

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

IN THE MATTER OF:

Issue

[REDACTED]

Reg. No.:

2012-35693

No.:

2009

DHS County:

Wayne (82)

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 April 30, 2012 at Detroit, Michigan. Participants on behalf of Claimant were the Claimant. Participants on behalf of the Department of Human Services (Department) were [REDACTED] Eligibility Specialist.

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 December 22, 2011 Claimant filed an application for Medicaid benefits. The application also requested MA retroactive to September 1, 2011.
2. On February 8, 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 [REDACTED] has a high-school diploma and a certificate as a [REDACTED] from the [REDACTED].
5. Claimant last worked in [REDACTED] as a custodian. Claimant also performed relevant work as a food and beverage preparer and a clothing store manager. Claimant's

relevant work history consists exclusively of unskilled medium and heavy exertional work activities.

6. Claimant has a history of HIV, asthma, psoriatic arthritis and joint pain. His HIV onset date is [REDACTED] when he was diagnosed by the [REDACTED].
7. Claimant was hospitalized three times as a result of HIV disorder and complications. The discharge diagnoses were HIV.
8. Claimant currently suffers from HIV, asthma, psoriatic arthritis and joint pain. He is receiving treatment from the [REDACTED].
9. Claimant has severe limitations of his ability to stand, walk, sit, lift and carry, and push and pull. 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):

_____.

OR

2. Claimant is not capable of performing other work.

Additionally, Claimant is not engaged in substantial gainful activity, and it is anticipated that he will remain unemployed for at least one year. Therefore it is found and determined that Claimant satisfies the first eligibility requirement, which is that he not be gainfully employed for a one-year period. Second, Claimant must establish that his condition is severe in that it will last for more than one year. Claimant's medical history indicates an HIV onset date of [REDACTED] this satisfies the severity requirement for eligibility. 20 CFR 404.1520; 20 CFR 416.920.

Third, Claimant may be eligible based solely on his medical condition alone, without reference to his work skills and employability. Claimant's medical tests establish he has HIV infection, in that his "viral load" test result and his "CD4" test result numbers were in the HIV positive range in [REDACTED] and again in [REDACTED].

Although Claimant is HIV positive, Claimant's medical records are insufficient to document the severity of his impairment, and it is found and determined that Claimant is not eligible for MA based only on his current medical status. It is therefore necessary to consider whether Claimant is able to work, and if so, whether he can perform prior relevant work or other work.

The fourth requirement of eligibility is whether Claimant can perform any prior relevant work. Claimant's prior relevant work consists of food and beverage preparation and serving, retail clothing sales management, and custodial work. He also received a nurse's aide certificate from the Everest Institute, although he has not worked in his chosen field.

Claimant gave credible and un rebutted testimony that when he worked at [REDACTED] he was required to stand for 4-8 hours and was only allowed to sit down on 2 0-30 minute break times. He lifted 75 pounds once or twice a day, and frequently lifted 20-50 lbs.

Claimant gave credible and un rebutted testimony that as a clothing store manager he was standing 8-12 hours a day, and was able to sit down only 30 minutes to 1 hour on a break. He was required to lift a maximum of 50-100 lbs.

Claimant gave credible and un rebutted testimony that as a custodian he was standing 4-5 hours a day, and sometimes more if special events were held. He was allowed to sit for less than 20 minutes on a break. He was required to push and pull 200 lbs., by himself, and was also required to walk long distances each day. He lost this job when he was hospitalized in [REDACTED] for two weeks.

Claimant gave credible and un rebutted testimony that at the present time he cannot perform any of his previous jobs. First, he cannot stand for more than an hour or his joints lock up and he tumbles over. He cannot sit for more than 30 minutes. He cannot walk more than one-half mile or his joints lock up. He can barely manage the stairs, and it took him 5 minutes to descend the 2 flights of stairs in his apartment building from his apartment to the ground floor today. He experiences pain at the level of 4-8 on a 10-point scale. He can push and pull little more than 25 lbs. The pain is primarily knee and back pain.

With regard to the activities of daily living, Claimant has stopped driving due to vision problems. He can do his own grocery shopping, but has to limit his purchases to just those few items that he will be able to carry himself.

Claimant gave credible and un rebutted testimony that he cannot perform his previous jobs because he can no longer do the amount of work required on those jobs. He cannot perform the standing, walking, lifting and carrying, and pushing and pulling. He has joint pain on a daily basis. He cannot concentrate or multi-task. He has "no stamina" and gets tired after a 4-5 hour shift. He experiences fatigue and has to sit down, leave work early, and suffers migraines and sporadic vision loss.

Based on this evidence, it is found and determined that Claimant is no longer able to perform any of his prior jobs. It is also found and determined that although he has a nurse's aide certificate, this type of work requires heavy exertion and he would not be able to perform it in spite of his educational qualifications.

Having determined that Claimant cannot perform his prior jobs, it is necessary to go to the fifth eligibility requirement. The Claimant must also be unable to perform other work that exists in significant numbers in the national economy. Regarding the fifth eligibility requirement, it is the Department's responsibility to present proof that Claimant can do other work as described. The Department failed to present such evidence in this case. Accordingly, it is found and determined that Claimant is not capable of performing other work that exists in significant numbers in the national economy. Therefore, as the fifth requirement has been satisfied, Claimant is determined eligible for MA benefits in accordance with the five-step requirements set forth in the Social Security guidelines. 20 CFR 404.1520; 20 CFR 416.920.

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.

SDA: Although Claimant did not apply for SDA, he may be eligible for SDA benefits by virtue of this decision. 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 considered 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 as of the onset date of 2008.

The Department's decision is **AFFIRMED**.

The Department's decision is **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 December 22, 2011 application, to determine if all nonmedical eligibility criteria for MA and MA retroactive 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 June, 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: May 4, 2012

Date Mailed: May 4, 2012

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

JL/cl

cc:

