

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-55091
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: August 13, 2012
County: Wayne (82-31)

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 August 13, 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) program(s)?

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 March 12, 2012, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to December 1, 2012.
2. On May 11, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On May 23, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age fifty-three [REDACTED] has a degree as a Certified Nurse Assistant (CNA). She has a high school diploma and three years of college.

5. Claimant last worked in February 2012 as a CNA. Claimant worked as a CNA since 1996. Claimant's relevant work history consists exclusively of heavy-exertional semi-skilled work activities.
6. Claimant has a history of osteoarthritis of the left ankle and major depressive disorder, recurrent, severe, without psychosis. [REDACTED]
7. Claimant was hospitalized [REDACTED] as a result of severe major depressive disorder. She was discharged with a diagnosis that she was in stable condition and should continue with appropriate medication.
8. Claimant currently suffers from left ankle osteoarthritis and severe major depressive disorder.
9. Claimant has severe limitations of her ability to sit, stand, walk, concentrate, and to respond to work-related stress. 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 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): _____.

OR

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

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 federal Medicare 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, it is found and determined that Claimant was forced to stop working because of the removal of special work accommodation conditions that were related to Claimant's impairment and essential to her work. 20CFR 416.973(C). 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 [REDACTED], when she suffered a left ankle injury. Since that time, her ankle has not healed and she continues to have pain and severe limitations of her mobility. At this time she is bedridden.

Based on the information of 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 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. Listings 1.00, Musculoskeletal, and 12.00, Mental disorders, were considered in this part of the evaluation of Claimant's application.

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

It shall next be considered whether Claimant can perform prior relevant work (Step 4), and, if not, 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 for six months. Claimant is a Certified Nurse Assistant (CNA), and her work requires six or more hours of standing and walking. The lifting requirements of her job involve transferring patients to and from bed, chair, toilet, transport vehicle, and bathing facilities.

When she worked as a CNA in February 2012, she used the siderails on the walls for support just like the residents. In order to get to her car from the facility, she needed the assistance of four employees, two on each side.

Claimant testified she was terminated from her job because she could not perform the physical requirements of the job. When asked if she could work as a CNA now, Claimant said she could not because of her physical impairments. Claimant testified she is in pain and experiences stiffness, and limps all day long. Her left ankle is swollen to three times its normal size, and is discolored blue and dark purple.

She is always in a lot of pain. She cannot lift and carry anything. She does not carry a purse. With regard to sitting, she testified she can sit for only a few minutes, and then her foot swells and she limps badly when she stands up and tries to walk. She stated that sitting is just as bad as standing and walking because the pain is still there. She never goes without pain medication and described her pain level as eight with medication on a scale of one to ten.

Claimant gave credible and un rebutted testimony that currently she stays in bed "a lot, locked up in my room." She stated that if she gets up for 2-3 minutes, she experiences pain and cannot continue to move around, so she returns to bed. If she has to walk as long as five minutes she uses a cane. She also uses a cane when she has already walked for a while and is limping. She has trouble making it to the bathroom in time to relieve herself.

Claimant testified that she does no cooking now, and her daughter helps out sometimes by bringing cooked food over to her. Claimant launders her clothes, consisting of one outfit only, in the sink. She cannot buy clothes because she gained 150 lbs. in the past three years.

Claimant testified she cannot climb stairs or walk up a curb, and she can do housework for only fifteen minutes before she needs to take a break. If she does go to the grocery store, she uses a motorized cart to do her shopping. She last drove a car in March, and has no insurance and gasoline money at this time.

Claimant testified she is very depressed about her condition and sleeps in excess of fourteen hours a day. She finds that sleep is "more comforting" than being awake and in pain. She is treating with a psychiatrist and is prescribed Cymbalta for severe depression. Recently, her psychiatrist has transferred her to a crisis management unit for special attention. She also sees a therapist regularly and has suicidal thoughts.

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 Medicare standards. The fourth step of the MA eligibility test has been completed, and it must now be determined whether other work is available in significant numbers in the national economy, and whether Claimant can perform it (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 (MA or Medicaid) program, by virtue of being disabled from prior relevant work, and because no other work is available in significant numbers in the national economy.

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 September 2009.


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 March 12, 2012, application, to determine if all nonmedical eligibility criteria for 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 retroactive and ongoing MA and SDA benefits to Claimant, including any supplements for lost benefits to which Claimant is entitled in accordance with policy. Claimant's onset date is September 2009.
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 September 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: August 20, 2012

Date Mailed: August 20, 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:

