

**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.: 2010-52637  
Issue No.: 2009/4031  
Case No.: [REDACTED]  
Hearing Date: January 18, 2011  
Macomb County DHS (36)

**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 telephone hearing was held on Tuesday, January 18, 2011. The Claimant appeared, along with [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 Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

**FINDINGS OF FACT**

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

1. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on August 1, 2010.
2. On August 18, 2010, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 77-78)
3. On August 23, 2010, the Department notified the Claimant of the MRT decision.
4. On August 27, 2010, the Department received the Claimant's request for hearing. (Exhibit 3)

5. On September 22, 2010, the State Hearing Review Team (“SHRT”) found the Claimant not disabled.
6. The Claimant alleged physical disabling impairments due to back/leg/knee pain, numbness, degenerative arthritis in the knees, pinched nerve, asthma, and high blood pressure.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 33 years old with a [REDACTED] birth date; was 5’5” in height; and weighed 350 pounds.
9. The Claimant is a high school graduate with some college and an employment history as a care provider, grocery bagger, and work in fast food restaurants and at a factory.
10. The Claimant’s impairments 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”).

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 applicants 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 back/leg/knee pain, numbness, degenerative arthritis in the knees, pinched nerve, asthma, and high blood pressure.

On [REDACTED], a three phase bone scan of the wrists found nothing to suggest the presence of a fracture in either wrist.

On [REDACTED] a lower extremity electromyography study due to low back pain with lower extremity dysesthesias was normal. The Claimant's symptoms were found to be due to her weight.

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On [REDACTED], a lower extremity somatosensory evoked potential was performed bilaterally due to back and leg pain. The study was abnormal.

On [REDACTED], a MRI of the lumbar spine was unremarkable.

On [REDACTED], the Claimant sought treatment for acute swelling and pain in both legs. No acute abnormalities were identified.

On [REDACTED], an ECG was borderline for sinus tachycardia. Chest x-rays revealed emphysematous appearing chest with some left pleural scarring without evidence of active cardiopulmonary disease.

On [REDACTED], lower extremity venous imaging study was negative for deep vent thrombosis. A lower extremity arterial Doppler was normal.

On [REDACTED], the Claimant was diagnosed with morbid obesity, bilateral degenerative osteoarthritis in the knees, and peripheral edema.

On [REDACTED], the Claimant was treated for/diagnosed with sinusitis, lower extremity edema, chronic pain, and lumbar myositis.

On [REDACTED], the Claimant was diagnosis of lumbar myositis was questioned.

On [REDACTED], the Clamant was treated for/diagnosed with sinusitis and arthritis in the knees.

On [REDACTED], the Claimant was treated for/diagnosed with sinusitis, rhinitis, cough, asthma, and lymphedema. The Claimant was 17 weeks pregnant.

On [REDACTED], the Claimant attended a prenatal appointment. The Claimant was considered high risk.

The Claimant attended a follow-up appointment on [REDACTED].

On [REDACTED], the Claimant was treated for/diagnosed with edema and anemia.

On [REDACTED], a treating physician wrote a letter on behalf of the Claimant confirming treatment for severe edema of the bilateral lower extremities and marked morbid obesity. The Claimant was pregnant at the time of writing. The D.O. opined that the Claimant was disabled from any type of gainful employment however not necessarily permanently.

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In [REDACTED], the Claimant attended a follow-up appointment.

On [REDACTED], the Claimant was treated for/diagnosed with gastritis. The Claimant had her staples removed.

On [REDACTED], the Claimant was treated for/diagnosed with lymphedema. In [REDACTED], the Claimant weighed 465 pounds. At this appointment the Claimant weighed 301 pounds.

On [REDACTED], the Claimant attended a consultative evaluation. The physical examination found the Claimant extremely obese without pitting edema or asymmetry and her lungs were without wheezes or crackles. The Claimant used a walker and was unable to walk on her toes or heels. The diagnoses were extreme exogenous obesity syndrome and degenerative arthritis of the lower back and knees.

On [REDACTED], the Claimant attended a consultative evaluation. The diagnosis was bronchial asthma however the Claimant did not show any respiratory distress noting clear lungs without audible wheezes or crackles. A Pulmonary Function Test revealed the Forced Expiratory Volume at 1 second ("FEV<sub>1</sub>") of 1.23, 1.09, and 1.24 before bronchodilator and a Forced Vital Capacity ("FVC") of 2.43, 2.46, and 2.37. Ten minutes after the bronchodilator the FEV<sub>1</sub> was 1.43, 1.07, and 1.27 and the FVC 2.42, 2.44, and 2.37.

On [REDACTED], the Claimant was diagnosed with sciatica.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were hypertension, morbid obesity, radiculopathy, right lower leg pain, and asthma. The Claimant's BMI was 64.7. The physical examination revealed shortness of breath, chest pain, unsteady gait, limited range of motion, ataxia, and morbid obesity. The Claimant was limited to standing/walking less than 2 hours in an 8 hour workday; sitting less than 6 hours during the same time frame; able to perform repetitive actions with her upper extremities; and unable to operate foot/leg controls.

On [REDACTED], the Claimant was treated for/diagnosed with edema and chronic pain.

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 she does have some physical limitations on her 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 and mental disabling impairments due to back/neck/knee pain, degenerative disc disease, hand numbness, depression, and anxiety.

Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2b(1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. 1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.*

Categories of Musculoskeletal include:

- 1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or
- B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively as defined in 1.00B2c

\* \* \*

1.04

Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:

- A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or
- B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or
- C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

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.*

Obesity is a medically determinable impairment that is often associated with disturbance of the musculoskeletal and respiratory system and may be a major cause of disability. 1.00Q; 3.00I

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 1.25 (based on the Claimant's 5' 5" height). For asthma, the medical evidence should include spirometric results obtained between attacks that document the presence of baseline airflow obstruction. 3.00C

In this case, the Claimant suffers with degenerative osteoarthritis in her knees and back; peripheral edema, chronic pain, sciatica, and radiculopathy. The Claimant is unable to ambulate without an assistive device. The FEV<sub>1</sub> results before the bronchodilator were 1.23, 1.09, and 1.24 and after the results were 1.43, 1.07, and 1.27. As noted above, to meet 3.03, the FEV<sub>1</sub> must equal or be less than 1.25 based on the Claimant's height of 65 inches. Prior to the bronchodilator each test was below 1.25 however afterwards one test was. The Claimant's morbid obesity significantly contributes to the Claimant's musculoskeletal and respiratory impairments. In consideration of the musculoskeletal and respiratory impairments combined with her morbid obesity, it is found that the Claimant's impairments meet, or the medical equivalent thereof, a listed impairment within 1.00 and 3.00, specifically 1.02 and 3.03. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assistance 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 automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program therefore the Claimant is found disabled for purposes of SDA benefit program.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the August 1, 2010 application to determine if all other non-medical criteria are met and inform the Claimant 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 February 2012 in accordance with department policy.

*Colleen M. Mamelka*

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Colleen M. Mamelka  
Administrative Law Judge  
For Maura Corrigan, Director  
Department of Human Services

Date Signed: 1/31/2011

Date Mailed: 1/31/2011

**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.

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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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