

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

**IN THE MATTER OF:**



Reg. No.: 2012-33953  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: April 23, 2012  
County: Macomb (50-20)

**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 hearing was held on April 23, 2012, at Warren, Michigan. Participants on behalf of Claimant included Claimant and his Authorized Hearing Representative, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

At the hearing, Claimant presented new medical evidence. On April 23, 2012, the Administrative Law Judge issued an Interim Order Extending the Record for Review by the State Hearing Review Team (SHRT). On June 1, 2012, SHRT denied Claimant's application.

On June 6, 2012, Claimant's medical records were received at the Detroit Office of the Michigan Administrative Hearing System (MAHS) for judicial review and determination.

**ISSUE**

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

**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 August 25, 2011, Claimant filed an application for Medicaid benefits. The application also requested MA retroactive to May 1, 2011.

2. On November 17, 2011, the Department sent a Notice of Case Action to Claimant, stating that the application was denied.
3. On February 1, 2012, Claimant filed a hearing request appealing the Department's denial.
4. Claimant, age forty-four [REDACTED] has a high school education. He attended Special Education classes.
5. Claimant last worked in 2001 as a tire mechanic and salesperson. Claimant's relevant work history consists exclusively of unskilled work activities requiring heavy exertional effort.
6. Claimant has a history of degenerative disc disease, lower back and knee pain, diabetes, acid reflux, high cholesterol and substance abuse. The onset date of Claimant's lower back and leg pain is [REDACTED].
7. Claimant was hospitalized [REDACTED] as a result of a hypoglycemic seizure. The discharge diagnosis was to the home.
8. Claimant currently suffers from degenerative disc disease, diabetes, lower back and knee pain, acid reflux, high cholesterol and substance abuse.
9. Claimant has severe limitations of his ability to walk, stand, lift and carry. 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.

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):

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 equina) of the spinal cord. With:

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. 20 CFR III, Appendix 1 to Subpart P of Part 404 – Listing of Impairments, 1.00, Musculoskeletal System, 1.04, Disorders of the spine.

**OR**

2. Claimant is not capable of performing other work.

The following discussion is an analysis to determine if Claimant is eligible for Medicaid, using the federal Medicare five-step evaluation procedure. The federal Medicare five-step guidelines must be used to evaluate all Medicaid cases at the state level. 20 CFR Ch. III, Secs. 416.905, 416.920.

The first of the five steps considers whether the claimant is engaged in substantial gainful employment for a period of one year. In this case, Claimant has not worked since 2001, and the first step is clearly established.

The second step in the evaluation process is whether the claimant's impairment is severe and of a duration of at least one year. Claimant reported lower back pain beginning approximately [REDACTED] and, therefore, he meets the second step test of the evaluation.

The third test question is whether the claimant's impairment meets a federal Listing of Impairment, which is a codified description of physical and mental impairments listed in the federal Code of Federal Regulations (CFR). If a claimant's impairment is the same as an impairment described in the Listing of Impairments, then she or he is eligible for Medicaid benefits. 20 CFR III, Appendix 1 to Subpart P of Part 404 – Listing of Impairments, 1.00, Musculoskeletal System, 1.04, Disorders of the spine.

In this case, although Claimant has not received treatment for a spinal impairment, Claimant was hospitalized from [REDACTED], for a seizure and fall. During that time, a lumbar spine x-ray and CT scan were performed [REDACTED], and a second lumbar CT scan was performed one day later on [REDACTED]. Department Exhibit 1, pp. 20, 35-40.

All three procedures indicated an L5-S1 issue: "minimal disc space loss at L5-S1" on the x-ray, "mild moderate sized central disc protrusion is seen" on the first CT scan, and "protrusion changes centrally at L5-S1" on the second CT scan. *Id.*, pp. 35, 37, 39. The discharge diagnoses state that there is degenerative disk disease of the lumbar spine and gives the following description:

CT scan of the lumbar spine showed L5-S1 mild-to-moderate-sized central disk protrusion, not causing any significant mass effect in the posterior fashion of the S1 nerve roots. There was an element of effacement of the anterior sac, per the radiologist, for significant cecal sac compression...Trauma has seen the patient and cleared him. They are recommending an outpatient neurosurgical evaluation for disk protrusion. *Id.*, p. 20.

It is found and determined that Claimant has a disc protrusion equivalent to a diagnosis of spinal stenosis resulting in compromise of the spinal cord, or resulting in pseudoclaudication. Claimant's CT scan and x-ray results support the inference that Claimant's impairment is equivalent to the federal Listing definition above. Also, Claimant's testimony regarding his symptoms supports the conclusion that his impairment is equivalent to federal Listing 1.04C. Claimant describes his lower back pain as "excruciating," and on a ten-point scale, he describes it as eight out of ten, even when using medication. He stated he is in pain all day long.

It is found and determined that this description is the equivalent to “chronic nonradicular pain,” as set forth in Listing 1.04C.

Claimant testified with regard to physical strength, that he can walk only 2-3 blocks at a time, he avoids long walks, stays in bed, and is “pretty much housebound.” He can stand for only 5-10 minutes at a time, and falls if he engages in longer walks. He cannot lift and carry objects and sometimes drops them. His sister and brother-in-law perform housework for him. He does no cooking. His legs are “numb and painful.”

Based on all of the testimony and the record as a whole, it is found and determined that Claimant has established he has the equivalent of chronic weakness as set forth in Listing of Impairment 1.04C.

Last, in regard to Claimant’s ability to ambulate effectively, again Claimant cannot walk more than 2-3 blocks, he avoids long walks, stays in bed and is “pretty much housebound.” He can stand only 5-10 minutes at a time and falls if he walks too far. His legs are “numb and painful.” It is found and determined that Claimant’s testimony establishes the inability to ambulate effectively as defined in Listing of Impairment 1.00B2b, or its equivalent. It is found and determined that Claimant has “an impairment(s) that interferes very seriously with the individual’s ability to independently initiate, sustain, or complete activities.” Listing of Impairment 1.00B2b.

Having fulfilled the requirement of the third step in the evaluation process, by demonstrating that his impairment meets or is the equivalent of a medical definition in the federal Listing of Impairments, it is found and determined that Claimant is eligible and qualified to receive Medicaid benefits from the State of Michigan. As Claimant has met the medical definition of disability by virtue of his impairment itself, it is not necessary to continue to the fourth and fifth steps of the Medicare/Medicaid eligibility evaluation process.

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**

Next, although Claimant did not apply for SDA, he may now be eligible for this program by virtue of this decision. An 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 program(s) 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 August 25, 2011, application, to determine if all nonmedical eligibility criteria for MA and retroactive MA 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 MA and MA retroactive 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 July 2013.
4. All steps shall be taken in accordance with Department policy and procedure.



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

Date Signed: June 18, 2012

Date Mailed: June 19, 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

JL/pf

cc:

