

**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.: 2010-41320  
Issue No.: 4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: August 26, 2010  
Livingston County DHS

**ADMINISTRATIVE LAW JUDGE:** Colleen M. Mamelka

**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, a hearing was held in Howell, Michigan on Thursday, August 26, 2010. The Claimant appeared, along with his authorized hearing representative, [REDACTED], and testified. [REDACTED] appeared on behalf of the Department.

**ISSUE**

Whether the Department properly determined that the Claimant was not disabled for purposes of the State Disability Assistance ("SDA") benefit 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. The Claimant submitted an application for public assistance seeking SDA benefits on February 9, 2010.
2. On March 5, 2010, the Medical Review Team ("MRT") deferred the disability determination requesting two consultative evaluations. (Exhibit 1, pp. 28, 37)
3. On April 20, 2010, the Claimant attended a Mental Status Evaluation. (Exhibit 1, pp. 11 – 24)
4. On June 7, 2010, the MRT determined that the Claimant was not disabled for purposes of the SDA benefit program. (Exhibit 1, pp. 1, 2)

5. On June 11, 2010, the Department sent an Eligibility Notice to the Claimant informing him that he was found not disabled.
6. On June 21, 2010, the Department received the Claimant's timely written Request for Hearing. (Exhibit 2)
7. On July 13, 2010, the State Hearing Review Team ("SHRT") determined that the Claimant was not disabled. (Exhibit 3)
8. The Claimant's alleged physical disabling impairment(s) are due to asthma, chronic obstructive pulmonary disease ("COPD"), farmer's lung, knee and arm pain, and headaches.
9. The Claimant's alleged mental disabling impairment(s) are due to depression anxiety, and post-traumatic stress disorder.
10. At the time of hearing, the Claimant was 50 years old with an [REDACTED] birth date; was 5'9" in height; and weighed 208 pounds.
11. The Claimant obtained his GED and has an employment history as a truck driver and farmer.
12. The Claimant's impairment(s) have lasted, or are expected to last, continuously for a period of 12 months or longer.

### **CONCLUSIONS OF LAW**

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formerly known as the Family Independence Agency, 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 Bridges Reference Manual ("BRM").

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

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) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR

416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples 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.

*Id.* The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An

impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability due to asthma, chronic obstructive pulmonary disease ("COPD"), farmer's lung, knee and arm pain, headaches, depression, anxiety, and post traumatic stress disorder. In support of his claim, some older records from as early as 1998 were submitted which reveal a retropharyngeal abscess requiring a tracheotomy, excision of soft issue mass of the right upper arm, hyperlipidemia, knee pain, shortness of breath, and hypertension.

As a preliminary matter, the Claimant participates in the care coordination/home telehealth program and is monitored with an in-home messaging device.

In [REDACTED], a mass measuring up to 3 cm in diameter in the region of the left tonsillar pillar was found which may have represented a necrotic squamous cell cancer. Chest x-rays confirmed low lung volumes.

On [REDACTED], the spirometry revealed a forced expiratory volume ("FEV<sub>1</sub>") of 2.68 and the Forced Vital Capacity ("FVC") of 3.91. A post bronchilator test was not performed

On [REDACTED], the Claimant was diagnosed with dyspnea on exertion, chronic cough, wheezing, and asthma. The Claimant had no standing restrictions; was restricted to sitting to 4 hours; able to work 2 hours during a day; occasionally lift 10 pounds with frequently lifting of 5 pounds; and unable to tolerate dust, smoke, and fumes. The Claimant was found to likely have farmer's lung. The treating physician opined that as a result, the Claimant has a significant, chronic disability.

In [REDACTED], the Claimant's FEV<sub>1</sub> was 0.88 and the FVC was 1.31. A post bronchilator test was not performed. The Claimant was diagnosed with severe asthma and farmer's lung.

On [REDACTED], the Claimant was admitted to the hospital for endoscopic repair of Zenker's diverticulum. The procedure could not be performed because the scope could not be passed due to narrow hypopharynx. The Claimant was discharged the following day.

On [REDACTED], the Claimant was diagnosed with farmer's lung (hypersensitivity pneumonitis), chronic obstructive pulmonary disease ("COPD"), obstructive sleep apnea, hypertension, knee pain, hyperlipidemia, mood disorder, and adjustment disorder. The Claimant was able to work 2 hours a day; able to stand; sit for 2 hours (limited to 15 minute intervals); occasionally lift 20 pounds; frequently lift 10 pounds; unable to bend, stoop, or balance; and able to perform fine and gross manipulation with his upper extremities. The Claimant's pain level was "mild" and he was unable to be

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around fumes, inhalants, weed, grain, mold, and/or spore due to it triggering his shortness of breath. The Claimant requires frequent breaks due to his severe lung disease.

On [REDACTED], a VA examination for housebound status or permanent need for regular aid and attendance was completed on behalf of the Claimant. The current diagnoses were severe asthma and possible farmer's lung. The Claimant experienced difficulty with memory. As a result, the physician opined that it would be difficult to work due to his impairments.

On [REDACTED], a Pulmonary Function Test ("PFT") was performed which found the FEV<sub>1</sub> and FVC was mildly decreased. The test was abnormal and suggestive of a mild restrict ventilatory defect.

On [REDACTED] and [REDACTED], the Claimant attended a pulmonary follow-up appointments. The Claimant's shortness of breath and sleep apnea were documented.

On [REDACTED], the Claimant was diagnosed with mood disorder and generalized anxiety disorder.

On or about [REDACTED], the Claimant's FEV<sub>1</sub> was 1.63 and the FVC was 2.09 noting that the values represent less than 2 second exhalational effort due to the Claimant's pain and anxiety. The PFTs were markedly diminished relative to the near normal values from [REDACTED].

On [REDACTED], the Claimant attended a mental status evaluation. The Claimant was diagnosed with major depressive disorder, recurrent, moderate, pain disorder, and anxiety disorder with panic episodes. The GAF was 45-50 and his prognosis was poor.

On [REDACTED], a Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was markedly limited in 6 of the 20 factors and moderately limited in 13 factors.

On [REDACTED], the Claimant was diagnosed with major depressive disorder with possible panic disorder. The Global Assessment Functioning ("GAF") was 50.

On [REDACTED], the Claimant participated in a home oxygen assessment based on the diagnosis of farmer's lung. The Claimant met the VA criteria for provision of home oxygen.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that he does have

physical and mental limitations on his ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis 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. The Claimant has alleged physical disabling impairments due to residual complications resulting from multiple gunshot wounds and depression.

Listing 3.00 defines respiratory system impairments. Respiratory disorders, along with any associated impairment(s), must be established by medical evidence sufficient enough in detail to evaluate the severity of the impairment. 3.00A Evidence must be provided in sufficient detail to permit an independent reviewer to evaluate the severity of the impairment. *Id.* A major criteria for determining the level of respiratory impairments that are episodic in nature, is the frequency and intensity of episodes that occur despite prescribed treatment. 3.00C 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 inhalational bronchodilator therapy in a hospital, emergency room or equivalent setting. 3.00C Hospital admissions are defined as inpatient hospitalizations for longer than 24 hours. *Id.* Medical evidence must include information documenting adherence to a prescribed regimen of treatment as well as a description of physical signs. *Id.* For asthma, medical evidence should include spirometric results obtained between attacks that document the presence of baseline airflow obstruction. *Id.*

Chronic asthmatic bronchitis (Listing 3.03A) is evaluated under Listing 3.02. Chronic obstructive pulmonary disease, due to any cause, meets Listing 3.02 if medical evidence establishes that the Claimant's forced expiratory volume (in one second) is equal to or less than 1.55 (based on the Claimant's 71" height). Attacks of asthma and/or episodes of bronchitis as referred to in 3.03 and 3.07, in spite of prescribed treatment, that occur at least once every 2 months or at least six times a year are considered. Each in-patient hospitalization for longer than 24 hours counts as two attacks/episodes and an evaluation of at least 12 consecutive months must be used to determine the frequency of attacks/episodes. 3.03B; 3.07B For asthma, the medical evidence should include spirometric results obtained between attacks that document the presence of baseline airflow obstruction. 3.00C Sleep related breathing disorders are defined in 3.10 and are caused by periodic cessation of respiration associated with hypoxemia and frequent arousals from sleep. 3.00H A disturbed sleep pattern and

associated chronic nocturnal hypoxemia may cause daytime sleepiness with chronic pulmonary hypertension and/or disturbances in cognitive function. *Id.*

In this case, the objective evidence confirms the Claimant's diagnoses of severe asthma, COPD, sleep apnea, and farmer's lung. The PFTs in December 2009 revealed a FEV<sub>1</sub> of .88 and the FVC of 1.39 with improvement showing in March of 2010 with a FEV<sub>1</sub> of 1.63 and the FVC of 2.09. As a result of the Claimant's farmer's lung and low O<sub>2</sub> saturation rates, the Veteran's Administration found the Claimant met the criteria for home oxygen. Further, the record establishes several treatments directly related to the Claimant's shortness of breath. Under these facts, it is found that the Claimant's respiratory impairment(s) meets, or is the medical equivalent thereof, a listed impairment within Listing 3.00. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the February 9, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized representative of the determination in accordance with department policy.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in September 2011 in accordance with department policy.

*Colleen M. Mamelka*

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Colleen M. Mamelka  
Administrative Law Judge  
For Ismael Ahmed, Director  
Department of Human Services

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Date Signed: 8/31/2010

Date Mailed: 8/31/2010

**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.

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