

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. 201043864  
Issue No. 2009  
Case No. [REDACTED]  
Load No. [REDACTED]  
Hearing Date: September 16, 2010  
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 Thursday, September 16, 2010. The claimant personally appeared and testified on her own behalf 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 24, 2010, the claimant applied for MA-P with retroactive MA-P to January 2010.
2. On April 12, 2010, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant impairments lack the duration of 12 months per 20 CFR 416.909.
3. On April 13, 2010, the department caseworker sent the claimant a notice that her application was denied.

4. On July 7, 2010, the department received a hearing request from the claimant, contesting the department's negative action.
5. On July 28, 2010, 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 anemia, asthma, diabetes, heart disease, hypertension, and depression. The claimant is 50 years old with 10 years of education and an unskilled work history. The claimant did not meet applicable Social Security Listings 7.01, 3.01, 9.01, 4.01, and 12.01. The claimant's impairments lack duration per 20 CFR 416.909 where the claimant is capable of performing work that is light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) under Vocational Rule 202.10. This may be consistent with past relevant work. However, there was no detailed description of past work to determine this. In lieu of denying benefits as capable of performing past work, a denial to other work based on a Vocational Rule will be used.

6. The claimant is a 50 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 5½" tall and weighs 206 pounds. The claimant has gained 20 pounds in the past year but does not quite know why, maybe water retention. The claimant completed the 10<sup>th</sup> grade of high school and was not sure if she was Special Education while in high school. The claimant stated that she can read and write, can add and subtract, but can only multiply and divide some. The claimant was last employed in 2000 as a laborer at the medium level. She has also been employed as a housekeeper at the light level.
7. The claimant's alleged impairments are asthma, diabetes, depression, ankle fracture in [REDACTED], high blood pressure, leaky left valve, irregular heartbeat, and menometrorrhagia.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL

400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"Disability" is:

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

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

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

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

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

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

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

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

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

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

...Medical reports should include --

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

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

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

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

roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

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

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

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

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

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

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

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

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

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

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

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

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

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

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

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

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

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

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

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

“Disability” is:

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

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

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since 2000. 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 (6<sup>th</sup> 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 underwent an independent medical examination with [REDACTED]. The claimant had diabetes where there was no evidence of sequela today. The claimant did have diminished vision. In addition, she had findings of obesity and restrictive lung disease with diminished air entry. The claimant was not able to do orthopedic maneuvers due to her recent ankle fracture. The claimant is walking on walking boot which would be helpful. The claimant does have a history of depression, which is contributing to her complaints and lack of remediability as well as lack of motivation. The claimant was cooperative in answering questions and following commands where she appears to be hyper dynamic. 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 poor effort during the examination. The independent medical consultant did note that the claimant had a walking boot. The claimant had a normal physical examination except her blood pressure was slightly elevated and she was obese. Musculoskeletally, there was no joint laxity, crepitance, or effusion. The claimant’s grip strength remains intact and dexterity was unimpaired. The claimant could pick up a coin and open a door. The claimant did have mild difficulty getting on and off the examination table. The claimant stated she was unable to heel and toe walk, squat, or hop. The claimant’s straight leg raising was negative. There was no vertebral muscle spasm. The claimant had an essentially normal range of motion. The claimant’s walks with a moderate right limp with a walking boot present over the right lower extremity which was required. Motor strength and tone were normal with sensory intact to light touch and pinprick. Department Exhibit E-J.

On [REDACTED], the claimant underwent an independent psychological medical evaluation with [REDACTED]. The independent medical consultant licensed psychologist's clinical impression was the claimant had bipolar disorder NOS, posttraumatic stress disorder, alcohol dependence, and nicotine dependence. The claimant was given a GAF of 45. Her prognosis was poor given the nature and severity of her illness, severity of her concentration/focus impairment and potentially below average cognitive functioning. The claimant could not manage her benefit funds given the severity of her symptoms, history of substance dependence, and severity of her concentration/focus impairment. The claimant presented with adequate contact with reality, but psychotic symptoms were prominent. There was evidence of significant psychomotor agitation identified as the claimant rocked continually in her seat. She was cooperative throughout the evaluation where there appeared to be no tendency of exaggerating or minimizing symptoms. The claimant had spontaneous and adequately organized speech, but she appeared confused and exhibited significant impairment in concentration and focus. The claimant had difficulty tracking the conversation, difficulty effectively expressing her symptoms, and required ongoing redirection and repeated questioning. This impairment may be related not only to her Axis I symptoms, but her medication effects as well. The claimant endorsed ongoing auditory hallucinations and paranoia was evident where she appeared to have a long history of psychotic symptoms. The claimant did have a past suicidal history and attempt. The claimant had problems with sleep disturbances. The claimant was cooperative throughout the examination, but presented with a significantly blunted affective range. She appeared confused and lacked focus throughout the evaluation. The claimant was oriented x4. The claimant endorsed symptoms that were consistent with bipolar disorder, and was quite vague in the description of her symptoms and had difficulty effectively expressing her symptoms. The claimant endorsed mood instability, phases of depressed mood, sleep disturbances, agitation, psychotic features, social isolation, difficulty with memory/concentration/focus, and aggression. She presented with prominent psychotic features, significant psychomotor agitation, and severe impairment of focus and concentration. The claimant also endorsed symptoms consistent with posttraumatic stress disorder resulting from a severely traumatic childhood experience, including recurring images and memories, nightmares, psychological distress when exposed to cues of the events, estrangement from others, hypervigilance, and loss of interest. The claimant has a long history of substance dependence where she minimized her substance use and history during this evaluation. It was difficult to assess her cognitive functioning due to her severe focus and concentration impairment, but there was suspicion of below average cognitive functioning. Department Exhibit M-X.

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant had a right ankle fracture where she was discharged home in stable condition. She was non-weightbearing on the right. She was provided medication. She was also given information in regard to substance abuse follow-up and hypertension. Department Exhibit 101-102.

On [REDACTED], the claimant was seen by an emergency room physician at [REDACTED]. Her chief complaint was chest pain that started 7 days ago. The timing was gradual onset and intermittent. The claimant had a history of hypertension, diabetes, cardiac disease, and anemia. The claimant had atypical chest pain with anemia. The emergency room assessment was chest pain, chronic anemia where she refuses transfusions, diabetes mellitus, acute kidney injury, and hypertension. Her troponin was negative and her EKG was negative. The claimant was discharged yesterday from Borgess Hospital for non-ST elevation myocardial infarction with elevated troponin. The claimant was medically managed. She refused a stress test and cardiac catheterization at that time in regards to the claimant's anemia secondary to her Jehovah Witness religion, where she refuses transfusions. She did state that she has heavy menstrual cycles. She had an IUD placed while at Borgess to assist with her anemia of blood loss. Currently, the claimant is chest pain free. Department Exhibit 46-47, 65-66.

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant was discharged in stable condition as a result of anemia. The claimant was evaluated by OB GYN and a pelvic ultrasound was performed that showed that the uterus contained multiple probable fibroids. She had an IUD placed and she initially refused a MRI of the pelvis for a UAE and later this could not be performed because she was severely claustrophobic. The claimant's menstrual bleeding subsided after the IUD placement and she is to follow-up with her OB GYN for further management as an outpatient. The claimant refused blood transfusions where they were giving her IV therapy with an outpatient hem-onc follow-up for management of her severe iron deficiency from blood loss. In addition, the claimant had mildly elevated troponins associated with anemia and chest pressure, but she was refusing any workup for this non-ST elevation MI, which probably was secondary to the severe anemia and she will continue to follow-up as an outpatient with cardiology for further management. Department Exhibit 67-69.

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 menometrorrhagia and fractured her ankle in [REDACTED]. In addition, she has mental issues, which have gone untreated. The claimant's impairments do not meet duration of 12 months or more. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

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

disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the claimant does not have a driver's license and does not drive because her license has expired. The claimant does not cook because she's in pain. The claimant does not grocery shop because she gets dizzy and lightheaded and has pain. The claimant doesn't clean her own home, do any outside work, or have any hobbies. The claimant felt that her condition has worsened in the past year because she has shortness of breath, can't walk and lift, and an increase in pain. The claimant stated she is not taking any medication for her mental impairment nor is she in therapy.

The claimant stated she sleeps during the day. She wakes up at 3:00 p.m. She eats. She sits on the porch or in the house. She watches TV. She goes to bed between 6:00 and 7:00 a.m.

The claimant felt that she could walk a ½ a block. The longest she felt she could stand was 5 minutes. The longest she felt she could sit was 5-10 minutes. The heaviest weight she felt she could walk and carry was 5 pounds. The claimant's level of pain on a scale from 1 to 10 without medication is a 9/10 that decreases to a 7 with medication.

The claimant smokes 6-7 cigarettes a day. She stopped drinking alcohol in June 2010 where she would drink a pint every 1-2 days. The claimant does not nor has ever illegal or illicit drugs. The claimant stated that there was no work that she felt she could do.

This Administrative Law Judge finds that the claimant has not established that she cannot perform any of her prior work. The claimant broke her ankle in [REDACTED]. By [REDACTED] during her independent medical exam she was able to be weightbearing and wear her boot. The claimant completed the 10<sup>th</sup> grade of high school. The claimant does have some mental impairment, as documented in her [REDACTED] evaluation, but the claimant should be able to perform simple, unskilled work. The claimant was treated for her anemia and menometrorrhagia by an IUD placement in [REDACTED], which decreased her blood flow. Therefore, the claimant is disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

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

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

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

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

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

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



**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 depression. The claimant's independent medical psychological report performed on [REDACTED] listed her with bipolar disorder, posttraumatic stress disorder, alcohol dependence, and nicotine dependence with a GAF of 45 that shows serious symptoms or any serious impairment in social, occupational, or school functioning. The claimant is not on medication or in therapy. 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 light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a closely approaching advanced individual with a limited or less education, and an unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.17. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression, bipolar disorder NOS, posttraumatic stress disorder, alcohol dependence, and nicotine dependence. 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, 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: November 5, 2010

Date Mailed: November 5, 2010

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

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

CGF / vc

cc:

