

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2010-54902  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: January 19, 2011  
DHS County: Wayne (82-82)

**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 19, 2011. Claimant appeared and testified.

**ISSUE**

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

**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 August 5, 2010, Claimant applied for MA-P and retro MA to July 2010.
2. On July 28, 2010, the Medical Review Team denied Claimant's request.
3. On September 9, 2010, Claimant submitted to the Department a request for hearing.
4. The State Hearing and Review Team (SHRT) denied Claimant's request.
5. Claimant is 44years old.
6. Claimant completed education through the 11<sup>th</sup> grade.

7. Claimant has employment experience (last worked in 2006 as a maintenance worker for an apartment complex), in maintenance work for 4 years, factory work and as a nursing home maintenance supervisor.
8. Claimant suffers from obstructive sleep apnea, appendicitis, pulmonary insufficiency, prostate problems and depression.
9. Claimant's limitations have lasted for 12 months or more.
10. Claimant's pulmonary function study revealed a lung age of 140 and a FEV1 of 1.59. The Claimant is 6 foot tall and weighs 364 lbs giving him of BMI 49.3.
11. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

### **CONCLUSIONS OF LAW**

MA-P 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 administers MA-P pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under MA-P. Under SSI, 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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence 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 the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge

reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

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, Appendix 1, 12.00(C).

Social Security Ruling 02-01 directs adjudicators to consider that the combined effects of obesity with other impairments may be greater than the non-obesity impairment alone. The National Institute of Health Clinical Guidelines for Obesity define three levels of obesity. Level I includes Body Mass Index (BMIs) of 30.0-34.9, Level II includes BMIs of 35.0-39.9 and Level III extreme obesity is considered over 40.0. Obesity at Level III represents a condition which creates the greatest risk for developing obesity-related impairments. Claimant's weight was 364 lbs and he was 6' in height. Claimant's obesity, as measured by his BMI, may be calculated using the Center for Disease Control and Prevention Body Mass Index calculation found at: [http://cdc.gov/nccdphp/dnpa/bmi/adult\\_BMI/english\\_bmi\\_calculator/bmi\\_calculator.htm](http://cdc.gov/nccdphp/dnpa/bmi/adult_BMI/english_bmi_calculator/bmi_calculator.htm).

The formula for calculating BMI is as follows: calculate BMI by dividing weight in pounds by height in inches squared and multiplying by a conversion factor of 703. This formula as applied to the Claimant's height and weight yields a BMI of 49.3, or Level III obesity. This level of obesity surely impacts Claimant's pulmonary insufficiency.

Social Security Ruling SSR-02 provides, in pertinent part:

Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting or related impairments to the extent that the combination of impairments meets the requirements of a listing. This is especially true of musculoskeletal, respiratory, and cardiovascular impairments. It may also be true for other coexisting or related impairments, including mental disorders.

In this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant appears to meet listing 3.02 A or its equivalent. This Administrative Law Judge will not continue through the remaining

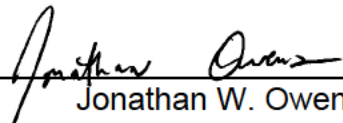
steps of the assessment. Claimant's testimony and the medical documentation support the finding that Claimant meets the requirements of a listing.

Therefore, Claimant is found to be disabled for purposes of the Medical Assistance and State Disability Assistance programs.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of July 2010.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated August 5, 2010, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for July 2012.

  
Jonathan W. Owens  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: May 19, 2011

Date Mailed: May 19, 2011

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

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

JWO/pf

cc:

