

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: 2010-19665
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 31, 2010
Genesee 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 Wednesday, March 31, 2010. The claimant personally appeared and testified with her authorized representative, [REDACTED], [REDACTED] also had a hearing request for the contested time period, but agreed to withdraw their hearing request, but still wants a copy of the hearing decision.

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 July 15, 2008, the claimant applied for MA-P with retroactive MA-P to June 2008.
- (2) On August 22, 2009, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was capable of performing other work per under Medical Vocational Grid Rule 202.17 per 20 CFR 416.920(f).
- (3) On January 29, 2010, the department caseworker sent the claimant a notice that her application was denied.
- (4) On February 8, 2010, the department received a hearing request from the claimant, contesting the department's negative action.
- (5) On March 2, 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 49 years old, has a less than high school education, and a history of no gainful employment.

The evidence supports that it is reasonable to place restrictions on mental ability to perform work related tasks. Beyond history of polysubstance abuse, the claimant has a less than high school education and no history of gainful employment. Physically, the claimant appears to be primarily limited secondary to obesity, body mass index = 48.9. It is noted that the claimant has bilateral crepitus of knees, most likely related to body habitus.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light exertional work of a simple and repetitive nature. Therefore, based on the claimant's vocational profile (49 years old, a less than high school education, and a history of no gainful employment), MA-P is denied using Vocational Rule 202.17 as a guide. Retroactive MA-P was considered in this case and is also denied. Listings 3.10, 4.04, 12.04, and 12.06 were considered in this determination.

(6) The claimant is a 49 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 6" tall and weighs 298 pounds. The claimant has completed the 9th grade of high school. The claimant stated that she can read and write and do basic math. The claimant stated she was last employed in 2002 as a housekeeper at the medium level.

(7) The claimant's alleged impairments are depression, anxiety, high blood pressure, angina, degenerative disc disease, obstructive sleep apnea, arthritis, bilateral crepitus of the knees, and morbid obesity.

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 2002. 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 was seen by an independent medical consultant licensed psychologist [REDACTED]. The claimant's current diagnosis was bipolar disorder by history with a history of alcoholism and drug dependency. The independent medical consultant stated that the claimant should receive some assistance in managing any benefits assigned due to her history of alcoholism and drug dependency. It was recommended that the claimant continue to be involved with outpatient psychiatric treatment designed to reduce psychiatric symptoms, stabilize daily functioning, and address substance abuse issues. Ongoing use of psychotropic medication will be an essential component of this treatment. Such treatment will be a necessary adjunct to any successful long-term attempt at vocational rehabilitation. The claimant was given a GAF of 48. (Department Exhibit 498-500)

On [REDACTED], the claimant was given an independent medical examination by [REDACTED]. The independent medical examiner's clinical impression was morbid obesity, COPD, major depression, anxiety, neurosis, panic attacks, essential hypertension, status post pulmonary embolism, and sleep apnea, presently using C-PAP. The independent medical examiner's opinion was that the claimant would require psychotherapy and psychiatric care for the rest of her life as well as medical care for her hypertension and mild to moderate COPD. The claimant was morbidly obese at a weight of 303 pounds and a height of 5' 6" tall. She had a normal blood pressure. The claimant's chest had a mild increase in the AP diameter. The claimant's morbid obesity made the visceral palpation somewhat difficult. Bowel sounds were present and normal. The claimant had flexion limited to 80 degrees, extension 20 degrees, left lateral flexion 20 degrees, and right lateral flexion 20

degrees of the dorsal spine. The claimant did have some crepitus in both knees. (Department Exhibit 502-504)

On [REDACTED] the claimant saw her treating specialist at [REDACTED]. The treating specialist's assessment was back pain, osteoarthritis, coronary artery disease, high blood pressure, and depression. The claimant had a normal physical examination where the claimant was morbidly obese at 299 pounds. The treating specialist's impression was not ill appearing and in no distress. Hand grasp was 4/5 bilaterally with decreased range of motion of the lumbar spine and knees. (Department Exhibit 605-606)

On [REDACTED], the claimant had a borderline echocardiogram at [REDACTED]. The radiologist's impression was trace mitral regurgitation of no hemodynamic significance, trace tricuspid regurgitation of no hemodynamic significance, and abnormal LV diastolic pilling was suspected. The claimant had normal aortic flow. (Department Exhibit 618)

On [REDACTED], the claimant had a psychiatric evaluation at [REDACTED]. The claimant was not suicidal or homicidal. She did have a past suicidal attempt. She was not aggressive. The claimant was cooperative. The claimant was goal-directed with a depressed mood and somewhat anxious. The claimant denied hallucinations or delusions. She was alert x3. Her insight and judgment were fair. The claimant denied current substance abuse, but 6 years ago used crack cocaine. The claimant was diagnosed with major depressive affective disorder that was moderate and recurrent. She was given a GAF of 49. She was signed up for therapy and medication.

(Department Exhibit 528-534)

On [REDACTED], the claimant was given x-rays at [REDACTED]

(Department Exhibit 567-568):

- Chest x-ray, two views. The radiologist's conclusion was mild bibasilar atelectasis.
- Left shoulder, three views. The radiologist's impression was a negative study of the left shoulder.

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant was brought into the emergency room by her daughter because of suicidality where the claimant took an overdose of sleeping pills and was placed in the intensive care unit at [REDACTED] for 4 days. The claimant was devastated after the news that her nephew was murdered. The claimant had some panic-like symptoms, sweating with breathing problems, and excessive nervousness. The claimant was placed in individual psychotherapy, chemotherapy, milieu activity and group recreational therapy to which the claimant responded favorably. The claimant had problems with panic-like symptoms as well as phobic avoidances. The claimant was no longer abusing drugs or alcohol where she participated in various program activity and productive individual sessions and was more optimistic about herself in the future. By the time the claimant was released from the hospital she was free of suicidal or homicidal ideation or psychotic process. (Department Exhibit 541-542)

On [REDACTED], the claimant's treating physician completed a Medical Examination Report, DHS-49, for the claimant. The claimant had a history of impairment and chief complaint of depression, severe, on medication, obstructive sleep apnea, and back pain that was resistant to medication. The claimant had a current diagnosis of osteoarthritis. The claimant had a normal physical examination. The treating physician did note that she was obese. She had wheezing and sleep apnea. She had back tenderness and was depressed. (Department Exhibit 29)

The treating physician's clinical impression was the claimant was deteriorating with physical limitations that were expected to last more than 90 days. She could occasionally lift 10 pounds, but never 20 pounds. The claimant could stand and/or walk less than 2 hours of an 8-hour workday. There were no assistive devices medically required or needed for ambulation. The claimant could use both hands/arms and feet/legs for repetitive action. The medical finding that supports the above physical limitation was back pain. The claimant was mentally limited in sustained concentration. In addition, the claimant could meet her needs in the home. (Department Exhibit 30)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's chief complaint was chest pain. The claimant used to smoke 2 packs a day and has been cutting where she says she is currently down to two cigarettes a day. The claimant was morbidly obese and her blood pressure was 156/81. The claimant had evidence of sleep apnea. Heart sounds were distant but regular. There was tenderness on palpation of the chest. Lungs were clear and abdomen was soft. The extremities showed good pulses. The treating emergency room physician felt the claimant's chest pain could be underlying ischemic parheart disease versus musculoskeletal chest pain. There was no evidence of any acute myocardial infarction. (Department Exhibit 37-38)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant was hospitalized in [REDACTED] for a suicidal attempt after the murder of her nephew. The claimant was treated and released where she is taking medication and in therapy. The claimant was subsequently diagnosed with major depressive affective disorder, moderate and recurrent or [REDACTED]. The claimant's echocardiogram on [REDACTED] showed normal aortic flow and no issues of hemodynamic

significance. The claimant's geriatric and medical specialist on [REDACTED] stated that the claimant had back pain, osteoarthritis, coronary artery disease, high blood pressure, and depression, but she had an essentially normal physical examination except for her obesity. The claimant's [REDACTED] independent medical consultative exam also showed morbid obesity, depression, and COPD. The independent psychiatric exam on [REDACTED] cited bipolar disorder by history with a history of alcoholism and drug dependency. She was given a GAF of 48. The claimant could not manage her own benefits funds and the independent medical consultant stated that the claimant should continue her outpatient psychiatric treatment. 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 drive where she has never driven a car. The claimant stated that she does not cook because she's drugged up by her medication. The claimant does not grocery shop, but goes with her sister because she doesn't drive and she leans on the cart. The claimant does clean her own home by keeping her bathroom clean. 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 a death in the family. The claimant stated for her mental impairments that she is taking medication and is in therapy.

The claimant stated that she wakes up at 6:00 a.m. She has a problem sleeping. She lies in bed and watches TV. She gets up between 10:00 to 11:00 a.m. She takes care of her personal needs. She goes to bed from 8:00 to 9:00 p.m. She's awake until 1:00 to 2:00 a.m.

The claimant felt that she could walk one block. The longest she felt she could stand was 15 minutes. The longest she felt she could sit was one hour. The heaviest weight she felt she could carry and walk was 8 pounds. The claimant stated that her level of pain on a scale of 1 to 10 without medication was an 8 that decreases to a 6 with medication.

The claimant stopped smoking 7 months ago where before she smoked 1-2 packs a week. The claimant drinks alcohol occasionally. She stopped doing cocaine 3-4 months ago. The claimant stated that there was no work that she thought 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 was employed as a housekeeper in 2002 at the medium level. The claimant should be able to perform her past relevant work at the light level. A housekeeping job is normally performed at the light level in the national economy. The claimant does have osteoarthritis, obesity, and bilateral crepitus of the knees, but should be able to

perform light work. The claimant is being treated for her mental impairments where she in therapy and taking medication. 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 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 is taking medication and in therapy for her mental impairment. She testified that she had depression and anxiety. The claimant had a nephew that was murdered and was hospitalized where she was treated and released in [REDACTED]. 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 younger 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 major depressive affective 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, 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: June 16, 2010

Date Mailed: June 16, 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/vmc

cc:

