

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-39068
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 3, 2012
County: Wayne (82-82)

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 May 3, 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) 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 January 17, 2012, Claimant filed an application for Medicaid benefits. The application also requested MA retroactive to October 1, 2011.
2. On February 8, 2012, the Department sent Claimant a Notice of Case Action denying the application.
3. On March 14, 2012, Claimant filed a hearing request appealing the Department's denial to the Michigan Administrative Hearing System.
4. Claimant, age fifty-three [REDACTED] has a high-school education.

5. Claimant had odd jobs but no regular employment in the last fifteen years. Claimant's relevant work history consists exclusively of unskilled, medium-exertional work activities.
6. Claimant has a history of acute gastrointestinal (GI) bleeding, chronic low back pain, anemia and osteomyelitis. His onset date is [REDACTED] when he stepped off a ladder and twisted his back and hip.
7. Claimant was hospitalized [REDACTED], as a result of the four conditions specified above. His discharge diagnosis was the same. He was also hospitalized [REDACTED] for anemia and alcohol withdrawal conditions, [REDACTED], for acute GI bleeding, and [REDACTED], for right thigh and epidural abscesses. He was released to a convalescent facility where he lived for six weeks.
8. Claimant currently suffers from all of the above medical impairments.
9. Claimant has severe limitations of his ability to sit, stand, walk, bend, lift and carry. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning these impairments, when considered in light of the medical evidence, and the record as a whole, 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).

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 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 1997. 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, Claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset date is

██████ when he fell from a ladder and injured his back and hip. He reported chronic lower back pain in ██████████. Claimant had a spinal MRI in ██████████ and again in ██████████, and a comparison was made that the condition was progressing. Department Exhibit 1, pp. 46-47.

Accordingly, it is found and determined that Claimant's impairment is of sufficient duration and seriousness to fulfill the second requirement of the MA eligibility.

Turning now to the third requirement for MA eligibility, 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 1.04, Disorders of the Spine, and its subpart, section I.04A. This Listing is set forth in full as follows:

1.04 Disorders of the Spine

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) or 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 and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine).

The following information from Claimant's medical records provides the basis for Claimant's eligibility based solely on his medical impairment. First, Claimant's MRI of the lumbar spine, December 19, 2011, indicates L5-S1 left paracentral and foraminal disc protrusion with narrowing of the neural foramina. The MRI also indicates straightening of the spine, five lumbar areas containing lumbar debris, and generalized intervertebral disc narrowing, most severely at the L5-S1 level. Also at L5-S1, there is a diffuse disc bulge, with a large amount of epidural soft tissue which may have collections of fluid with tiny abscesses (this may be arachnoiditis). As a result, there is compression of the thecal sac, the nerve roots appear to be clumped together in the sac, and the surrounding tissue extends into the L5-S1 disc. Department Exhibit 1, pp. 46-47; see *also*, pp. 19-20.

The information from the MRI clearly documents a spinal disorder, which may consist of or be equivalent to one or more of the examples given in the Listing of Impairment, i.e., spinal arachnoiditis, spinal stenosis, and degenerative disc disease.

Going next to subsection A of Listing 1.04, first, it is found and determined that Claimant's MRI and the medical records contain evidence of nerve root compression characterized by neuro-anatomic distribution of pain. Claimant's MRI indicates left

paracentral and foraminal disc protrusion with narrowing of the neural foramina. Consistent with this, on the same day as the MRI, Claimant reported shooting pain along with numbness down the left leg, extending to the tibia. It is found and determined that this evidence meets the definition of neuro-anatomic distribution of pain in Listing 1.04A. *Id.*, pp. 27, 47.

Continuing on through the requirements of subsection A, there must be limitation of motion of the spine. The physical examination of Claimant's musculoskeletal system states he has restricted movement in the lower back, tenderness in the lumbar region, pain across the entire back, and, inability to bend forward completely. It is found and determined that this evidence establishes the second prong of the Listing definition of nerve root compression. *Id.*, p. 44.

Next, the third requirement of Listing 1.04A is that there must be motor loss, which can be either atrophy with associated muscle weakness, or muscle weakness, accompanied by sensory or reflex loss. On [REDACTED], Claimant reported weakness more toward the right side in the lower extremity. *Id.*, pp. 19, 44. At the hearing, Claimant was experiencing numbness and tingling in both feet in a socklike distribution.

The third and last part of the subsection A definition of spinal disorder is that the individual must have a positive straight-leg raising test, sitting and supine. On December 19, 2011, Claimant had a positive bilateral straight-leg raising test. It is unknown which straight-leg raising test Claimant was given. It is found and determined that this evidence fulfills the fourth requirement of the Listing definition of nerve root compression. *Id.*, p. 44.

It must also be considered whether Claimant's testimony at the hearing is consistent with the medical data. Claimant testified he can walk only a couple of blocks, he can stand only 5-10 minutes, he can lift and carry no more than 20 lbs., and he might be able to climb or do home repairs, but his balance comes and goes. Claimant testified that bending down causes pain in his right leg, and he can only manage to return to a standing position half-way before he experiences pain. Claimant has no insurance or money for health care.

It is found and determined that Claimant's testimony is consistent with the medical data in this case. Claimant has demonstrated that he has nerve root compression, based on evidence of neuroanatomic distribution of pain, limitation of motion of the spine, motor loss accompanied by sensory or reflex loss, and a positive straight-leg raising test. It is found and determined that all the evidence in this case considered in its entirety, meets or is equivalent to Listing of Impairment 1.04A, Disorders of the spine – nerve root compression.

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 impairments meet a Federal SSI Listing of Impairment(s) or its equivalent.
State the Impairment Listing No.:
1.04A *Disorders of the Spine* – Nerve root compression.

2. Claimant is not capable of performing other work.

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 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.

While Claimant has not applied for SDA, he may be eligible for this program by virtue of this decision. In order to become eligible, 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 and therefore eligible to receive SDA benefits. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Claimant has been found disabled

in this decision for purposes of MA, he must also be found disabled for purposes of SDA benefits, if he should choose to apply for them.

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

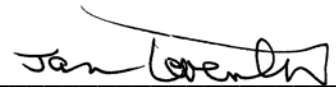
the definition of medically disabled under the Medical Assistance program as of the onset date of 2003.

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 January 17, 2012, 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 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, a redetermination date for review of Claimant's continued eligibility for program benefits shall be no earlier than October 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: September 17, 2012

Date Mailed: September 17, 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:

