

**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.: 2011-47234  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: November 9, 2011  
Oakland County DHS (02)

**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 Madison Heights, Michigan on Wednesday, November 9, 2011. The Claimant appeared and testified. The Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department.

During the hearing, the Claimant waived the time frame for the issuance of this decision in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On May 4, 2012, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

**ISSUE**

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit program?

**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 benefits on April 4, 2011.

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2. On June 16, 2011, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
3. The Department notified the Claimant of the MRT determination.
4. On August 9, 2011, the Department received the Claimant’s timely written request for hearing. (Exhibit 3)
5. On September 9, 2011, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 4)
6. The Claimant alleged physical disabling impairments due to shortness of breath and asthma.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was [REDACTED] years old with an [REDACTED] birth date; was 5’5” in height; and weighed 234 pounds.
9. The Claimant is a high school graduate with some college and vocational training with an employment history as a project manager, in a call center, and as a file clerk.
10. 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 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, 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 Tables (“RFT”).

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 416.913. 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 416.945(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 shortness of breath and asthma. In support of her claim, records from as early as [REDACTED] were submitted which

document hospitalizations due to asthma exacerbation despite prescribed treatment to include breathing treatments and steroids.

On [REDACTED] the Claimant presented to the hospital with breathing difficulty complaints. The Claimant was treated with IV steroids and breathing treatments. After four such treatments, the Claimant continued to have a persistent wheeze and dyspnea. An ECG was abnormal. As a result, she was admitted for observation and discharged the following day.

On [REDACTED] the Claimant was admitted to the hospital with complaints of asthma exacerbation after presenting each two days previous for emergency room treatment. The Claimant was treated with steroids and breathing treatments and discharged the following day with the diagnoses of asthma exacerbation, acute exacerbation of asthma, and bronchitis.

On [REDACTED] the Claimant attended a consultative evaluation. The physical examination noted mild end-expiratory wheezing with force expiration. The pulmonary function study test performed three times was suggestive of small airway disease. The Forced Vital Capacity ("FVC") was 3.48, 3.34, and 3.14. The Forced Expiratory Volume at 1 ("FEV<sub>1</sub>") was 2.36, 2.39, and 2.39. The Physician opined that the Claimant may have problems working in environments with increased humidity, dust, or extreme temperature changes.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The diagnoses were bronchial asthma, glaucoma, and allergic rhinitis. The physical examination noted episodic, daily bouts with shortness of breath and wheezing. The Claimant was found able to occasionally lift/carry 20 pounds; stand and/or walk less than 2 hours during an 8-hour workday; sit about 6 hours during this same time frame; and able to perform repetitive actions with her upper extremities with the exception of pushing and pulling.

On [REDACTED] the Claimant was admitted to the hospital with complaints of asthma exacerbation. The Claimant was treated and discharged the following day with the diagnoses of asthma exacerbation, shortness of breath, and chest pain.

On [REDACTED] the Claimant was admitted to the hospital with complaints of shortness of breath and dyspnea. The Claimant was treated with steroids, breathing treatments, and oxygen. Despite maximal treatment, the Claimant continued to have a prolonged course of recovery. The Claimant was discharged the following day with the diagnosis of asthma exacerbation.

On [REDACTED] a Medical Statement regarding asthma was completed on behalf of the Claimant. Based on the pulmonary function study reports and blood gas study

reports, the Claimant continues to have attacks, despite prescribed treatment, requiring physician intervention occurring at least once every two months or at least six times a year and has a chronic need for oral corticosteroids. The severity of the Claimant's asthma was severe, persistent meaning continual symptoms, limited physical activity, frequent exacerbations, frequent nighttime symptoms, and a FEV<sub>1</sub> of less than 60-80%. The Claimant was limited to 30 minutes of standing; 4 hours sitting at one time; 4 hours of work per day; and was unable to frequently lift any weight.

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 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 minimus* 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 shortness of breath and asthma.

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 inhaled 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.*

Asthma is discussed in Listing 3.03. To meet this listing, attacks of asthma and/or episodes of bronchitis, despite prescribed treatment, that occur at least once every 2 months or at least six times a year are considered. Each inpatient 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

In this case the Claimant was hospitalized for longer than 24 hours in [REDACTED] due to asthma exacerbation. Additionally, the Claimant had two emergency room treatments in [REDACTED]. The record shows that prior to each admission, the Claimant increased her prescribed treatment at home without success, which occasionally resulted in her running out of her prescribed treatment. During each hospitalization, the Claimant was aggressively treated without having to be intubated. In [REDACTED] the Claimant's treating physician completed a Medical Statement regarding her asthma. Based on the pulmonary function study reports and blood gas study reports, the Claimant continued to have attacks, despite prescribed treatment, requiring physician intervention occurring at least once every two months or at least six times a year and has a chronic need for oral corticosteroids. The severity of the Claimant's asthma was severe, persistent meaning continual symptoms, limited physical activity, frequent exacerbations, frequent nighttime symptoms, and a FEV<sub>1</sub> of less than 60-80%. In light of the foregoing, the record established that over a 12 month period, the Claimant had 8 episodic asthma attacks which required physician intervention. Accordingly, it is found that the Claimant's respiratory impairment meets, or is the medical equivalent thereof, a listed impairment within 3.00, specifically 3.03B.

### **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 benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the April 11, 2011 application to determine if all other non-medical criteria are met and inform the Claimant and her Authorized Hearing 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.

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4. The Department shall review the Claimant's continued eligibility in June 2013 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: May 11, 2012

Date Mailed: May 11, 2012

**NOTICE:** Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322



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cc:

