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: 200926261
Issue No: 2009
Case No: [redacted]
Load No:
Hearing Date:
August 25, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on August 25, 2009.

ISSUE

Was the denial of claimant's application for MA-P and SDA for lack of disability correct?

FINDINGS OF FACT

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

(1) Claimant applied for MA-P, Retro MA-P, and SDA on February 6, 2009.

(2) Claimant is 44 years old.

(3) Claimant has a high school education.

(4) Claimant is not currently working.

(5) Claimant has no prior work history.

(6) Claimant is homeless.

(7) On January 23, 2009, claimant was hospitalized due to numerous generalized symptoms regarding her liver.

(8) On February 3, 2009, claimant underwent a thoracentesis of her right sided pleural effusion.

(9) On February 23, 2009, claimant underwent a second thoracentesis of her right sided pleural effusion.

(10) Claimant is able to do many activities of daily living, including driving, grocery shopping, and some housekeeping, without assistance.

(11) On March 31, 2009, the Medical Review Team denied MA-P and Retro MA-P, stating that claimant did not meet the durational requirement under the Medical/Vocational grid rules found at 20 CFR 416.909.

(12) Claimant was approved for SDA.

(13) On May 1, 2009, claimant filed for hearing.

(14) On June 29, 2009, the State Hearing Review Team denied MA-P, Retro MA-P, stating that claimant did not meet the durational requirement.

(15) On August 25, 2009, a hearing was held before the Administrative Law Judge.

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).

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

Disability is defined as 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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant’s disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA

amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is $1,640. For non-blind individuals, the monthly SGA amount for 2009 is $980.

In the current case, claimant has testified that she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "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;
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> (2) Capacities for seeing, hearing, and speaking;
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> (3) Understanding, carrying out, and remembering simple instructions;
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> (4) Use of judgment;
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> (5) Responding appropriately to supervision, co-workers and usual work situations; and
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> (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. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented limited medical evidence of an impairment expected to last 12 months or more (or result in death), which significantly limits her physical or mental ability to perform basic work activities. Claimant applied for benefits on February 6, 2009. At that time, she had been in the hospital since January 23, 2009 for treatment on her liver. Less than 9 months later, a treating source cited marked improvements of her hepatic hematoma and acute hepatic failure. There is no indication that claimant's condition will be expected to persist for the required 12 month time period. The only condition that is expected to persist, according to the treating source, is the Hepatitis C, which is not supported by the medical evidence as having any effect on claimant's ability to perform basic work activities, and as such, cannot be considered a severe impairment. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers; Bowen v Commissioner,* 473 F. 3d 742 (6th Cir. 2007). The undersigned sees no reason to discount claimant's treating source opinions. For that reason, the undersigned finds that claimant does not meet the durational requirement under the Medical/Vocational grid rules found at 20 CFR 416.909, and cannot be considered disabled. However, for the sake of argument, the undersigned will evaluate claimant under the other steps in the sequential evaluation process.

It should be noted that the undersigned is evaluating the claimant based upon the most recent medical records, and is in no way evaluating claimant's status at the time of application. At the time of application, the undersigned believes that claimant could easily pass the 5 step process when not considering the step 2 durational limit; for this reason, MRT approved claimant for SDA, which does not have the same durational requirements as does MA-P. However, claimant's current medical records show marked improvement; this improvement is of a degree that the undersigned is skeptical with regards to her meeting the step 2 durational requirement. The full 5 step evaluation as considered below is based upon these new records and therefore, claimant's current health situation.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. Although the undersigned closely analyzed the listings, specifically 5.05 chronic liver disease, claimant lacks clear and convincing medical evidence proving that she meets the listing. Appendix 1 of Subpart P of 20 CFR 404, Section 5.05 has this to say about chronic liver disease:

5.05 Chronic liver disease, with:

A. Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other appropriate medically acceptable imaging, resulting in hemodynamic instability as defined in 5.00D5, and requiring hospitalization for transfusion of at least 2 units of blood. Consider under disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

OR

B. Ascites or hydrothorax not attributable to other causes, despite continuing treatment as prescribed, present on at least 2 evaluations at least 60 days apart within a consecutive 6-month period. Each evaluation must be documented by:

1. Paracentesis or thoracentesis; or

2. Appropriate medically acceptable imaging or physical examination and one of the following:

    a. Serum albumin of 3.0 g/dL or less; or

    b. International Normalized Ratio (INR) of at least 1.5.

OR

C. Spontaneous bacterial peritonitis with peritoneal fluid containing an absolute neutrophil count of at least 250 cells/mm3.

OR

D. Hepatorenal syndrome as described in 5.00D8, with on of the following:

1. Serum creatinine elevation of at least 2 mg/dL; or

2. Oliguria with 24-hour urine output less than 500 mL; or

3. Sodium retention with urine sodium less than 10 mEq per liter.

OR

E. Hepatopulmonary syndrome as described in 5.00D9, with:

1. Arterial oxygenation (PaO2) on room air of:

a. 60 mm Hg or less, at test sites less than 3000 feet above sea level, or

b. 55 mm Hg or less, at test sites from 3000 to 6000 feet, or

c. 50 mm Hg or less, at test sites above 6000 feet; or

2. Documentation of intrapulmonary arteriovenous shunting by contrast-enhanced echocardiography or macroaggregated albumin lung perfusion scan.

OR

F. Hepatic encephalopathy as described in 5.00D10, with 1 and either 2 or 3:

1. Documentation of abnormal behavior, cognitive dysfunction, changes in mental status, or altered state of consciousness (for example, confusion, delirium, stupor, or coma), present on at least two evaluations at least 60 days apart within a consecutive 6-month period; and

2. History of transjugular intrahepatic portosystemic shunt (TIPS) or any surgical portosystemic shunt; or

3. One of the following occurring on at least two evaluations at least 60 days apart within the same consecutive 6-month period as in F1:

a. Asterixis or other fluctuating physical neurological abnormalities; or

b. Electroencephalogram (EEG) demonstrating triphasic slow wave activity; or

c. Serum albumin of 3.0 g/dL or less; or

d. International Normalized Ratio (INR) of 1.5 or greater.

OR

G. End stage liver disease with SSA CLD scores of 22 or greater calculated as described in 5.00D11. Consider under a disability from at least the date of the first score.

In order to meet or equal the listings for chronic liver disease, a claimant must meet or equal the criteria set forth in 5.05. After viewing the evidence of record,

including treating source opinions, the undersigned believes that the evidence shows claimant has not met the criteria. The undersigned looked closely at 5.05(B) because medical records showed that claimant did display ascites not attributable to other causes, but where she comes up short is in the documented evaluations. Although claimant did have a thoracentesis on two occasions, they were within two weeks of one another. Furthermore, claimant's serum albumin levels and International Normalized Ratio (INR) were both normal, according to treating sources. Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

1) the individual has the functional and vocational capacity to for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or
2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at her PRW as is normally performed in the national

economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptoms, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as

contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, there is no reliable evidence that claimant has any past relevant work history. The undersigned is willing to accept as fact that the claimant is incapable of any past work and move on to the fifth step in the sequential evaluation process. Therefore, the undersigned holds that claimant can not be ruled not disabled at this step.

In the fifth step of the sequential consideration of a disability claim, the Administrative Law Judge 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.

See *Felton v DSS* 161 Mich. App 690, 696 (1987).

At step five, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work that the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional and nonexertional functions required at that level. SSR

96-8p. The individual has the burden of proving that they are disabled and of raising any issue bearing on that determination or decision. SSR 86-8.

If the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs in the national economy, and the claimant has the vocational capabilities (considering age, education and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the claimant is not disabled. However, if the claimant's physical, mental and vocational capacities do not allow the individual to adjust to work different from that performed in the past, it shall be determined at this step that the claimant is disabled. SSR 86-8.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy". These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. In order to evaluate the claimant's skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

These aspects are tied together through use of the rules established in Appendix 2 to Subpart P of the regulations (*20 CR 404, Appendix 2 to Subpart P, Section 200-204 et. seq*) to make a determination as to disability. They reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his

or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(a).

In the application of the rules, the individual's residual functional capacity, age, education, and work experience must first be determined. The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(c)-200.00(d).

In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(e)(1).

However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone; if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework

for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Furthermore, when there are combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

Claimant is forty-four years old, with a high school diploma and no reliable evidence of prior work experience. According to a DHS-49 completed on October 1, 2009, a treating source has indicated that claimant's functional capacity is only somewhat limited, as she retains the capacity to lift 10 lbs frequently and 20 lbs occasionally. The treating source did not indicate that there were to any limitations in terms of sitting, standing, or walking. The treating source also did not express on the form that claimant has any limitations regarding simple grasping, reaching, pushing, pulling, or fine manipulating. Therefore, according to treating sources and the objective medical evidence, claimant's exertional impairments likely render claimant able to perform work at the light level.

According to vocational rules 202.20, 202.21 and 202.22, a person of a younger age with a maximum sustained work capability limited to light work, at least a high school education, and with previous experience in any type of work, or no work at all, is not disabled. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers; Bowen v Commissioner,* 473 F. 3d 742 (6th Cir. 2007). The undersigned sees no reason to

discount claimant's treating source opinions with regards to claimant's residual functional capacity.

Claimant has also made allegations of disabling pain. When considering pain, there must be an assessment of whether the claimant's subjective complaints are supported by an objective medical condition which can be expected to cause such complaints. 20 CFR 416.929, *Rogers v. Commissioner,* 486 F. 3d 234 (6th Cir. 2007). An assessment must be done to consider whether objective medical evidence confirms the severity of the alleged pain or whether the objectively established medical condition is of such a severity that it can reasonably be expected to produce the alleged disabling pain. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (1986); *Felisky v Bowen*, 28 F3d 213 (6th Cir, 1994). Furthermore, the adjudicator must evaluate the intensity, persistence and limiting effects of the symptoms on the claimant's ability to do basic work activities, i.e. daily activities, location duration, frequency, intensity of symptoms, aggravating and precipitating factors, type, dosage effectiveness, and side effects of any medications, and any other treatment undertaken to relieve symptoms or other measures taken to relieve symptoms such as lying down. *Rogers.*

In this case, medical evidence from claimant's treating sources confirms the existence of a condition which can be expected to cause complaints of pain. The specific nature of claimant's injury indicates tenderness in the abdominal area due to a hepatic hematoma and chronic hepatitis C, a condition which can result in extreme, sometimes disabling pain without the aid of medication. Claimant's treating sources confirm claimant's credibility regarding the complaints of pain. However, treating sources also stated that claimant's condition is improving and will continue to improve

over time. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers; Bowen v Commissioner,* 473 F. 3d 742 (6th Cir. 2007). The undersigned sees no reason to discount claimant's treating source opinions.

Therefore, after careful review of claimant's medical record and the Administrative Law Judge's interactions with claimant at the hearing, the undersigned finds that claimant's medical condition is of such a severity that it can reasonably be expected to produce complaints of disabling pain.

With regard to the complaints of pain, claimant expressed familiarity with the pain scale. Claimant reported her pain to be around a 6-7 on the scale without medication, depending on the day and the circumstances.

The evidence indicates that claimant takes Paxil in the amount of 40mg daily. This medication is not known to severely limit an individual's ability to maintain concentration, persistence, pace, and affect; nor can they also impair memory or affect the ability to sustain gainful activity. Claimant has reported none of these types of side effects. Claimant does complain of insomnia and difficulty maintaining her sleep, but it does not appear to affect her basic work functions and also appears to be improving since her last change in medication. Claimant's medical treatment plans approved by her doctors and pain management specialist include taking the medication.

According to a DHS-49 completed on October 1, 2009, a treating source expressed that claimant has no mental limitations regarding her abilities to understand, carry out and remember instructions, and maintain concentration, persistence and pace.

The Administrative Law Judge therefore concludes that claimant also does not have functional mental limitations resulting from her symptoms.

That same DHS-49, while presumably taking into account claimant's complaints of pain, rated claimant as having the functional capacity to perform light work. Therefore, the undersigned is unable to assign claimant specific limitations as a result of her pain, even though he finds the allegations of the pain credible.

Furthermore, treating sources report that claimant's pain is improving, and do not report that claimant's complaints of pain have resulted in any lowering of claimant's functional capacity. Finally, claimant's treating sources evaluated claimant with restrictions that were consistent with work at the light level; the undersigned assumes that these restrictions were also made in consideration of claimant's pain tolerances.

While the undersigned finds claimant's complaints of pain credible, there is no evidence that claimant's pain is of such that it would affect her ability to perform basic work activities, or in any way affect her residual functional capacity as stated by treating sources.

In the present case, the claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has complained of medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the impairment or impairments are severe enough to reach the criteria and definition of disabled, even if

the undersigned were to find that the claimant's impairments met the statutory durational requirement. While the claimant most certainly met the requirements at the onset of her impairment, when not taking into account durational requirements, a reading of claimant's most recent medical records shows that claimant cannot be considered disabled at the time those records were submitted.

Accordingly, after careful review of claimant's medical records, this Administrative Law Judge finds that claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is not disabled for the purposes of the MA program. Therefore, the decisions to deny claimant's application for MA-P and Retro MA-P were correct.

Accordingly, the Department's decision in the above stated matter is, hereby, AFFIRMED.

Robert Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: _08/11/2010

Date Mailed: _08/11/2010

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.

RJC/dj

cc: [redacted]