

officer, the treating physician, in a note dated November 26, 1991, stated:

[Petitioner's] asthma is mild between exacerbations. During severe attacks she is unable to work. Between attacks she is capable of performing light or sedentary jobs.

And, in a note dated December 17, 1991, the same physician stated:

[Petitioner] has been experiencing asthma attacks on a daily basis for approximately the past month. The attacks are sometimes severe and can last as long as the entire day.

Based on the above it is found that the petitioner has been incapable of any sustained employment since at least October, 1990.

ORDER

The Department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

In this case, a preponderance of evidence establishes that the petitioner meets the above definition. Although

the petitioner's problems appear to be episodic, it appears she has been incapable of sustained employment of any type since at least October 1990.² The Department's decision is reversed.

FOOTNOTES

¹This assessment is uncontroverted by any other examining medical source.

²Inasmuch as it concedes that the petitioner cannot perform her past work, the Department would have the burden of proving the existence of alternative jobs the petitioner could do despite her impairment and in light of her age, education and work experience. It is highly unlikely that the Department could show that there exist unskilled sedentary or light jobs that would accommodate the unpredictable absenteeism and the extended periods of total absence from work that the petitioner's condition would impose.

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