

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. 200933452
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: September 29, 2009
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, an in-person hearing was held on Tuesday, September 29, 2009. The claimant personally appeared and testified with her authorized representative, [REDACTED]

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 a material fact:

1. On February 23, 2009, the claimant applied for MA -P and retroactive MA-P to November 2008.
2. On April 29, 2009, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA -P stating that the claimant's impairments lacks the duration of 12 months 20 CFR 416.909.
3. On April 30, 2009, the department caseworker sent the claimant a notice that her application was denied.

4. On July 14, 2009, the department received a hearing request from the claimant, contesting the department's negative action.
5. On August 31, 2009, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to seizures, skin cancer, bipolar disorder, and learning impairment. She is 40 years old with 12 years of education and a history of unskilled work. The claimant did not meet applicable Social Security Listings 11.01, 13.01, and 12.01.

There is insufficient evidence where a complete independent physical consultative examination by an internist not by treating physician, psychiatric examination in narrative form not to give treatment recommendations, and treating sources from April 2009 to current.

6. During the hearing on September 29, 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 February 1, 2010 and forwarded to SHRT for review on February 11, 2010.
7. On February 17, 2010, 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 40 years old with a high school education and a history of light, unskilled employment.

The claimant retains the ability to perform past relevant work. The claimant would be limited to seizure precautions of only occasional use of ramps and stairs, no use of rope, ladders, scaffolds, and no exposure to unprotected heights or dangerous machinery.

The claimant retains the physical residual functional capacity to perform her past work. The claimant's past work was of a light, unskilled nature. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. SDA was not applied for by the claimant. Listings 3.03, 11.02/03, 13.03, and 12.02/04/05 were considered in this determination.

8. The claimant is a 41 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 7" tall and weighs 117 pounds. The claimant has a high school education. The claimant can read and write and do basic math. The claimant testified that she has no pertinent work history which means she has not been employed since 1995.
9. The claimant's alleged impairments are seizures, skin cancer, anxiety, bipolar disorder, and learning disorder.
10. The Social Security administrator found the claimant disabled for Supplemental Security Income with a disability onset date of [REDACTED].

CONCLUSIONS OF LAW

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

"Disability" is:

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

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

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

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

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

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

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

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

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

...Medical reports should include --

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

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

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

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

It must allow us to determine --

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

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

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

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

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

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

...If all of the evidence we receive, including a 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 no pertinent work history. 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 independent medical examiner, [REDACTED] submitted a note on behalf of the claimant that the claimant appeared for her appointment at approximately 8:45 a.m. on [REDACTED] where she was disruptive and observed using profanity where she was on the floor in the entrance way cursing. She had her foot wrapped and did have crutches, but was not using them. The claimant was observed to crawl where the claimant was complaining about the stairs to the independent medical consultative licensed psychologist's office where his assistant stated he could meet her at the McDonald's where she refused to get out of the taxi cab. This incident occurred before 9:00 a.m. and the independent consultative licensed psychologist did not have the opportunity to meet directly with the claimant, but based on her actions the independent consultative licensed psychologist did not want the claimant to reschedule at his office. (Department Exhibit 4)

On [REDACTED] the claimant was seen by an independent consultative examiner for a physical exam. The independent medical examiner's conclusion was anxiety disorder where the claimant was instructed to find shelter or an appropriate living arrangement. The claimant refuses to have adult protective services come out to evaluate her. The independent medical consultative examiner suspected that the claimant may be continuing to be abused in her living area, but there were no findings of bruising or lesions today. The claimant does have a history of alcohol use, but does not smell of alcohol today. The claimant did not appear encephalopathic or psychotic. The claimant did have mild obstructive pulmonary disease today, but appeared to be relatively non-contributory as far as asthma. There were no focal neurological deficits today. Physically, the claimant appeared relatively stable and again her main issue appears to be her current psychological state where her seizures seem to be more related to her anxiety disorder. The claimant was unkempt. She was openly crying. The claimant's exam was somewhat limited due to her current psychological state. The claimant was cooperative in answering questions and following commands. The claimant's immediate, recent, and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The claimant provided a good effort during the examination. The claimant had a normal examination except for her chest that had increased AP diameter with expiratory wheezing with no accessory muscle use. The claimant walks with a normal gait without the use of assistive device. (Department Exhibit 1-3)

On [REDACTED] the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's primary diagnosis was change in mentation secondary to seizure. The claimant's secondary diagnosis was alcohol abuse, history of chronic nausea and vomiting, anxiety, hypertension, and chronic thrombocytopenia. The claimant presented to the hospital after a seizure. The claimant was confused on presentation. The claimant had another seizure while undergoing

computed tomography scan of the head while in the hospital. The claimant admitted she was loaded with fosphenytoin. The claimant's antiepileptic medication was switched and her previous medication was discontinued. The claimant did not have any further seizures during her hospital stay. Her mentation is currently baseline and the claimant was discharged home. The claimant's discharge instructions were compliance with antiepileptic medication where she was not very compliant with her medications in the past. The claimant was instructed not to drive for at least six months. (Department Exhibit 5-6)

On [REDACTED] the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's discharge diagnosis was seizures x2, alcohol abuse, thrombocytopenia of unknown etiology, cholelithiasis, and hypertension that was stable. The claimant had a normal biliary scan. There was a positive ultrasound of Murphy's sign and probable fatty hepatic infiltration. There was no evidence of common bile duct dilation or any gallbladder wall thickening or pericholecystic fluid. The CT scan of the brain revealed no intracranial injuries or skull fracture. There was a left frontal scalp hematoma. Chest x-rays showed no signs of active disease. The claimant was also found to have alcoholic hepatitis and thrombocytopenia with a platelet count of 63,000. The claimant had multiple bruises all over her body that she reports is from her fall and seizure activity. The claimant continued to improve throughout her hospital stay with vital signs being stable prior to discharge. There was no evidence of hemolytic anemia or any evidence of dry platelets, which would indicate consumptive process. There was no evidence of cirrhosis on laboratory studies. The claimant was adamant about going home where she was subsequently discharged home in stable condition. (Department Exhibit 10-11)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant had multiple hospitalizations in [REDACTED] for her seizure disorder. The claimant was found to be noncompliant with her seizure medication. In addition, the claimant had an essentially normal independent medical consultative physical examination [REDACTED] where the claimant's anxiety was an issue, with mild obstructive pulmonary disease, and seizures related to her anxiety disorder. The claimant was not seen by the independent medical consultative examiner for a mental status examination [REDACTED] because of her behavior when she came to the appointment. 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 impairment(s) do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the claimant does not have a driver's license and does not drive because of her seizures. She does not cook. The claimant grocery shops once a month with a friend who helps her with the list and shopping. The claimant does not clean her own home nor do any outside work. The claimant's hobby is watching TV. The claimant wasn't sure if her condition has worsened in the past year. The claimant stated that for her mental impairment that she is taking medication, but wasn't sure about therapy.

The claimant wasn't sure what a typical day was from the time she gets up in the morning until she goes to bed at night. The claimant wasn't sure how long she could walk, stand, sit, or the heaviest weight she could carry and walk.

The claimant stated that she does not or has ever smoked. She does drink alcohol depending. She does not or has not even used illegal or illicit drugs.

At Step 4, this Administrative Law Judge finds that the claimant has not established that she cannot perform any work. The claimant has anxiety that causes her to have seizures where she is taking medication, but not in treatment. The claimant had an essentially normal physical exam except for some mild chronic obstructive pulmonary disease. The claimant does have a high school diploma and no pertinent work history. Therefore, the claimant is disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and

- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

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

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

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

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

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

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

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

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

In the instant case, the claimant stated that she has anxiety and bipolar disorder. She is currently taking medication, but not in therapy for her mental impairment. The claimant was scheduled for a mental status exam, but because of her behavior her exam was cancelled and not rescheduled with the psychologist on [REDACTED]. The claimant did undergo an independent physical exam by [REDACTED] on [REDACTED] that cited her anxiety disorder. The claimant was hospitalized twice in [REDACTED] where her secondary diagnosis was alcohol abuse. The claimant has a high school diploma and should be capable of performing simple, unskilled work. As a result, there is sufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from performing skilled, detailed work, but the claimant should be able to perform simple, unskilled work.

At Step 5, the claimant should be able to meet the physical requirements of medium work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual with a high school education, and no pertinent work history, who is limited to medium work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 203.28. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as anxiety and bipolar disorder. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of simple, unskilled, medium activities where she does not work around moving machinery and unprotected heights, and that the claimant does not meet the definition of disabled under the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P. The claimant should be able to perform any level of simple, unskilled, medium work that does not involve working moving machinery and

unprotected heights. 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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 26, 2011

Date Mailed: January 26, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CGF / vc

cc:

