. The claimant was diagnosed with major depressive disorder, recurrent with moderate severity, cocaine dependence in early full remission, and alcohol dependence in early full remission. The claimant was given a GAF of 40-45. The claimant was given a prognosis of good. The claimant presented with intact reality with gradually increasing levels of

self-esteem. The claimant was pleasant to evaluate and was motivated to answer all questions asked of her. She did not appear to exaggerate or minimize her symptoms. The claimant's stream of mental activity was spontaneous and well-organized. There was no evidence of any hallucinations, delusions, or thoughts controlled by others. The claimant reported sleep disturbances and a recent weight gain within the last 8 months. The claimant stated she had fleeting suicidal thoughts. The claimant's mood fluctuated between depression and friendliness. The claimant stated to have episodes of anxiety that included feelings of hyperventilation, tingling hands and feet, and sweatiness. The claimant stated that during these times, she talks herself into relaxing. The claimant reported her current state to be emotional. The claimant was oriented to time and person, but she was unable to name the location she was at. Based upon the evaluation, the claimant would likely work with female coworkers. She would do well in accepting criticism from authority. She demonstrated some impairment in her general fund of information, concentration on digits, as well as her recent memory. The claimant's abstract thoughts and sense of judgment were found to be within normal limits. (Department Exhibit C-F)

On [REDACTED], the claimant's treating psychiatrist submitted a Medical Examination Report, DHS-49, on behalf of the claimant. The claimant was first examined on [REDACTED] for an initial psychiatric evaluation and last examined on [REDACTED]. The claimant had a current diagnosis of polysubstance dependence of alcohol, cocaine, and marijuana, with tobacco and alcohol, and crack cocaine where a bipolar mood disorder was ruled out and panic disorder versus alcohol disorder was ruled out with social anxiety disorder and anti-social and borderline traits. The claimant's treating psychiatrist's clinical impression was that the claimant was stable and temporarily disabled, but expected to return to work in at least six month. The claimant had no physical limitations and there no assistive devices medically

required or needed for ambulation. The medical findings that support the above physical limitations was that the claimant was currently attending appointments with a physical therapist where x-rays showed calcium deposits in the right shoulder, elbow, and joint pain as the result of multiple breaks in the arm and arthritic pain. The claimant was mentally limited in comprehension, memory, sustained concentration, reading/writing, and social interaction. The findings that support the above physical limitations was poor historian, difficulty understanding instructions, completing tasks involving writing, and anxiety interference with concentration, and difficulty falling and staying asleep that can impair functionality during waking hours. The claimant could meet her needs in the home. (Department Exhibit 45)

On [REDACTED], the claimant treating physician submitted a Medical Needs, FIA-54A, on behalf of the claimant. The claimant had a diagnosis and treatment plan for overall anxiety disorder, polysubstance dependence, and bipolar disorder, NOS. The claimant had a chronic ongoing illness that would require 1-4 office visits per month for a lifetime. The claimant was ambulatory, did not need special transportation, nor anyone to accompany her to her appointment. The claimant did not need assistance with any of her personal care activities. The claimant could not work her normal job for six months.

On [REDACTED], the claimant underwent a psychiatric evaluation and plan at [REDACTED]. The claimant was diagnosed with polysubstance dependence of alcohol, cocaine, and marijuana, tobacco, and crack cocaine. The claimant was also diagnosed with alcohol withdrawal and bipolar disorder, NOS. The claimant was given a GAF of 35. The claimant was referred for treatment and services where she was to be treated with medication and therapy. (Department Exhibit 39-43)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant was admitted via the emergency room with severe depression and suicidality. The claimant had been through some financial setbacks where she was subsequently homeless and unemployed. Nonetheless, the claimant was using cocaine at \$20 worth on a daily basis and about a case of alcohol a day. The claimant could not sleep, eat, or concentrate. On physical examination, the claimant gave a history of multiple contusions of the head due to beatings. The claimant was placed on individual psychotherapy, chemotherapy, activity, group, and recreational therapy to which the claimant responded with a significant amount of resistance. Towards the end of her hospital stay, the claimant's suicidal impulses lessened and affect was again level. The claimant's concentration and participation in the various unit programs were still limited. The claimant's sleep was fragmented. She was not readily amenable to reason and persuasion. The claimant was anxious, restless, and agitated. At the time of release, the claimant had made significant improvement through introspection and self-reflection. The claimant was compliant and had a receptive response to intervention. The claimant was sleeping and eating better. The claimant was free of suicidal and homicidal ideation or psychotic processes at the time of her release from the hospital. The claimant's prognosis was guarded. (Department Exhibit A1-A2)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant was admitted and treated psychologically in [REDACTED]. She was released with a guarded prognosis and submitted for treatment. The claimant has participated in treatment and is taking medication for her mental impairments. 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, but no car and does not drive, but she is physically able. The claimant does not cook. The claimant grocery shops with her daughter once a month. She stated that she does have confusion in the store. The claimant cleans her own home by picking up after herself. The claimant doesn't do any outside work or have any hobbies. The claimant felt that her condition has worsened in the past year because they are trying to regulate her medication. The claimant stated that for her mental impairment she is taking medication and in therapy.

The claimant stated that sometimes she's up for days and does not sleep and sometimes she sleeps. The claimant wakes up at 12:00 noon. She takes care of her personal needs. She watches TV and calls the doctor.

The claimant stated that she could walk for 30 minutes, but does not have a problem walking. The longest she felt she could stand was 30 minutes. The longest she felt she could sit was one hour. The heaviest weight she felt she could carry and walk was 20-25 pounds. The claimant's level of functioning on a scale from 1 to 10 without medication was a 1 that increases to a 6/7 with medication.

The claimant stopped smoking on April 12, 2009 where she would smoke a pack of cigarettes a day. The claimant stopped drinking in the fall of 2008 where she would drink a case of beer a day. The claimant stopped doing crack in the fall of 2008. The claimant stated that there was no work that she thought she could do.

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 a certified nursing assistance and mail woman. Those previous positions are performed are skilled, detailed work, which with the claimant's current level of mental impairment she would have a difficult time performing. The claimant should be able to perform simple, unskilled, medium work. 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

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 she lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. The claimant's testimony as to her limitation indicates her limitations are exertional and non-exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the claimant stated that she has bipolar disorder and schizophrenia. The claimant is currently in therapy and taking medication. See analysis in Step 2. As a result, there is sufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from performing skilled, detailed work, 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 medium work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual with a high school education and a skilled work history, who is limited to medium work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 203.29. The

Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as major depressive disorder, recurrent of moderate severity. 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, medium 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, medium 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: February 26, 2010

Date Mailed: February 26, 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/vmc

cc:

