

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-37848
Issue Nos.: 2009, 4000
Case No.: [REDACTED]
Hearing Date: May 23, 2012
County: Oakland (63-04)

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 May 23, 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) 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 January 11, 2012, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to October 1, 2011.
2. On February 23, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On March 1, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age forty-five [REDACTED] has a tenth-grade education.

5. Claimant last worked in 2012 as a hi-lo driver. Claimant also performed relevant work as a construction worker and unloading trucks. Claimant's relevant work history consists exclusively of unskilled heavy-exertional work activities.
6. Claimant has a history of right tibia and fibula fracture [REDACTED], dislocated right shoulder [REDACTED], reading disability, attention deficit and hyperactivity disorder (ADHD) and obsessive-compulsive disorder (OCD) (all three from childhood), rheumatoid arthritis (RA) [REDACTED], and major depressive disorder [REDACTED]. His onset dates are childhood, [REDACTED].
7. Claimant was hospitalized in [REDACTED] as a result of the right leg fracture. The discharge diagnosis was post-reconstructive surgery for the fracture.
8. Claimant currently suffers from right leg fracture, dislocated right shoulder, reading disability, ADHD, OCD, RA and major depressive disorder.
9. Claimant has severe limitations of his ability to walk, 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 prior 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.

In this case the fact finder must apply the five-step eligibility test used as well in federal Social Security Administration (SSA) disability decisions. 20 CFR III, Sec. 416.920 Evaluation of disability of adults, in general. The first step in this procedure is to determine whether Claimant is engaged in substantial gainful activity.

Substantial gainful activity can be measured by monthly income: if a customer earns less than \$1,010 per month, then they are not engaged in substantial gainful activity as defined by the SSA. Claimant's present employment is part-time and it does not provide him with an income over \$1,010 per month. Therefore, it is found and determined that Claimant is not engaged in substantial gainful activity, and the second step in the procedure must be considered.

The second step in the SSA procedure requires that, in order to be eligible, Claimant's impairment must be severe and must be of a duration of at least one year. Claimant testified that his mental and physical impairments began in childhood and in [REDACTED]. All of these dates are more than one year ago and represent impairments which have required medical and psychiatric attention. It is found and determined that Claimant's impairments are serious and meet the one-year duration test. Therefore, Claimant is not disqualified at the second SSA step, and the third SSA step to determine eligibility must be considered.

The third step that must be considered is whether Claimant's impairment meets a definition specifically set forth in the federal Listing of Impairments. First, Listing 1.03, Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, was considered. In order to meet the requirement of this Listing, the individual must be unable to ambulate effectively. The inability to ambulate effectively is defined as

“... having insufficient lower extremity functioning ... to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities (references omitted).” 20 CFR III, Appendix 1 to Subpart P of Part 404-Listing of Impairments, Sections 1.00B(2)(b)(1) and 1.03.

It is found and determined that Claimant’s impairment does not meet this Listing.

With regard to Claimant’s dislocated shoulder, the relevant Listing of Impairment is Section 1.02 Major dysfunction of a joint(s) (due to any cause). This Listing requires the Claimant to establish

“[i]nvolvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow or wrist-hand), resulting in inability to perform fine and gross movements effectively. The word ‘inability’ is defined elsewhere as ‘an extreme loss of function of both upper extremities; i.e., an impairment(s) that interferes very seriously with the individual’s ability to independently initiate, sustain, or complete activities.’” 20 CFR III, Appendix 1 to Subpart P of Part 404-Listing of Impairments, Sections 1.00B(2)(b)(2), 1.02 and 1.02B.

With regard to Claimant’s shoulder impairments, Listing 1.02 Major dysfunction of a joint(s) due to any cause is applicable, and Claimant has presented insufficient evidence to meet the standard of this listing. *Id.*,

With regard to Claimant’s reading disability, Listing 12.05 Mental retardation is applicable and relevant. This definition requires “significantly subaverage general intellectual functioning.” The medical evidence of record, taken with the testimony of the Claimant at the hearing, does not support a conclusion that Claimant is significantly subaverage in his general functioning and, therefore, it is found and determined that Claimant does not meet the requirements of this medical listing. 20 CFR III, Appendix 1 to Subpart P of Part 404-Listing of Impairments, Section 12.05.

With regard to Claimant’s ADHD and OCD impairments, the Listing governing eligibility for these impairments is 12.08 Personality disorders:

“A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual’s long-term functioning and are not limited to discrete episodes of illness.”

Based on the records and testimony in this case it is found and determined that Claimant’s ADHD and OCD are not of sufficient severity to meet the federal standard of impairment. 20 CFR III, Appendix 1 to Subpart P of Part 404-Listing of Impairments, Section 12.08.

Next, with regard to Claimant’s RA impairment, it is necessary to return to Listing 1.02 Major dysfunction of a joint(s) (due to any cause.) As no records to verify RA were

presented, it is not possible for Claimant to meet the federal Listing standard for eligibility based on this impairment. 20 CFR III, Appendix 1 to Subpart P of Part 404-Listing of Impairments, Sections 1.00B(2)(b)(2), 1.02.

The final Listing of Impairment that must be considered is Listing 12.04 Affective disorders. This Listing is used to determine if a person is eligible based on major depressive disorder, which is Claimant's current diagnosis. Subsection C is the portion of Listing 12.04 that is applicable in this case. 20 CFR III, Appendix 1 to Subpart P of Part 404-Listing of Impairments, Sections 12.04 and 12.04C.

Section 12.04 C refers to

"Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following: (1) Repeated episodes of decompensation, each of extended duration; or (2) A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or (3) Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement."

Applying the requirements of Listing 12.04C to Claimant's application, the evidence shows that Claimant has not had repeated episodes of decompensation, he is not marginally adjusted, and he is able to live outside a highly supportive living arrangement. Accordingly, it is found and determined that Claimant's major depressive disorder is not of the severity to meet the federal Listing of Impairments.

As none of Claimant's impairments meet the federal requirements for eligibility, it is necessary to move on to the fourth step of the SSA eligibility process, which is whether Claimant is capable of performing prior relevant work. If Claimant is capable of performing prior relevant work, including work he is doing now, then he is not eligible for MA. At the hearing, Claimant gave credible and un rebutted testimony that he is capable of driving a hi-lo and that this is the work he is currently performing. Based on this testimony, it is found and determined that Claimant is capable of performing prior relevant work and, therefore, does not meet the statutory standards of eligibility for the MA disability program.

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**

At Claimant's request, the issue of SDA is dismissed from the hearing.

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.

The Department's decision is

AFFIRMED **REVERSED**

In addition, at the Claimant's request, the issue of eligibility for SDA benefits is DISMISSED.



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

Date Signed: May 31, 2012

Date Mailed: May 31, 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:

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- 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:

