

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-40801
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 25, 2012
County: Wayne (82-15)

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 25, 2012, at 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 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 10, 2012, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to October 1, 2011.
2. On April 6, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On April 17, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age forty-four [REDACTED] has a Graduate Equivalency Diploma from high school.

5. Claimant has not worked in the past fifteen years. Claimant was a cook for eight years while he was incarcerated.
6. Claimant has a history of joint pain and injured testicles. His onset dates are [REDACTED] (testicle injury) and [REDACTED] (joint pain). He also suffers from lower back pain and emotional and behavioral problems.
7. Claimant was not hospitalized as a result of these impairments. He was hospitalized in [REDACTED] for an eye injury.
8. Claimant currently suffers from joint pain, injured testicles, lower back pain, and emotional and behavioral problems.
9. Claimant has severe limitations of his ability to perform manual labor, lifting and carrying, and sitting and standing. 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.

The following is an examination of Claimant's eligibility required by the 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 in the past fifteen years. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and Claimant is not engaged in substantial gainful activity. Department Exhibit 1, p. 7.

Second, in order to be eligible for MA, the claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset date is [REDACTED], when a hockey puck struck him in the testicle. Since that time, his testicle has become constantly swollen and throbbing, and it is the size of a pear. The examining doctor, [REDACTED] internal medicine, described it as a "large right testicular mass and swelling. The patient does need surgical evaluation." *Id.*, p. 14.

Based on the information in the record, it is found and determined that Claimant's impairment is of sufficient severity and duration to fulfill the second eligibility requirement.

Turning now to the third requirement for MA eligibility approval, the factfinder must determine if the 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 does not meet the definition of a specific listed impairment in the federal Listing of Impairments.

As Claimant is not found to be eligible for MA based solely on his physical impairment, it is necessary to proceed further to the last two eligibility requirements of the five-step Medicare eligibility sequence.

It shall now be considered whether Claimant can work, either his previous work or some other type of employment. This requires use of the fourth and fifth steps of the MA evaluation process, i.e., whether Claimant can perform prior relevant work (Step 4) and whether Claimant can perform other work that is available in significant numbers in the national economy (Step 5).

With regard to prior relevant work, Claimant has not been employed and has no relevant work to describe. However, he was a prison cook while he was incarcerated. When asked if he could work now as a cook, Claimant said he could not because of his physical impairments.

Claimant gave credible and un rebutted testimony that his testicular swelling and throbbing gets worse with activities such as standing, walking and moving around. When sitting, he is constantly adjusting his testicle and his sitting position. The only time his testicle is not painful is when he is seated with his legs elevated, and he usually gets into this position. He cannot sleep on his stomach, which is his preferred position. He can walk about ½ mile without pain and falling down.

In addition, Claimant gave credible and un rebutted testimony that he has joint pain in his elbows, wrists, ankles, hands and knees. His right hand also goes numb for weeks at a time. Claimant states his joints are more painful when he uses them. He particularly noted that he climbs stairs only one at a time.

Claimant testified that he tried physical work in 2011, but he was let go after two weeks because he could not keep up with the work requirements. He can carry a gallon of milk when he is not in pain, but does not think he could carry this much weight repeatedly. He stated in response to a Department questionnaire, that it hurts to cut vegetables.

Based on all of the above information of record, and all of the testimony considered as a whole, it is found and determined that Claimant is incapable of returning to prior relevant work as defined by the Medicaid standards. The fourth step of the MA eligibility test has been completed, and it must now be determined if there is other work available in significant numbers in the national economy that Claimant can perform (Step 5).

If now, at the fifth step, Claimant is found capable of performing other work that is available in significant numbers in the national economy, MA 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. As the Department has the responsibility, or burden of proof, to establish that such other work exists, and the Department failed to do so, there is no duty on Claimant to produce evidence to disprove the point. Therefore, it is found and

determined that there is no other work that is available in significant numbers in the national economy which Claimant can perform.

In conclusion, it is found and determined that Claimant meets the eligibility requirements of the Medical Assistance program by virtue of being disabled from prior relevant work and other work that is available in significant numbers in the national economy.

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 program(s) as of the onset date of 2008 (testicular injury).

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 10, 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 26, 2012

Date Mailed: June 26, 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:

