

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: 2009-27910

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 20, 2009

Allegan County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on Thursday, August 20, 2009. The claimant personally appeared and testified with her authorized representative, [REDACTED], and the claimant's aunt, [REDACTED] as a witness.

ISSUE

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

FINDINGS OF FACT

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

(1) On November 25, 2008, the claimant applied for MA-P with retroactive MA-P to August 2008.

(2) On March 16, 2009, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant's impairment lacks duration of 12 months per 20 CFR 416.909.

(3) On March 30, 2009, the department caseworker sent the claimant a notice that her application was denied.

(4) On June 3, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On July 9, 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 31 years old with 9 years of education and a work history as a cashier. The claimant alleges disability due to bowel obstruction. The claimant did not meet applicable Social Security Listing 5.01. The claimant's impairment lacks duration per 20 CFR 416.909. The claimant's conditions have improved with treatment and are expected to continue to improve and not prevent all work for 12 months from date of onset or from date of surgery.

(6) During the hearing on August 20, 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 November 20, 2009 and forwarded to SHRT for review on December 2, 2009.

(7) On December 9, 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 31 years old with 9 years of education and a work history as a cashier. The claimant alleges disability due to bowel obstruction. The claimant did not meet applicable Social Security Listing 5.01. The claimant's impairment lacks duration per 20 CFR 416.909. Additional objective information received does not

significantly affect the residual functional capacity. The claimant's impairments did not prevent all work for 12 months.

(8) The claimant is a 31 year-old woman whose date of birth is [REDACTED].

The claimant is 5' 1" tall and weighs 137 pounds. The claimant completed the 9th grade of high school, where she was in Special Education in history, reading, and science. The claimant cannot read and write, but can add and subtract but not divide and multiply. The claimant was last employed as a stocker/cashier in 2006, at the medium level.

(9) The claimant's alleged impairments are bowel obstruction and depression.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"Disability" is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of

your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can

still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the

particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

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

“Disability” is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months ... 20 CFR 416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since 2006. 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's treating physician completed a Medical Examination Report for the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant has a history of impairment and chief complaint of chronic abdominal pain. The claimant's current diagnosis is lumbosacral and chronic abdominal

pain. The claimant had a normal physical examination with no noted abnormalities. Department Exhibit 8.

The claimant's treating physician's clinical impression was that the claimant was stable with limitations that were expected to last more than 90 days. The claimant could frequently lift less than 10 pounds, occasionally lift 10 pounds, but never 20 pounds. The claimant can stand and/or walk less than 2 hours in an 8-hour workday. There were no assistive devices medically required and needed for ambulation. The claimant could use both hands/arms for simply grasping, reaching, and fine manipulation, but not for pushing/pulling. The claimant could use both feet/legs for operating foot/leg controls. The claimant had no mental limitations and could meet her needs in the home. Department 9.

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. X-rays of the abdomen and pelvis showed mild diffuse small bowel dilation compatible with ileus, post-surgical changes within the small bowel, right lower quadrant. There was no evidence of obstruction, normal appendix, and post-surgical changes. The claimant is treated with multiple doses of narcotic medication for pain. As far as abdominal pain, the treating emergency room physician stated that it was not pyelonephritis, because she has no evidence of a urinary tract infection. The claimant's lipase was normal, therefore not pancreatitis. The claimant does have a mild ileus on the CT scan, but no evidence of an obstruction. The claimant was given medication for pain and nausea, and released in stable condition. Department Exhibit 10-11.

On [REDACTED], the claimant's treating physician submitted a progress note on the claimant. The claimant had a previous abdominal surgery x5, where she had laparoscopic surgery for adhesions for intestinal obstruction. Post-operatively, the claimant was viscous where she was nicked and apparently had peritonitis where she ended up having one after another

laparostomy until she was doing fine. The claimant has started eating. Her surgical site is in the process of healing with a lot of granulation tissue, but has not completely healed and the claimant still has significant pain. The claimant had no fever, chills, chest pain, or shortness of breath. Abdomen was soft, non-tender, with positive bowel sounds. The claimant's scar has been opened four or five times and an appliance is underneath a lot of granulation tissue with mild erythema, which could be painful. The claimant's treating physician's analysis was abdominal pain from healing abdominal wall surgical scar. Department Exhibit 5.

On [REDACTED] the claimant was evaluated by her treating physician at [REDACTED] [REDACTED] for her depression. The claimant is on medication for her depression, but it does not seem to be working well. The claimant has been through a lot the last few months, where she had an exploratory surgery in [REDACTED] for lysis of adhesions. The surgical was complicated by a nicking of the bowel, which necessitated further surgery and partial resection of her small bowel. The claimant had to have another three surgeries after the initial surgery to correct the complications. On examination today, the claimant was alert and in no apparent distress. Her affect was rather flat. Her head and neck today were unremarkable. Lungs were clear and heart regular. The treating physician's analysis was depression, where the claimant's medication was increased. Department Exhibit 6.

On [REDACTED], the claimant saw her treating physician at [REDACTED] [REDACTED]. The claimant had a complaint of abdominal pain, where she had had numerous recent and remote abdominal surgeries. The claimant does have a history of endometriosis. She has had a hysterectomy, but does have one ovary intact. The claimant states that her endometriosis is quite painful, where she needs pain medication. The 30 year-old female looks older than her stated age, with a heavy odor of nicotine. The claimant was afibril with a regular heart rate and rhythm where the lungs were clear to auscultation. The claimant has healing

surgical scars on the abdomen. The claimant has a history of endometriosis, where the claimant was given a prescription for pain medication. Department Exhibit 7.

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant has a previous medical history of adhesions, endometriosis, and bowel obstruction. The claimant had surgery in [REDACTED] for adhesions, but suffered complications where her bowel was nicked. The claimant had to have four subsequent surgeries to have a partial resection of her small bowel. The claimant had peritonitis. The claimant's condition subsequently improved, but she was still having chronic abdominal pain as a result of her healing abdominal scars. The claimant's treating physician on [REDACTED], stating that the claimant was stable where she could occasionally lift 10 pounds and stand for at least two hours in an 8-hour workday, but she would be limited with regard to pushing and pulling because of her healing abdominal scar. She had no mental limitations. A subsequent hospital visit in [REDACTED] showed that there was no evidence of an obstruction. The claimant did have a mild ileus, but no evidence of an obstruction. As a result the claimant should be able to perform simple, unskilled, light work. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence

alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant does have a driver's license and does drive with no problem, but does have a problem reading signs. The claimant cooks every other day, but has a problem reading directions. The claimant grocery shops with her mom every two weeks, however, she has a problem reading. The claimant does clean her own home with no problem, but does have a problem bending over because of the scar tissue. The claimant doesn't do any outside work or have any hobbies. The claimant felt that her condition has worsened in the past year as a result of her chronic bowel pain. The claimant stated that she does have a mental impairment of depression, where she is currently taking medication, but not in therapy.

The claimant wakes up at 8:00 a.m. She eats breakfast. She takes a shower. She cleans up and has lunch. She goes to bed between 9:30 p.m. to 10:00 p.m.

The claimant felt she could walk half a mile. The longest she felt she could stand was 15 to 20 minutes. The longest she felt she could sit was 20 to 25 minutes. The heaviest weight she felt she could carry was 10 to 15 pounds. The claimant stated that her level of pain on a scale of 1 to 10 without medication was a 10, that decreases to a 6 with medication.

The claimant that she smokes half a pack of cigarettes a day. She stopped drinking in 2007, where before she drank occasionally. The claimant stopped using marijuana in March 2009. The claimant stated that there was no work that she felt she could do.

This Administrative Law Judge finds that the claimant has established that she cannot perform any of her prior work. The claimant was previously employed as a stocker/cashier at the medium level in 2006. The claimant's surgical scar is currently healing, but in September 2009, the claimant's treating physician limited her from pushing and pulling, which would make the claimant's past work at the medium level difficult to perform. The claimant should be able to perform simple, unskilled, light work. Therefore, the claimant is not disqualified. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work.

20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

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

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

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

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

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

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

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

In the instant case, the claimant stated that she has depression, where she is currently taking medication, but not in therapy. The claimant's treating physician on [REDACTED], stated that she had no mental impairments. In addition, the claimant's treating physician on [REDACTED], saw the claimant for evaluation of the depression. He increased her medication dosage because the current level did not seem to be working well. The claimant was

alert and in no apparent distress, but had a rather flat affect. As a result, there is sufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from working at any job. The claimant completed the 9th grade of high school, where she testified that she can't read or write, or multiply or divide. She also stated that she was in Special Education for history, reading, and science. Therefore, the claimant would be limited to simple, unskilled work.

At Step 5, the claimant should be able to meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual, with a limited or less education and an skilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.17. 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 and physical impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of simple, unskilled, light activities and that the claimant does not meet the definition of disabled under the MA program.

DECISION AND ORDER

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

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

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

Date Signed: May 3, 2010

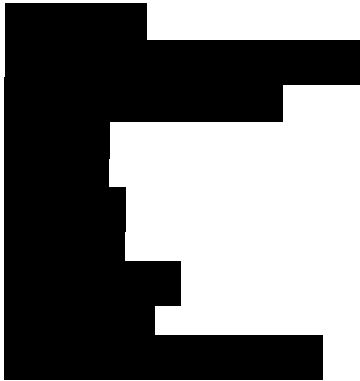
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NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration 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.

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