

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

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Reg. No: 2013-30538
Issue No: 2009; 4031
Case No: ██████████
Hearing Date: May 9, 2013
Calhoun 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 Hearing. After due notice, an in-person hearing was held on Thursday, May 9, 2013. Claimant personally appeared and testified with his Authorized Representative, ██████████, from L&S Associates, Inc., and his mother, ██████████. The Department was represented by, Lynn Trall, ES.

ISSUE

Whether the Department of Human Services (Department) properly denied Claimant's application for Medical Assistance (MA-P), and retro-active Medical Assistance (Retro/MA-P) benefits?

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 August 16, 2012, the Claimant applied for MA-P, with Retro-MA, to July 2012.
2. On November 14, 2012, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA-P, stating that the Claimant's impairment was denied due to lack of duration of 12 months per 20 CFR 416.909.
3. On November 19, 2012, the Department Caseworker sent the Claimant a notice that his MA-P/Retro MA-P application had been denied.
4. On February 11, 2013, Claimant filed a Request for Hearing to contest the Department's negative MA-P/Retro MA-P action.

5. On April 18, 2013, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and Retro-MA-P eligibility for the Claimant. The SHRT report reads in part that the Claimant is capable of performing at least simple, unskilled, sedentary work. The Claimant is not engaged in substantial gainful employment. The Claimant's impairment does not meet/equal the intent or severity of a Social Security listing. Therefore, based on the Claimant's vocational profile (younger individual, high school equivalent education and history of semi-skilled work); MA-P is denied using Vocational Rule 201.21 as a guide. Retro-MA-P was considered in this case and is also denied.
6. During the hearing on May 9, 2013, 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 and forwarded to SHRT for review on June 10, 2013.
7. On June 25, 2013, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and Retro-MA-P. The SHRT report reads in part:
 - The Claimant is not currently engaged in substantial, gainful activity. The Claimant's impairments do not meet/equal the intent or severity of a Social Security listing of 1.02/04, 4.04, 5.06, 11.14, and 12.04/06/08/09. The medical evidence of record indicates that the Claimant retains the capacity to perform sedentary exertional tasks of a simple and repetitive nature. The Claimant has a history of no gainful employment so there is no past work for the Claimant to perform, nor are there past work skills to transfer to other occupations. Therefore, based on the Claimant's vocational profile (47 year old individual, at least a high school equivalent education, and history of no gainful employment), MA-P is denied per 20 CFR 416.920 (e&g) using Vocational Rule 201.21 as a guide. Retro-MA-P was considered in this case and is also denied.
8. The Claimant is a 47 year-old man whose date of birth is [REDACTED]. The Claimant is 5' 11" tall and weighs 175/180 pounds. The Claimant has a high school equivalent education. The Claimant can read and write, with a hard time spelling, and do basic math. The Claimant was last employed as a journeyman plasterer/construction worker in 1995. He

has not worked since 1998. The Claimant was incarcerated in 2002 and has had a hard time adjusting back into society.

9. The Claimant's alleged impairments are low back pain, hypokalemia, leukocytosis, metabolic acidosis, left ankle arthritis, gastroesophageal reflux disorder (GERD), depression, and anxiety.

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 determine if 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 to be 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).

...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 1998. 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 May 20, 2013, the Claimant treating physician submitted a Medical Examination Report, DHS-49, on behalf of the Claimant. The Claimant had an essentially normal physical examination. His current diagnosis was chronic back pain. He was first examined on August 8, 2012 and last examined on May 17, 2013. The Claimant’s blood pressure was slightly elevated at 146/90. His treating physician noted an antalgic gait. The Claimant was stable with physical limitations that were expected to last more than 90 days. The Claimant could lift no weight, but he could stand and walk for 6 hours of an 8 hour workday and could sit about 6 hours of 8 hour workday. The Claimant used a walker as an assistive device. The Claimant could use both his hands/arms for simple grasping, reaching, and fine manipulation, but neither for pushing/pulling. The Claimant could use neither feet/legs for operating foot/leg controls. The medical findings that support the above physical limitations are overall decreased strength that is worse in the left lower extremity. The Claimant was mentally limited in comprehension, memory, and social interaction where he has trouble with immediate recall. The Claimant can meet his needs in the home, but has trouble climbing stairs. Claimant Exhibit 1-2.

On May 8, 2013, the Claimant’s treating psychiatrist submitted a letter of support on behalf of the Claimant. The Claimant had been under professional care since August 30, 2006. He is suffering from severe bipolar disorder, anxiety, seizures, and post-traumatic stress disorder. The Claimant is taking medications and in therapy. Claimant Exhibit a1.

On March 26, 2013, the Claimant underwent an independent medical examination with Great Lakes Medical Evaluations. The Claimant had a history of osteomyelitis of the lumbar spine with bone resection. The Claimant may benefit from physical therapy to help with motor strength and loss of range of motion. Based on the examination, the Claimant did appear to require restrictions in ambulation, climbing stairs, or being in the seated or standing position for long periods of time. The Claimant has the ability to pull, push, and

carry, but secondary to motor strength deficits in the lower extremities he would likely not be able to perform those tasks. The Claimant had intact grip strength and fine motor manipulation is intact bilaterally. Department Exhibit a-e.

On March 26, 2013, the Claimant underwent an independent psychiatric examination with Michigan Disability Determination Service. The Claimant was diagnosed with alcohol abuse, in remission, per Claimant, anxiety disorder, not otherwise specified, and mood disorder, not otherwise specified with a tier II diagnosis of antisocial personality disorder. He was given a GAF of 55. The prognosis was guarded. The Claimant was able to manage his own benefit funds. The Claimant was coherent, clear, and organized, but rather slanted in his opinions of himself where he was not always credible or consistent. There were no admitted or observed hallucinations, delusions, persecution, obsessions, compulsions, or suicidal thoughts. The Claimant was oriented times three. Claimant Exhibit f-l.

On August 8, 2013, the Claimant was treated at the hospital for follow up where the Claimant had had abdominal surgery, but was admitted for his spine. The Claimant was improving from his osteomyelitis and for his obstruction of the intestinal, neck. He was counseled about the importance compliance and to follow up with his appointments. Claimant Exhibit a9-a10.

On October 30, 2012, the Claimant underwent a MRI of the lumbar spine with and without contrast at Bronson Battle Creek. The radiologist's impression was status post multilevel posterior decompression. There was no evidence of epidural fluid collection. There was no abnormal disc enhancement. There was mild edema within the L5 vertebral body. Claimant Exhibit a7-a8.

On August 23, 2012, the Claimant was admitted to the hospital with a discharge date of September 8, 2012. The Claimant's admitting diagnosis was edema, low back pain, vomiting, and hypoxia. His discharge diagnosis was low back pain, hypokalemia, metabolic acidosis, leukocytosis, osteomyelitis, and small bowel obstruction, vomiting, leg swelling, anemia, hypo-albuminemia, and seizure disorder, pulmonary infiltrate on chest x-ray, degenerative lumbar spinal stenosis, and discitis of lumbosacral region, chronic anemia, and acute renal insufficiency. The Claimant's discharge condition was fair. Department Exhibit 588-591.

On July 25, 2012, the Claimant was admitted to the hospital with a discharge date August 5, 2012. The Claimant had a primary diagnosis of possible osteomyelitis due to MRSA with low back pain/radiculopathy with multilevel degenerative changes with multilevel central canal stenosis and neuronal foraminal narrowing L-spine. His secondary diagnosis was seizure disorder, hypokalemia, metabolic acidosis (improving), leukocytosis, post-traumatic stress disorder, anemia, and vomiting. The Claimant was discharged in stable and improved condition. Department Exhibit 455-459.

At Step 2, the objective medical evidence in the record indicates that the Claimant has established that he has a severe impairment. The Claimant has physical and mental limitations. However, the Claimant should be able to perform at least simple, unskilled, sedentary work. Therefore, the Claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the Claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the Claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's impairment(s) prevents Claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the Claimant does not have a history of gainful employment within the past 15 years to be relevant. The Claimant was last employed in 1998 as a journeyman plasterer/construction worker, which was 15 years ago. The Claimant has no history of prior work to go back to. Therefore, the Claimant is not disqualified from receiving disability at Step 4.

The Claimant testified that he does not have a license since his was revoked in 1984 for operating under the influence so he does not drive. The Claimant does not cook because he cannot sit or stand that long. He does not grocery shop because he has a problem standing and walking. The Claimant does clean by picking up his paper wrappers to his TV dinner trays. The Claimant felt his condition had worsened in the past year with leg numbness and increase pressure on the spine. He is in therapy and taking medications for his mental impairments.

The Claimant felt that he could walk 100 feet. The longest he felt he could stand was 15 minutes. The Claimant felt the longest he could sit was for 15/20 minutes. The heaviest weight he felt he could carry was 5 pounds. The Claimant's level of pain on a scale from 1 to 10 without medication is a 10 that decreases to a 6 with medication.

The Claimant smokes a pack of cigarettes a day. He stopped drinking alcohol in 1995 because it was not available. The Claimant did not think that there was any work that he could do. 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 his previous employment or that he is physically unable to do any tasks demanded of him. The Claimant's testimony as to his limitation indicates his 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 he has mental impairments. The Claimant is in treatment and taking medications. He was given a GAF of 55, which shows moderate symptoms or any moderate impairment in social, occupational, or school functioning. (See step 2 and 4) As a result, there is sufficient medical evidence of a mental impairment that is so severe that it would prevent the Claimant from working at a skilled, detailed job, 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 at least sedentary work, based upon the Claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual with a high school equivalent education, and a no work history, who is limited to simple, unskilled, sedentary work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 201.21. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as bipolar disorder, depression, PTSD, and anxiety. 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, sedentary 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, sedentary 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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: 07/30/2013

Date Mailed: 07/31/2013

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/pw

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