

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-45959
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 14, 2012
County: Wayne (82-43)

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 [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 25, 2012, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to October 1, 2011.
2. On March 21, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On April 12, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age fifty [REDACTED] has a high-school education.

5. Claimant last worked in 2008 as a telemarketer. Claimant also performed relevant work as a lottery agent and a live-in caregiver. Claimant's relevant work history consists of light to heavy exertional unskilled work activities.
6. Claimant has a history of right foot arthritis, right leg radiculopathy, depressive disorder, Meniere's disease, skin disease, headaches, muscle spasms, and dizziness. Her earliest onset date is [REDACTED] when she was involved in a head-on auto collision accident. Her onset date regarding her right leg and foot is [REDACTED]
7. Claimant was hospitalized in [REDACTED] (3 days) and [REDACTED] (5 days) as a result of depression [REDACTED] and also in [REDACTED], obsessive compulsive disorder, panic attacks and anxiety disorder. The discharge diagnosis was, in [REDACTED], all of the above.
8. Claimant currently suffers from right foot arthritis, right leg radiculopathy, depressive disorder, Meniere's disease, skin disease, headaches, muscle spasms, and dizziness.
9. Claimant has severe limitations of her ability to conduct activities of daily living. 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

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.

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 2008. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and the Claimant is not engaged in substantial gainful activity. Department Exhibit 1, p. 45.

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 [REDACTED]. At that time, Claimant's dizziness, headaches, vertigo (Meniere's disease) etc., began. She also suffered injuries to her back, left rotator cuff, left arm, head and inner ear. *Id.*, p. 44. She testified that these impairments continued and she does suffer symptoms as a result.

Claimant testified that in [REDACTED], she worked full time at [REDACTED], and that this was her only long-term full-time employment. Her [REDACTED] auto accident, which was a head-on collision, resulted in two or three herniated disks in her neck, a dislocated rotator cuff in her left shoulder, severe headaches and dizziness, inner ear damage resulting in Meniere's disease (vertigo), and soft-tissue injuries to her back. She was in physical therapy for one year.

As a result, Claimant currently suffers back and neck pain if she sits for more than 1-2 hours at a time. She has neck pain if she bends forward while sitting. She testified she has muscle spasms in her entire back and also in her neck and right leg almost daily. When she has a back spasm, her entire back locks up and she can hardly get up from a sitting or lying position.

Also, Claimant suffered a right foot injury in [REDACTED] and was diagnosed in [REDACTED] with right leg radiculopathy, arthritis, and a large dorsal exostosis in the right foot. *Id.*, pp. 38, 41-42. She was put in a lace-up cast and uses a cane to ambulate effectively. Claimant testified she can only walk one-half block without feeling “serious pain.” She cannot stand for more than fifteen minutes at a time.

Based on this information, it is found and determined that Claimant’s impairments are of sufficient severity and duration to fulfill the second eligibility requirement.

Going on to the third requirement for MA eligibility approval, 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 none of Claimant’s impairments meets the definition in the federal Listings, and it is found and determined that, on a strictly medical basis alone, Claimant’s impairments do not meet the MA requirements for eligibility as a disabled person. Accordingly it is necessary to proceed further to the fourth and fifth steps of the MA eligibility test in order to determine if Claimant meets these requirements.

Looking at the fourth step of the MA requirements, this step considers whether Claimant is capable of performing prior relevant work. Claimant’s prior relevant work is telemarketing, operating a lottery ticket machine, and live-in caregiving. Claimant performed each of these jobs for only two months. She has not been employed for more than two months at a job in the last fifteen years.

Claimant testified she cannot perform telemarketing work now for several reasons. First, she can only sit for 1-2 hours and cannot sit for an entire eight-hour shift because of back pain. When she bends forward over a desk or computer, she experiences pain in her back and neck. Also, she experiences muscle spasms which prevent her from moving freely.

Claimant testified she cannot walk more than ½ of a city block without experiencing “serious pain.” Also, she loses her balance and trips sometimes because her balance is poor. She walks with a cane.

She testified she is in “constant pain,” at a level of more than ten on a scale of ten, and medication reduces her pain to only 7-8 on a scale of ten. She stated her pain level would prevent her from performing telemarketing work on a regular basis.

Claimant also testified that her medications would prevent her from performing telemarketing work. Her medications make her weak and groggy. Also, as she sleeps very little because of pain, and takes two to three 20-minute naps during the day, she testified she would have difficulty performing work on a routine daily basis.

Claimant also testified that she has lupus and her hands, fingers, ears, and face have open, puffy sores and lesions that emit blood and pus on papers, telephones, computers, etc. She stated it is very painful to touch anything, and pieces of skin come off and stick to paper, making it painful and messy to conduct work activities.

Claimant brought her friend and caregiver, [REDACTED], to the hearing. She testified that Claimant's testimony is true and she herself has witnessed many of the impairments Claimant described.

In addition, Claimant is under the care of [REDACTED] psychiatrist, [REDACTED], for depression, obsessive compulsive disorder, panic attacks and anxiety disorder. She has been prescribed Prozac, Paxil, Cymbalta, Clonazepam and Abilify for these disorders. She sees a therapist, [REDACTED], once a week.

In [REDACTED], Claimant treated with [REDACTED]. On [REDACTED] diagnosed right midfoot arthritis and chronic complex regional pain syndrome. On [REDACTED] diagnosed right midfoot arthritis and right lower leg radiculopathy. *Id.*, pp. 11-12, 34, 37-38, 41.

Claimant testified that for all of these reasons, it is impossible for her to perform the other two jobs she held in the past fifteen years. These jobs are caregiving and lottery ticket sales.

Based on the testimony and documents in this case and on the entire record as a whole, it is found and determined that Claimant is not capable of returning to any of her prior relevant work activities. Claimant has met the requirement of the fourth step of the Medicaid evaluation; that is, she cannot return to prior relevant work. It is now necessary to return to the fifth and last step of the evaluation process.

The fifth step in the evaluation process asks whether the individual can perform other work that is available in significant numbers in the national economy. It is the Department's responsibility, or burden of proof, to establish that other work of this kind is available. In this case, the Department failed to present evidence that other available work exists in significant numbers in the national economy. When the Department has not submitted such evidence, the individual Claimant has no responsibility (burden of proof) to put forward evidence to the contrary. Accordingly, it is found and determined that Claimant has met the requirements of the fifth step of the evaluation process, and has established her eligibility for Medicaid benefits at this point.

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 May 2011.

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 25, 2012, application to determine if all nonmedical eligibility criteria for MA, retroactive 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, retroactive 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.

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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:

