

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2013-31816  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: July 10, 2013  
County: Wayne (82-18)

**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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on July 10, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

**ISSUE**

Whether the 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 October 12, 2012, Claimant applied for MA-P and retro MA-P.
2. On February 1, 2013, the Medical Review Team denied Claimant's request.
3. On February 25, 2013, Claimant submitted to the Department a request for hearing.
4. The State Hearing Review Team (SHRT) denied Claimant's request.
5. Claimant is 47 years old.
6. Claimant completed education through the 11<sup>th</sup> grade.

7. Claimant has employment experience (last worked 2009) as a factory worker (required her to stand 8 hours, no sitting and lifting 30 lbs), teacher's assistant (required standing/walking 5 hours or more, up to 3 hours of sitting and lifting up to 10-15 lbs), security work (required standing/walking 2 hours, sitting 6 hours and lifting no weight).
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from asthma, arthritis, chronic obstructive pulmonary disease, hypertension, migraines, aneurysm and depression.
10. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. On [REDACTED], Claimant completed spirometry testing completed by a consulting physician. Claimant was noted to be 64 inches tall. The results were: Pre-Bronchodilation revealed FVC of 1.56, 1.45, 1.28 and FEV<sub>1</sub> of 0.79, 0.72 and 0.74. Post-Bronchodilation revealed FVC of 1.41, 1.21 and 1.19 and FEV<sub>1</sub> of 0.83, 0.71 and 0.70.

### **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 Bridges Reference Manual (RFT).

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).

Claimant testified to the following symptoms and abilities: sees spots in her vision fields, left hand hurts, numb feeling in left hand, middle and upper back pain, has to crawl up the stairs, difficult to get up from sitting due to back pain, shortness of breath, feels like an elephant is sitting on her chest, has breathing machines in her home, she has started to throw up blood in the last two weeks, she lives alone, can walk 15 feet, uses a cane, poor grip and grasp, struggles with opening items, her neighbors help her, can sit 10 minutes before back pain increases, can stand 5 minutes before she gets real tired, no medical restriction on lifting, gets help with household chores, gets help with personal hygiene, needs help with grocery shopping and feels weak and tired.

Claimant's physician indicated on a DHS-49 on [REDACTED] that Claimant's condition was deteriorating. This physician noted that Claimant suffered with COPD, asthma, hypertension and obesity. On [REDACTED], Claimant had spirometry testing completed by a consulting physician. Claimant was noted to be 64 inches tall. The results were: Pre-Bronchodilation revealed FVC of 1.56, 1.45, 1.28 and FEV<sub>1</sub> of 0.79, 0.72 and 0.74. Post-Bronchodilation revealed FVC of 1.41, 1.21 and 1.19 and FEV<sub>1</sub> of 0.83, 0.71 and 0.70. Claimant was noted to weigh 258 lbs.

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 258 lbs and she is 5'4 in height. Claimant's obesity as measured by her BMI may be calculated using the Center for Disease Control and Prevention Body Mass Index calculation found at: <http://cdc.gov/nccdphp/dnpha/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 Claimant's height and weight yields a BMI of 44.3 or Level III obesity. This level of obesity surely impacts Claimant's COPD and asthma.

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.

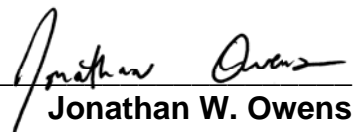
In this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant appears to meet listing 3.02A or its equivalent. This Administrative Law Judge will not continue through the remaining steps of the assessment. Claimant’s testimony and the medical documentation support the finding that Claimant meets the requirements of a listing.

Therefore, Claimant is found to be disabled.

**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 2012.

Accordingly, the Department’s decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated October 12, 2012, 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 August 2014.

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

Date Signed: July 22, 2013

Date Mailed: July 22, 2013

**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 affect the substantial rights of the claimant,
  - 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

JWO/pf

cc:

