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: 2009-2852
Issue No: 2009; 4031
Case No: [redacted]
Load No: [redacted]
Hearing Date:
February 18, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

## 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 hearing was held in [redacted] on February 18, 2009. The Claimant appeared and testified. The Claimant was represented by [redacted] appeared on behalf of the Department.

## ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P"), Retro MA-P, and State Disability Assistance ("SDA") programs.

## FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P, Retro MA-P from September 2007, and SDA benefits on November 8, 2007.

2. On July 11, 2008, the Medical Review Team ("MRT") determined the Claimant was not disabled finding the Claimant's impairment(s) did not prevent employment of 90 days or more for SDA purposes, and finding the Claimant capable of performing other work for MA-P purposes. (Exhibit 1, pp. 2, 3)

3. On July 16th, the Department sent the Claimant an eligibility notice informing the Claimant she was not eligible for MA-P. (Exhibit 1, p. 1)

4. On October 6, 2008, the Department received the Claimant's Request for Hearing protesting the determination that the Claimant was not disabled.

5. On November 3, 2008, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2, pp. 1, 2)

6. The Claimant's alleged physical disabling impairments are due to right ankle pain, asthma, chronic obstructive pulmonay disease ("COPD"), emphesyma, chest pain, anemia, uterine and stomach masses, uncontrolled uterine bleeding, sleep apenea, and headaches.

7. The Claimant has not alleged any mental disabling impairment.

8. At the time of hearing, the Claimant was 43 years old with a June 10, 1965 birth date; was 5' 7" tall and weighed 227 pounds.

9. The Claimant graduated from high school and has work history as a direct care worker and general laborer.

10. The Claimant's impairment(s) has lasted, or is expected to last, continuously for a period of at least 12 months.

## CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formally known as the Family Independence Agency, 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 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(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and

(4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

As previously stated, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in 2006. The Claimant is not disqualified from receipt of disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples 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.

*Id.* The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability based on right ankle pain, asthma, chronic obstructive pulmonay disease ("COPD"), emphesyma, chest pain, anemia, uterine and stomach masses, uncontrolled uterine bleeding, sleep apenea, and headaches.

The Claimant was hospitalized at the [redacted] due to a left forearm abscess and bug bite. The Claimant's anemia and vaginal bleeding is document throughout the progress notes. A CT revealed a rounded lobulated mass in the mid-abdominal area down through the pelvis. Blood transfusions (at least 4) were given throughout the Claimant's hospitalization. The Claimant was discharged on September 19th with a final diagnosis of cellulitis and abscess,

leukocytosis, obstructive sleep apnea, cor pulmonale, pulmonary hypertension, anemia, and positive Methicillin-resistant Staphylococcus aureus ("MRSA") with cultures.

On October 22, 2007, an Internist submitted a Medical Examination Report on behalf of the Claimant. The Claimant's menometrorrhagia was noted and the Claimant was limited to occasionally lifting 10 pound but unable to perform repetitive actions with either hand/arm/feet/legs. The Claimant's limitations were noted to last more than 90 days.

On or about January 6, 2008, the Claimant was admitted to the [redacted]. On January 6th, 7th, and 9th, 2008, the Claimant's hemoglobin was documented as 7gm/dl or less. The Claimant was given a two-unit blood transfusion on each date. Subsequently, another transfusion was performed. On January 11th, a gynecologist opined that the Claimant had uterine fibroids, anemia secondary to vaginal bleeding, and ovarian cysts. The Claimant was discharged on January 12, 2008 with a primary diagnosis of iron deficiency anemia secondary to chronic blood loss. Multiple secondary diagnoses were listed.

On or about February 28, 2008, the Claimant was admitted to the [redacted] with complaints of abdominal pain. The Claimant's white blood cell count was 8.32; hemoglobin of 4.5; and creatinine of .9. A consultative examination found the Claimant with "multiple problems, all of this has been related to a large fibroid tumor." A hysterectomy was recommended and the Claimant's "life-threatening nature" of her anemia was discussed as well as the necessity for blood transfusions. The computed tomography of the abdomen and pelvis revealed a "large multilobulated uterine mass."

On June 10, 2008, the Claimant attended a Department ordered internist evaluation. The Claimant was found to have fibroid tumor with heavy bleeding. The Claimant's anemia was also noted. Additionally, the Claimant's right ankle was documented as painful, swollen, and with

restricted movement. The Pulmonary Function Study revealed restrictive but no obstructive airway disease. More specifically, the results of the Pulmonary Function Study revealed a Forced Vital Capacity ("FVC") for 3 tests as 1.28, 1.87, and 1.82 before bronchodilator. The Forced Expiratory Volume at 1 second ("$FEV_1$") for each test was 1.06, 1.44, and 1.49. The results 10 minutes after the bronchodilator for the FVC were 1.44, 1.85, and 1.25 with the $FEV_1$ at 1.19, 1.38, and 1.00. The Claimant's coughing, gagging, fatigue, and shakiness were noted. Ultimately, the Claimant was diagnosed with bronchial asthma with no evidence of emphysema or cor-pulmonale, hypertension, post traumatic osteoarthritis of the right ankle, and obesity. The Claimant's anemia status was not determined in the absence of blood tests.

On November 30, 2008, the Claimant was admitted to [redacted] after complaints of chest pain and excessive vaginal bleeding. The Claimant was scheduled for a cardiac catheterization however her hemoglobin reached 6 thus she was given multiple blood transfusions which improved her hemoglobin to about 10.7. The Claimant was iron deficient. On December 4th, the Claimant's blood was stabilized to allow for the catheterization. The procedure revealed angiographically normal coronary arteries with multiple hypogastric and uterine AV malformations as well as arterial cavity fistula at the level of the right uterine wall. After the procedure, continued observation was recommended however the Claimant opted to leave even after being informed of the possibility of "bleeding to death and/or death."

On January 10, 2009, a hematologist, who first examined the Claimant in September of 2007, submitted a Medical Examination Report on behalf of the Claimant. The Claimant's condition was documented as "bed ridden" and in need of red cell transfusions along with "multiple medical issues."

On February 12, 2009, the Claimant's treating physician submitted a Medical Examination Report on behalf of the Claimant. The Claimant's current diagnoses were listed, in part, as hypertension, COPD, asthma, anemia, menometrorrhagia, and cardiomyopathy.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that she does have physical limitations on her ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis 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. The Claimant asserts physical disabling impairment(s) due in part to back pain and arthritis. Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an

impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2b(1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. 1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

Categories of Musculoskeletal include:

1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

* * *

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

In March of 2006, the Claimant had surgery on her right ankle requiring hardware. The medical records document the surgery and subsequent pain and swelling however, there was insufficient evidence presented to supporting a finding of a Listed impairment within 1.00, specifically 1.02 and/or 1.04 therefore the Claimant is not disabled under this Listing.

The Claimant has alleged physical disabling impairments due in part to shortness of breath, asthma, and chronic obstructive pulmonary disease. Listing 3.00 defines respiratory system impairments. Respiratory disorders, along with any associated impairment(s), must be established by medical evidence sufficient enough in detail to evaluate the severity of the impairment. 3.00A Evidence must be provided in sufficient detail to permit an independent reviewer to evaluate the severity of the impairment. *Id.* A major criteria for determining the level of respiratory impairments that are episodic in nature, is the frequency and intensity of episodes that occur despite prescribed treatment. 3.00C Attacks of asthma, episodes of

bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum), or respiratory failure as referred to in paragraph B of 3.03, 3.04, and 3.07, are defined as prolonged symptomatic episodes lasting one or more days and requiring intensive treatment, such as intravenous bronchodilator or antibiotic administration or prolonged inhalational bronchodilator therapy in a hospital, emergency room or equivalent setting. 3.00C Hospital admissions are defined as inpatient hospitalizations for longer than 24 hours. *Id.* Medical evidence must include information documenting adherence to a prescribed regimen of treatment as well as a description of physical signs. *Id.* For asthma, medical evidence should include spirometric results obtained between attacks that document the presence of baseline airflow obstruction. *Id.*

Chronic asthmatic bronchitis (Listing 3.03A) is evaluated under Listing 3.02. Chronic obstructive pulmonary disease, due to any cause, meets Listing 3.02 if medical evidence establishes that the Claimant's forced expiratory volume (in one second) is equal to or less than 1.35 (based on the Claimant's 5' 7'' height). Attacks of asthma and/or episodes of bronchitis as referred to in 3.03 and 3.07, in spite of prescribed treatment, that occur at least once every 2 months or at least six times a year are considered. Each in-patient hospitalization for longer than 24 hours counts as two attacks/episodes and an evaluation of at least 12 consecutive months must be used to determine the frequency of attacks/episodes. 3.03B; 3.07B For asthma, the medical evidence *should* include spirometric results obtained between attacks that document the presence of baseline airflow obstruction. 3.00C

In this case, the Claimant's forced expiratory volume was below 1.35 on two tests but above 1.35 on the other tests. Additionally, although the medical records note the Claimant's asthma and/or COPD, the record is insufficient to find that the Claimant's impairment(s) meet

the severity requirement of a listing within 3.00. Accordingly, the Claimant is not disabled under this Listing.

The Claimant also alleged physical disabling impairments based upon hypertension and chest pain. Listing 4.00 defines cardiovascular impairment in part, as follows:

> . . . any disorder that affects the proper functioning of the heart or the circulatory system (that is, arteries, veins, capillaries, and the lymphatic drainage). The disorder can be congenital or acquired. Cardiovascular impairment results from one or more of four consequences of heart disease:
> (i) Chronic heart failure or ventricular dysfunction.
> (ii) Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.
> (iii) Syncope, or near syncope, due to inadequate cerebral perfusion from any cardiac cause, such as obstruction of flow or disturbance in rhythm or conduction resulting in inadequate cardiac output.
> (iv) Central cyanosis due to right-to-left shunt, reduced oxygen concentration in the arterial blood, or pulmonary vascular disease.

An uncontrolled impairment means one that does not adequately respond to the standard prescribed medical treatment. 4.00A3f In a situation where an individual has not received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment, the disability evaluation is based on the current objective medical evidence. 4.00B3a If an individual does not receive treatment, an impairment that meets the criteria of a listing cannot be established. *Id.* Hypertension (high blood pressure) generally causes disability through its effect on other body systems and is evaluated by reference to specific body system(s) affected (heart, brain, kidneys, or eyes). 4.00H1 Hypertension, to include malignant hypertension, is not a listed impairment under 4.00 thus the effect on the Claimant's other body systems were evaluated by reference to specific body parts. Listing 4.02 discusses chronic heart failure. To meet the required level of severity while on a regimen of prescribed treatment the following must be satisfied:

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or

2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

**AND**

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or

2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b (ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c); or

3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:

   a. Dyspnea, fatigue, palpitations, or chest discomfort; or

   b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or

   c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or

   d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

In the record presented, the Claimant was diagnosed with hypertension and cardiomyopathy. Although the diagnoses are medically documented, this same documentation does not meet the severity requirements of a listed impairment within 4.00. Accordingly, the Claimant can not be found disabled under this Listing.

Listing 5.00 defines digestive system impairments. Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. 5.00A Medical documentation necessary to meet the listing must record the severity and duration of the impairment. 5.00B The severity and duration of the impairment is considered within the context of the prescribed treatment. 5.00C1 Listing 5.02 defines gastrointestinal hemorrhaging from any cause. To meet this Listing, medical records must document blood transfusions of least 2 units of blood per transfusion, and occurring at least three times during a consecutive 6-month period, at least 30 days apart.

In this case, abdominal and uterine masses are documented; however, the Claimant's bleeding is connected with the uterine mass, as opposed to a gastrointestinal hemorrhage. Accordingly, the medical records do not support a finding of disabled under this Listing.

The Claimant also alleges physical disabling impairment(s) due to chronic anemia. Listing 7.00 defines hematological disorders. An impairment caused by anemia is evaluated based upon an individual's ability to adjust to the reduced oxygen-carrying capacity of the blood in consideration of the Claimant's cardiovascular system. 7.00A "Chronic" anemia persists for at least three months with supporting laboratory findings and one or more blood transfusions on an average of at least once every two months. 7.00B; 7.02A.

The Claimant's medical records consistently document the Claimant's anemia associated with her excessive vaginal bleeding; however, once again, the severity requirement of this listing

is not supported. Accordingly, the Claimant's eligibility under Step 4 is considered. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv) An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* To be considered capable of

performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Over the past 15 years, the Claimant worked as a direct care worker and general laborer whose responsibilities included standing, walking, bending, squatting, and lifting 25+ pounds. Given these facts, the Claimant's past work history is classified as unskilled, medium.

The Claimant testified that she can lift/carry 3-5 pounds; sit/stand for short periods, and was unable to bend, squat, grip or grasp (left hand/arm) without pain. The DHS-49 submitted by the Claimant's hematologist notes the Claimant is in stable condition but is "bed ridden." If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920 In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work as a direct care worker and/or general laborer thus the fifth-step in the sequential evaluation process is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant, a high school graduate, was 43 years old thus considered to be a younger individual for MA-P purposes. Disability is found disabled if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). Transferability of skills is most probable and meaningful among jobs in which the same or a lesser degree of skill is required; the same or similar tools and machines are used; and the same or similar raw materials, products, processes, or services are involved. 20 CFR 416.968(d)(2)

In the record presented, the Claimant suffers from several medically documented serious impairments. Accordingly, the Claimant's residual functional capacity for work activities on a regular and continuing basis, in light of the multiple medical issues does not include the ability to meet even the physical and mental demands required to perform sedentary work. After review of

the entire record, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

## DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program.

Accordingly, it is Ordered:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the November 8, 2007 application which included Retro MA-P for September 2007 to determine if all other non-medical criteria are met and inform the Claimant and her representative of the determination.

3. The Department shall supplement the Claimant any lost benefits she was entitled to receive if otherwise eligible and qualified in accordance with department policy.

4. The Department shall review the Claimant's continued eligibility in accordance department policy in February 2010.

/s/_____
Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: _[redacted]_____

Date Mailed: _[redacted]_____

**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 the Circuit within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the recip date of the rehearing decision.

CMM

cc: