

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-53201
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 27, 2012
County: Genesee (25-02)

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 hearing was held on August 27, 2012, at Flint, Michigan. Participants on behalf of Claimant included Claimant, Authorized Representative [REDACTED], and Claimant's husband, [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 December 2, 2011, Claimant filed an application for MA benefits. The application requested MA retroactive to September 1, 2011.
2. On April 6, 2012, the Department denied the application.
3. On May 15, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is fifty-one years old [REDACTED] has a high school Graduate Equivalency Diploma (GED).
5. Claimant last worked in 2011 as a part-time telemarketer. Claimant also performed relevant work as a Certified Nurses Aide. Claimant's relevant work history consists exclusively of unskilled, light and heavy-strength work activities.

6. Claimant has a history of chronic obstructive pulmonary disease (COPD). Her onset date is [REDACTED]
7. Claimant was hospitalized in [REDACTED] a result of COPD. The discharge diagnosis was chronic airway obstruction.
8. Claimant currently suffers from COPD.
9. Claimant has severe limitations of her ability to sit, stand, walk, lift, carry, push and pull. 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 the 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 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 impairment(s) meet a Federal SSI Listing of Impairment(s) or its equivalent.

State the Listing of Impairment(s):

3.02A Chronic obstructive pulmonary disease due to any cause, with the FEV1 [forced expiratory volume] equal to or less than the values specified in table (sic) 1 corresponding to the person's height without shoes. (Table omitted).

OR

2. Claimant is not capable of performing other work that is available in significant numbers in the national economy.

The following is a five-step examination of Claimant's eligibility for Medicaid. The State of Michigan Department of Human Services is required by the federal Code of Federal Regulations (CFR) to use the U.S. Social Security Act Title XVI Supplemental Security Income five-step test for evaluating applicants for the Michigan Medicaid disability program. 20 CFR 416.905, 416.920; 42 CFR 435.540.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since August 2011, fourteen months ago. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and the Claimant is not engaged in substantial gainful activity. 20 CFR 416.920(b); Department Exhibit 1, p. 9.

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 for COPD is [REDACTED]. In [REDACTED] she was hospitalized for COPD, and was again hospitalized for COPD in [REDACTED]. 20 CFR 404.1520(c), 404.1521; Department Exhibit 1, p. 16.

Based on this information of record, it is found and determined that Claimant's impairment is of sufficient severity and duration to fulfill the second eligibility requirement. 20 CFR 404.1520(c), 404.1521.

Turning now to the third requirement for MA eligibility, here 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 3.02A, Chronic obstructive pulmonary disease, or its equivalent. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments 3.02A.

Listing 3.02A requires a test result of forced expiratory volume (FEV₁) of 1.15 L,BTPS (litres, body temperature and pressure saturated with water vapor) or less for one second, for a person of Claimant's height, which is 64 inches. This test was not conducted in Claimant's case. However, another test was used to determine that she was in respiratory failure on [REDACTED], when she was admitted to the hospital. This test shows the patient's SPO₂, or oxygen saturation level. Department Exhibit 1, p. 18.

On [REDACTED], Claimant's SPO₂ level was 85%, which indicates respiratory failure. It is found and determined that the SPO₂ test is the equivalent in diagnostic significance to the FEV₁ test, for purposes of this analysis, because SPO₂ was used in the ordinary course of the hospital's business of admitting and treating patients. SPO₂, therefore, has a circumstantial guarantee of trustworthiness, because it is probable that the hospital would not administer the SPO₂ test if it did not assist in the respiratory treatment process.

The additional evidence considered in this case is that Claimant was hospitalized five years earlier for the same condition, and that she left at least one job because of health reasons, i.e., COPD. Further, Claimant experiences coughing, wheezing, shortness of breath, difficulty speaking, difficulty with perfumes, chemicals and other odors, tightness in the chest and pressure on her ribs, choking and gagging. She takes Spiriva and Advair for COPD, and also uses an inhaler and a nebulizer. She treated at the [REDACTED] from [REDACTED], and was diagnosed by a [REDACTED], with severe COPD in [REDACTED]. She stated that [REDACTED] advised her she may have to consider a lung transplant.

In addition, Claimant's husband, [REDACTED], appeared at the hearing and gave testimony about his wife's impairment. He stated that Claimant is "pretty much on the couch." She cannot take walks with him as she used to do, nor can she jog, hike or swim for the last five years.

It is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 3.02A. Claimant, therefore, has established her eligibility for Medicaid based on her impairment. Listing of Impairment 3.02A.

As Claimant is found by the undersigned to be eligible for MA based solely on a physical impairment, it is not necessary to proceed further to the last two eligibility requirements of the five-step Medicare eligibility sequence. 20 CFR 404.1520(d).

Further, 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 261. Inasmuch as Claimant has been found disabled for purposes of MA, Claimant must also be found disabled for purposes of SDA benefits, should she choose to apply.

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 [REDACTED].

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 December 2, 2011, application, to determine if all nonmedical eligibility criteria for 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 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 November 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: October 19, 2012

Date Mailed: October 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.

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:

