

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-35687
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 14, 2012
County: Wayne (82-19)

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 June 14, 2012, at Detroit, Michigan. Participants on behalf of Claimant included Claimant and witness, [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) programs?

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 July 20, 2011, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to April 1, 2011.
2. On January 5, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On February 24, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age thirty-four [REDACTED] has a high-school education.

5. Claimant last worked in 2009 as a crew member at [REDACTED]. Claimant also performed relevant work as a restaurant server. Claimant's relevant work history consists exclusively of unskilled medium-exertional work activities.
6. Claimant has a history of cervical and lumbar degenerative disc disease, spinal canal stenosis, complex regional pain syndrome, depression and anxiety. Her onset date is [REDACTED], when she slipped and fell. Department Exhibit 1, pp. 15, 27, 50, 52.
7. Claimant has not been hospitalized as a result of her impairments.
8. Claimant currently suffers from cervical and lumbar degenerative disc disease, spinal canal stenosis, complex regional pain syndrome, depression and anxiety. She has right leg, right arm, neck and shoulder pain. *Id.*, pp. 48-51.
9. Claimant has severe limitations of her ability to sit, stand, and walk. Claimant's limitations have lasted or are expected to last twelve months or more. *Id.*, pp. 68, 78.
10. Claimant's complaints and allegations concerning her 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:

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:

- A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss.... 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 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 five-step Medicare eligibility test in evaluating applicants for the State'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. Department Exhibit 1, p. 13.

Second, in order to be eligible for MA, a claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset date is [REDACTED]. In [REDACTED] Claimant had a bone scan of her right leg, which showed "[d]eferred activity noted within the right ankle and foot on all 3 phases. This can be seen with reflex sympathetic dystrophy." *Id.*, p. 40.

Also, in [REDACTED], Claimant had an ultrasound test of her right shoulder, which showed “subtle changes are consistent with partial thickness undersurface tear distal SST.” Claimant underwent a third test in [REDACTED], a cervical MRI, which showed “[r]eversal of the normal lordotic curvature, centered at C5-C6” and “[m]ultilevel degenerative disc disease, worst at the level of C5-C6 with a right paracentral disc protrusion posteriorly displacing and moderately flattening the spinal cord and resulting in severe spinal canal stenosis.” *Id.*, pp. 38, 40, 17-18.

In [REDACTED], Claimant had a fourth test done, a lumbar spine MRI, which showed “bulging disks at L3-4 through L5-S1” and “superimposed left posterolateral herniation at L3-4 and L4-5.” *Id.*, pp. 15-16.

Claimant’s diagnoses in [REDACTED] were regional pain syndrome and C7 radiculopathy ([REDACTED]), and, severe cervical stenosis and complex regional pain syndrome ([REDACTED]). *Id.*, pp. 14, 46.

Based on this information of record, 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 the 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 1.04, Disorders of the Spine, and its subpart, section 1.04A. This Listing is set forth above in full.

Listing 1.04A opens with a list of five examples of spine disorders, which are presented in parentheses. The list indicates five types of spinal disorders that the Listing is intended to cover. Claimant’s medical records indicate she has three of the five examples of spinal disorders identified in the opening parenthetical description, specifically, herniated nucleus pulposus, spinal stenosis and degenerative disc disease. Listing of Impairment 1.04, above; Department Exhibit 1, pp. 14, 16, 18, and 40.

Sentence 1 of the Listing continues on to state the second requirement of the impairment, which is that there must be compromise of a nerve root due to the above conditions. Claimant’s records clearly document nerve root compromise at the C7 level which involves the right hand. *Id.*, p. 46.

To summarize up to this point, Claimant has established that she has three spinal disorders and cervical radiculopathy. Now, Claimant must go further and establish three features of cervical nerve root compression (radiculopathy) in order to qualify. The three features of cervical nerve root compression are:

1. Neuro-anatomical distribution of pain.
2. Limitation of motion of the spine.

3. Motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss.... Listing of Impairment 1.04A above.

Regarding the first feature of nerve root compression, there must be radiating pain attributable to the compressed nerve root. [REDACTED] diagnosed this feature on [REDACTED], during treatment. The second feature, limitation of motion, is documented by [REDACTED]

[REDACTED] he wrote that Claimant's severe cervical stenosis and Complex Regional Pain syndrome, depression and anxiety, cause Claimant to suffer "debilitating pain from several sources relating to an accident suffered in [REDACTED]...significantly impacts her abilities to perform usual activities of daily living." *Id.*, pp. 14, 46; see also, p. 78.

Third, in order to qualify for MA, the nerve root compression must have motor loss, which is defined in the Listing as "motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss." In this case, Claimant's medical records document "limitation of movement in the right upper extremity," "weakness of the first dorsal interossei," "reflexes are decreased," and "dysesthesias involving the right foot." This medical documentation supports a conclusion that Claimant has motor loss accompanied by sensory or reflex loss. *Id.*, p. 46.

It is, therefore, found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 1.04A, Disorders of the spine. Claimant, therefore, has established her eligibility for Medicaid based on her impairment.

As Claimant is found by the undersigned to be eligible for MA based solely on a physical 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 2006.

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 July 20, 2011, application, to determine if all nonmedical eligibility criteria for 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 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 July 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: 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:

