

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2012-25818
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: March 19, 2012
County: Wayne (82-76)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on March 19, 2012, at Detroit, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department correctly determine that Claimant is not disabled for purposes of the Medical Assistance (MA or Medicaid) and State Disability Assistance (SDA) program(s)?

FINDINGS OF FACT

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

1. On November 14, 2011, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to August 1, 2011.
2. On January 11, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On January 17, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age forty-six [REDACTED] has an eighth-grade education. He was a Special Education student.

5. Claimant last worked in 2009 as a production worker. Claimant also performed relevant work as a laborer lifting steel frame doors. Claimant's relevant work history consists exclusively of unskilled, medium to heavy-exertional work activities.
6. Claimant has a history of left-side lower back, wrist and leg pain, stomach pain, carpal tunnel syndrome, learning disability and depression. His onset date regarding left lower back and wrist pain is [REDACTED], when he was injured from a fall from a ladder. The onset date regarding his learning disability is approximately [REDACTED] the year he began elementary school.
7. Claimant was not hospitalized as a result of any impairment.
8. Claimant currently suffers from left-side lower back, wrist and leg pain, stomach pain, carpal tunnel syndrome, learning disability and depression.
9. Claimant has severe limitations of his ability to read and write. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the whole record, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables (RFT).

SDA provides financial assistance for disabled persons and was established by 2004 PA 344. The Department administers SDA pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and RFT.

The Administrative Law Judge concludes and determines that Claimant **IS NOT DISABLED** for the following reason (select ONE):

1. Claimant is engaged in substantial gainful activity.

OR

2. Claimant's impairment(s) do not meet the severity and one-year duration requirements.

OR

3. Claimant is capable of performing previous relevant work.

OR

4. Claimant is capable of performing other work that is available in significant numbers in the national economy.

The Administrative Law Judge concludes that Claimant **IS DISABLED** for purposes of the MA program, for the following reason (select ONE):

1. Claimant's physical and/or mental impairment(s) meet a Federal SSI Listing of Impairment(s) or its equivalent.

State the Listing of Impairment(s):

12.05 – Mental retardation.

Mental retardation refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period: i.e., the evidence demonstrates or supports onset of the impairment before age 22. The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

...

B. A valid verbal, performance, or full scale IQ of 59 or less.

OR

2. Claimant is not capable of performing other work that is available in significant numbers in the national economy.

The following is an examination of Claimant's eligibility required by the federal Code of Federal Regulations (CFR). 20 CFR Ch. III, Secs. 416.905, 416.920. The State of Michigan is required to use the federal Medicare five-step eligibility test in evaluating applicants for Michigan's Medicaid disability program.

First, the claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since 2009. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and Claimant is not engaged in substantial gainful activity.

Second, in order to be eligible for MA, the claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset date for mental disability is [REDACTED] [REDACTED] Claimant entered the first grade, and he was a

Special Education student since about that time. Claimant completed the eighth grade as a Special Education student.

In [REDACTED], Claimant took an IQ test, which indicated that he has a full scale IQ of 54. According to the Diagnostic and Statistical Manual (DSM), this score places Claimant in the mild cognitive impaired range of intellectual functioning. Based on this information of record in combination with Claimant's history, it is found and determined that Claimant's impairments are of sufficient severity and duration to fulfill the second eligibility requirement.

Turning now to the third requirement for MA eligibility approval, the factfinder must determine if Claimant's impairment is listed as an impairment in the federal Listing of Impairments, found at 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments. In this case it is found and determined that Claimant's impairment meets the definition in Listing 12.05, Mental retardation. This Listing is set forth above in full.

In order to meet the requirements of Listing 12.05, the claimant must first present evidence that he suffered significant, subaverage, general intellectual functioning with deficits in adaptive functioning before age twenty-two. Claimant's impairment in this case began in elementary school in about [REDACTED]. He was a Special Education student, and he completed the eighth grade but did not attend high school. It is found and determined that Claimant has met the first part of the Listing 12.05 requirements.

The second part of the Listing requirement is that the claimant must have a measurable deficit in intellectual functioning as shown on a standardized intelligence test. In this case, Claimant underwent the Wechsler Adult Intelligence Test and was determined to have a full-scale IQ of 54. Claimant's score of 54 is within the Listing 12.05B requirement that the applicant must have a full scale IQ of 59 or less. Listing of Impairment 12.05, above.

Although the IQ test in this case was performed by a psychologist retained by the State of Michigan to evaluate Claimant, it is relevant and useful information as it is a test result and not an opinion *per se*. The CFR states:

Because symptoms, such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or nontreating source, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account as explained in paragraph (c)(4) of this section in reaching a conclusion as to whether you are disabled. 20 CFR CH. III Sec. 416.929(c)(3).

Accordingly, it is found and determined that Claimant meets the third step of the five-step Medicaid eligibility test, as his mental impairment equals or is the equivalent of Listing of Impairment 12.05B.

As Claimant is found by the undersigned to be eligible for MA based solely on a mental impairment, it is not necessary to proceed further to the last two eligibility requirements of the five-step Medicare eligibility sequence.

In conclusion, based on the Findings of Fact and Conclusions of Law above, the Claimant is found to be

NOT DISABLED DISABLED

for purposes of the MA program. The Department's denial of MA benefits to Claimant is

AFFIRMED REVERSED

Considering next whether Claimant is disabled for purposes of SDA, the individual must have a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of MA benefits based upon disability or blindness (or receipt of SSI or RSDI benefits based upon disability or blindness) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM Item 261. Inasmuch as Claimant has been found disabled for purposes of MA, Claimant must also be found disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, and for the reasons stated on the record finds that Claimant

DOES NOT MEET MEETS

the definition of medically disabled under the Medical Assistance and State Disability Assistance programs as of the onset date of [REDACTED].

The Department's decision is

AFFIRMED REVERSED

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate processing of Claimant's November 14, 2011, application to determine if all nonmedical eligibility criteria for retroactive and ongoing MA and SDA benefits have been met.
2. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate processing of retroactive and ongoing MA and SDA benefits to Claimant, including any supplements for lost benefits to which Claimant is entitled in accordance with policy.

3. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate procedures to schedule a redetermination date for review of Claimant's continued eligibility for program benefits in September 2013.
4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 13, 2012

Date Mailed: August 14, 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.

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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

JL/pf

cc:

