

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-39083
Issue No.: 4031
Case No.: [REDACTED]
Hearing Date: May 7, 2012
County: Wayne (82-76)

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 7, 2012, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. 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 State Disability Assistance (SDA) 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 15, 2012, Claimant filed an application for State Disability Assistance (SDA) benefits.
2. On March 9, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On March 13, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age forty-seven [REDACTED] has a twelfth-grade education.

5. Claimant last worked in 2011 as a Certified Nurse Aide (CNA). Claimant was a CNA for twenty-five years. Claimant's relevant work history consists exclusively of unskilled, heavy exertion work activities.
6. Claimant has a history of back and leg pain beginning [REDACTED] or earlier. Her onset date is [REDACTED], the date of her first back surgery.
7. Claimant was hospitalized and underwent surgery in [REDACTED] as a result of back and leg pain. Her [REDACTED] discharge diagnosis on [REDACTED] [REDACTED], was post-operative L4-L5 decompressive laminectomy and fusion, and L5-S1 removal of instrumentation and fusion.
8. Claimant currently suffers from back and leg pain in an L5 pain distribution pattern.
9. Claimant has severe limitations of her ability to walk, stand, bend, drive, sleep, shop, and cook. Claimant's limitations have lasted or are expected to last twelve months or more.
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

Medical Assistance (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.

First, it is found and determined that Claimant is not engaged in substantial gainful activity at this time and does not expect to return to such activity for at least one year. Second, Claimant's impairment is sufficiently severe as to significantly limit her physical ability to perform basic work activities such as walking, standing, lifting, pushing, pulling, reaching, carrying and handling. The severity of her impairment is expected to last at least one year.

Third, it is found and determined that Claimant's physical impairments do not meet an impairment definition in the federal Listing of Impairments, 20 CFR 404, Subpart P, Appendix 1. It is necessary next to consider whether Claimant can perform work, either her previous work or some other type of employment.

With regard to previous work, Claimant gave credible and un rebutted testimony that her physical limitations to her ability to walk, bend, stand, stoop, drive, carry, lift, push and pull, would prevent her from returning to her previous work as a nurse's aide. Claimant's work as a nurse's aide involves providing personal hygiene care, bathing, grooming and dressing patients, taking their vital signs, lifting, positioning and assisting patients with walking and other body movements, feeding patients, reporting changes in physical or mental status, and housekeeping tasks. At this time, Claimant is in pain and uses a walker. She takes Oxycodone and Percocet for pain. She is in need of help with the activities of daily living, including household chores, cooking, shopping, and driving.

Claimant's doctor has advised her to find other work. She is currently under her doctor's care, and cannot begin physical therapy until [REDACTED] when it is estimated

that she will be sufficiently healed to benefit from physical therapy. Claimant uses a cane at home.

Based on the evidence in the record, it is found and determined that Claimant is incapable of returning to work as a nurse's aide, because of her physical limitations. The last requirement is that Claimant's ability to perform other work must be examined.

If Claimant is found to be capable of performing other work that is available in significant numbers in the national economy, SDA must be denied. The Department presented no evidence to substantiate its assertion that Claimant is capable of performing other work and also did not present evidence to show that any such work is readily available. Claimant gave credible and un rebutted testimony that her physical impairments limit her ability to perform other work that exists in significant numbers in the national economy.

Claimant has established that she cannot perform other work that is available in significant numbers in the national economy. It is, therefore, found and determined that Claimant meets the five eligibility requirements of the MA program.

The five requirements of the MA program are requirements for the SDA benefits as well. SDA requires further that 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.

Based on the Findings of Fact and Conclusions of Law above, Claimant is found to be

NOT DISABLED. **DISABLED.**

for purposes of the program. The Department's denial of benefits to Claimant is

AFFIRMED. **REVERSED.**

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 MA and SDA programs as of the onset date of 1998.

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 January 5, 2012, application to determine if all nonmedical eligibility criteria for 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 retroactive and ongoing SDA benefits to Claimant;
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 14, 2012

Date Mailed: May 15, 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:

