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: 2010-2829
Issue No: 2009
Case No: [redacted]
Load No:
Hearing Date:
January 7, 2010
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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, a hearing was held on January 7, 2010.

ISSUE

Was the denial of claimant's application for MA-P for lack of disability correct?

FINDINGS OF FACT

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

(1) Claimant applied for MA-P on May 20, 2009.

(2) Claimant is 53 years old.

(3) Claimant has a 10th grade education.

(4) Claimant is not currently working.

(5) Claimant has a prior work history consisting of a cashier at a fast food restaurant and bus aid/dispatcher.

(6) Claimant is 5’ 1 inches and weighs 233 lbs.

(7) Claimant is obese with a BMI of 44.0.

(8) Claimant has a history of Asthma, Chronic Obstructive Pulmonary Disease (COPD), Type II Diabetes Mellitus, and Osteoarthritis of the knee joints and lumbar spine.

(9) Claimant takes medications for her symptoms, including Symbicort, Atrovert inhaler, Vicoden, Metforminin, and claimant uses an Albuterol nebulizer 3 times a day.

(10) Claimant’s medical records indicate she was first hospitalized due to exacerbation of asthma on [redacted]. Claimant exhibited shortness of breath without chest pain.

(11) Claimant was also hospitalized in March, June, and October of 2009 for exacerbation of asthma and/or COPD when breathing treatments were ineffective in relieving shortness of breath and coughing.

(12) On [redacted], an independent Department examiner completed a psychiatric/psychological evaluation. Claimant was diagnosed with depressive disorder. Claimant has limited insight and depressed emotion.

(13) Claimant received a GAF of 48 with a guarded prognosis.

(14) On [redacted], an independent Department examiner completed an Internist’s Evaluation. Claimant was diagnosed with Osteoarthritis of the lumbar spine and knee joints, Bronchial Asthma, Diabetes Mellitus, Chronic Poly-substance Abuse, and Marked Exogenous Obesity with little to no limitation of mobility or activity resulting from it. Claimant exhibited shortness of breath on normal physical exertion, such as moving around

the room and getting on and off the examination table. Claimant is able to stand and ambulate well without support. Movement of the lumbar spine and knee joints were restricted and painful.

(15) The independent Department examiner also completed a Pulmonary Function Test.

(16) Claimant received a Forced Vital Capacity (FVC) of 1.69-2.08L and a Forced Expiratory Volume at 1 second (FEV_1) of 1.15-1.38L without a bronchodilator. Claimant received a FVC of 1.96-2.17L and FEV_1 of 1.27-1.46L with a bronchodilator.

(17) On June 30, 2009, the Medical Review Team denied MA-P and Retro MA-P.

(18) On September 8, 2009, claimant filed for hearing.

(19) On October 26, 2009, the State Hearing Review Team denied MA-P and Retro MA-P.

(20) On January 7, 2010, a hearing was held before the Administrative Law Judge.

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).

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

Disability is defined as 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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant’s disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage

index. The monthly SGA amount for statutorily blind individuals for 2009 is $1,640. For non-blind individuals, the monthly SGA amount for 2009 is $980.

In the current case, claimant has testified that she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "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;
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> (2) Capacities for seeing, hearing, and speaking;
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> (3) Understanding, carrying out, and remembering simple instructions;
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> (4) Use of judgment;
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> (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. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a

rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of Asthma, Chronic Obstructive Pulmonary Disease (COPD), and Osteoarthritis in the lumbar spine and knee joints that severely limits her capacity for physical activity, according to the great weight of the evidence in claimant's medical records and an internist's evaluation by an independent Department examiner. The Administrative Law Judge finds that this is a significant impairment to claimant's performance of basic physical work activities, and is therefore enough to pass step two of the sequential evaluation process.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records contain medical evidence of an impairment that meets or equals a listed impairment.

After considering the listings contained in Section 3.00 (Respiratory System), the Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals the listing for Chronic Pulmonary Insufficiency. A listings disability finding for Chronic Pulmonary Insufficiency, based on claimant's height, requires a maximum FVC of 1.35L or a maximum FEV_1 of 1.15L as the highest volume obtained from spirometry or Pulmonary Function Test.

Claimant's highest FVC and FEV_1 were 2.08L and 1.38L respectively. Therefore, claimant does not meet the listing for Chronic Pulmonary Insufficiency.

However, the great weight of the evidence of record finds that claimant meets or equals another listing contained in section 3.00 (Respiratory System), Asthma.

Appendix 1 of Subpart P of 20 CFR 404, Section 3.00(C) has this to say about Asthma:

> When a respiratory impairment is episodic in nature, as can occur with exacerbation of asthma, cystic fibrosis, bronchiectasis, or chronic asthmatic bronchitis, the frequency and intensity of episodes that occur despite prescribed treatment are often the major criteria for determining the level of impairment.
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> Documentation for these exacerbations should include available hospital, emergency facility and/or physician records indicating the dates of treatment; clinical and laboratory findings on presentation, such as the results of spirometry and arterial blood gas studies (ABGS); the treatment administered; the time period required for treatment; and the clinical response.
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> Attacks of asthma, episodes of bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum), or respiratory failure as referred to in paragraph B of 3.03, 3.04, and 3.07, are defined as prolonged symptomatic episodes lasting one or more days and requiring intensive treatment, such as intravenous bronchodilator or antibiotic administration or prolonged inhalation bronchodilator therapy in a hospital, emergency room or equivalent setting.
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> **3.03 *Asthma***: With:
>
> A. Chronic asthmatic bronchitis. Evaluate under the criteria for obstructive pulmonary disease in 3.02A;
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> OR

> B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each in-patient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks.

In order to meet or equal the listing for asthma, a claimant must either meet or equal the A or B criteria. After examination of the A and B criteria and the claimant's medical records, the undersigned holds that claimant does meet the listing for Asthma under the B criteria.

Claimant's medical records show three hospitalizations in 2009, each lasting longer than 24 hours. On [redacted], claimant was admitted into [redacted]. Claimant was diagnosed with COPD exacerbation and asthma. Claimant was administered steroids and antibiotics. Physical examination of claimant's lungs showed diminished breathing sounds bilaterally. Claimant was discharged on [redacted].

On [redacted], claimant was again admitted into [redacted] Hospitals. Claimant complained of cough and shortness of breath with yellow sputum. Claimant exhibited chest congestion, fatigue, and wheezing. Claimant was diagnosed with COPD exacerbation. Claimant was administered updraft treatment and antibiotics. Claimant was discharged on [redacted].

On [redacted], claimant was admitted into [redacted] Hospital. Claimant complained of difficulty breathing. Claimant exhibited bilateral diffuse wheezing and was diagnosed with COPD exacerbation. Claimant was administered

intravenous steroids and breathing treatments. Claimant was discharged on [redacted].

Although claimant was specifically diagnosed with COPD exacerbation during the June and October hospitalizations, the symptoms and functional limitations resulting from COPD exacerbation is equivalent to asthma attacks. Therefore, the undersigned finds that claimant was hospitalized on three instances for more than 24 hours, within a 12 month period, for asthma attacks or equivalent respiratory problems. Since claimant was hospitalized on three instances for more than 24 hours and each hospitalization for longer than 24 hours counts as two attacks under 3.03(B), claimant meets the minimum requirement of six asthma attacks within a year under the B criteria.

As claimant meets the B criteria, the Administrative Law Judge holds that claimant meets or equals a listing contained in section 3.00, and therefore, passes step 3 of our 5 step process. By meeting or equaling the listing in question, claimant must be considered disabled. 20 CFR 416.925.

With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is medically disabled as of March 2009.

Accordingly, the Department decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated May 20, 2009, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform

Claimant of the determination in writing. The Department shall set this case for review in August 2011.

Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/01/10

Date Mailed: 07/01/10

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.

JWO/dj

cc: [redacted]