

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No. 200923549
Issue No. 2009;4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: July 22, 2009
Bay 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on Wednesday, July 22, 2009. The claimant personally appeared with her mother, C. M. and authorized representative, [REDACTED]

ISSUE

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

FINDINGS OF FACT

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

1. On November 5, 2008, the claimant applied for MA-P and SDA with retroactive MA-P to August 2008.
2. On January 20, 2009, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was capable of performing other work per 20 CFR 416.920(f) and SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

3. On January 23, 2009, the department caseworker sent the claimant a notice that her application was denied.
4. On April 6, 2009, the department received a hearing request from the claimant, contesting the department's negative action.
5. The claimant subsequently applied and received SDA through an MRT decision based on a new application of January 28, 2009 where she was approved for SDA with a medical review requested June 2009 so that timeframe will not be part of this hearing decision. The claimant still needs to have a medical review for SDA of her June 2009 MRT SDA approval dated March 25, 2009.
6. On June 8, 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 chest pains, leaking heart valves, uterine bleeding, anemia, shortness of breath, and depression. She is 26 years old and has a 12th grade education with a history of semi-skilled and skilled work. The claimant's impairments improved with treatment.

The medical evidence of record indicates that the claimant's condition has improved and should continue to improve with treatment and not prevent all work for 12 months from the 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.

7. During the hearing on July 22, 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 September 9, 2009 and forwarded to SHRT for review on September 21, 2009.
8. On September 28, 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 chest pains, leaking heart valves, uterine bleeding, anemia, shortness of breath, and depression. She is 26 years

old and has a 12th grade education with a history of semi-skilled/skilled work. The claimant did not meet applicable Social Security Listing 7.02. The claimant's impairments lack duration per 20 CFR 416.909. The claimant is capable of performing other work.

9. The claimant is a 28 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 5" tall and weighs 200 pounds. The claimant has lost 50 pounds in the past year because of not eating and no appetite. The claimant has a high school diploma and one semester of college. The claimant can read and write and do basic math. The claimant was last employed as a laborer in July 2008. The claimant has also been employed as a cashier, teller, sales clerk, and pizza maker.
10. The claimant's alleged impairments are shortness of breath, depression, chest pain, endocarditis, heart murmur, leaking heart valve, coronary artery disease, dyspnea, and uterine bleeding.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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 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 July 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 given a comprehensive case management and therapy assessment by [REDACTED]. The claimant's general appearance was neat/clean where she was appropriately dressed. In

her intellectual assessment, the claimant was average. She was cooperative, anxious, fearful, tearful, and pessimistic in her mood. Her affect was appropriate. The claimant was logical and coherent with normal for age, intellect, tangential, circumstantial, and obsessive. The claimant was normal and alert. She was oriented to time, place, and person. She had good insight. Her memory was intact with some difficulty concentrating. The claimant was intact with reality. The claimant denies suicidal/homicidal ideation, intent, or plan. The claimant did admit to passive suicidal thoughts like, "I feel my life is over". The claimant had a depressed mood with poor appetite and daily panic attacks. Her triggers are being alone, feeling bored, scar from surgery, wondering why she deserved this. The claimant was diagnosed with major depressive disorder and posttraumatic stress disorder. She had a secondary diagnosis of alcohol and cannabis abuse. She was given a current GAF of 45 compared to a 60 in the past. (Department Exhibit A1-12)

On [REDACTED], the claimant saw her treating specialist at [REDACTED]. The claimant was having issues with her blood pressure following her post aortic valve replacement on [REDACTED] where she also had a next aortic root enlargement and subaortic membrane resection performed. The claimant did state she feels better in terms of shortness of breath prior to surgery. She was able to walk a mile without difficulty as before. She also reported rollerblading which gave no difficulty with shortness of breath, but she did have some right-sided pain in her chest that she attributed to the surgery. The claimant has had a few episodes of lightheadedness that last a minute or so before spontaneously resolving. It did not seem to be associated with standing up. She has also felt associated palpation with shortness of breath at that time. The claimant had a normal physical examination and her medication was adjusted accordingly. (Department Exhibit 263-265)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant underwent surgery to treat a principal diagnosis of subaortic stenosis and bicuspid aortic valve. She also had a secondary diagnosis of S/P treating AV endocarditis, dysfunctional uterine bleeding, depression/anxiety, acute diastolic CHF, and mild hypertension. She had aortic valve replacement. The claimant was discharged in stable condition. (Department Exhibit 216-221)

On [REDACTED], the claimant had surgery at [REDACTED]. The claimant had abnormal vaginal bleeding with acute blood loss anemia and endometrial polyp. The procedure performed was a hysteroscopy, dilation, and curettage, and removal of polyp. The claimant's postoperative condition was stable. The claimant was taken to the recovery room in stable condition. (Department Exhibit 87-88)

On [REDACTED], the claimant's treating physician submitted a Medical Examination Report, DHS-49, on behalf of the claimant. The claimant was first examined years ago with the date of the last exam being [REDACTED]. The claimant had a history of impairment and chief complaint of shortness of breath and fever for the last 3 months. The claimant's current diagnosis was aortic sclerosis, aortic

incompetence, and pulmonary hypertension. The claimant had a normal examination. Her blood pressure was 110/64 and her weight was 182. The treating physician noted a grade 4/6 systolic ejection murmur with shortness of breath and wheezing. The claimant was stable with limitations that were expected to last more than 90 days. The claimant can occasionally lift less than 10 pounds, but never 10 pounds. The claimant could stand and/or walk less than 1 hour. The claimant could sit less than 6 hours of an 8-hour workday. There were no assistive devices medically required or needed for ambulation. The claimant could use both hands/arms for simple grasping and fine manipulation, but neither hand/arm for reaching and pushing/pulling. The claimant could use both feet/legs for operating foot/leg controls, but not if it would take a lot of effort. The medical findings that support the above physical limitations were an abnormal stress test done in the hospital as well as abnormal EKG done at [REDACTED]. The claimant had no mental limitations and could meet her needs in the home. Department Exhibit 27-28

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant had uterine bleeding that required surgery on [REDACTED]. The claimant had heart issues where she had surgery on [REDACTED]. In [REDACTED], she was still having uncontrolled high blood pressure issues that they were trying to regulate. The claimant was given a GAF of 45 on [REDACTED] even though she was in contact with reality, had a depressed mood, and had logical thought content. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

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

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the claimant does not have a driver's license and does not drive. The claimant doesn't cook because she can't lift, bend, or pull. The claimant does not grocery shop because large crowds make her anxious and people make her sick. The claimant does clean her own home by picking up. The claimant doesn't do any outside work. Her hobby is reading. The claimant felt that her condition has worsened in the past year

because she can't play sports or do activities of daily living because she has no strength. The claimant stated that for her depression that she is currently taking medication and in therapy.

The claimant wakes up at 7:30 a.m. She checks her e-mail. She reads a book. She sits outside with her mother. She eats dinner. She takes her meds. She watches TV. She goes to bed between 12:00 a.m. to 1:00 a.m.

The claimant felt she could walk 4 blocks. The longest she felt she could stand was 10-15 minutes. The longest she felt she could sit was 10-15 minutes. The heaviest weight she felt she could carry was 5 pounds. The claimant's level of pain on a scale from 1 to 10 without medication is a 7/8 that decreases to a 4 with medication.

The claimant stopped smoking in August 2008 where she smoked one pack of cigarettes every 3 days. The claimant stopped drinking in August 2008 where before she drank a lot. The claimant stopped smoking marijuana in August 2008. The claimant felt she could work a desk job.

This Administrative Law Judge finds that the claimant has not established that she cannot perform any of her prior work. The claimant was previously employed as a cashier and sales clerk, which are performed at the light level in the national economy. She has also been employed as a teller, which is performed at the sedentary level in the national economy. She may not be able to be a pizza maker or laborer, but the claimant should be able to perform light work. Therefore, the claimant is 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 objective medical evidence on the record is insufficient that the claimant 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 depression. She underwent a psychiatric evaluation on [REDACTED] where she was given a GAF of 60 that shows moderate symptoms or moderate difficulty in social, occupational, or school functioning

previously compared to a current GAF of 45 that shows serious symptoms or any serious impairment in social, occupational, or school functioning. The claimant claims she is a victim of rape when she was staying in [REDACTED] where she declined to prosecute, but suffered from mental after affects as a result of her depression and anxiety. See MA analysis, Step 2. As a result, there is insufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from working at any job.

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 an 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 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 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 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: October 19, 2010

Date Mailed: October 19, 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.

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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 / vc

cc:

