

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-60138
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 13, 2012
County: Oakland (04)

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 September 13, 2012, at [REDACTED], Michigan. Participants on behalf of Claimant were the Claimant, [REDACTED], [REDACTED], Authorized Representative, and Belinda Marie Rochat. Participants on behalf of the Department of Human Services (Department) were [REDACTED] Eligibility Specialist.

ISSUE

Did the Department correctly determine that Claimant is not disabled for purposes of the Medical Assistance (MA or Medicaid) 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 January 26, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to October 1, 2011.
2. On March 16, 2012, the Department denied the application.
3. On June 4, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is fifty-one years old (DOB 6/1/1961), has an eleventh-grade education.

5. Claimant last worked in 2007 as a service clerk at [REDACTED]. Claimant also performed the same type of work at [REDACTED]. Claimant's relevant work history consists exclusively of unskilled, medium-to-heavy exertional work activities.
6. Claimant has a history of lumbar disc space narrowing at L2-L3, cervical stenosis and foraminal space narrowing at C3-C4 through C6-C7, chest pain, gastresophageal reflex disorder, and high blood pressure. His/her onset date is January, 2007, when store merchandise fell on his back at work.
7. Claimant was hospitalized October 6-7, 2011 for chest pain, and June 18-19, 2012 for shooting pain in his left arm. The discharge diagnoses were degenerative lumbar disc disease, shortness of breath, chest pain and lumbago (2011), and cervical radiculopathy, shoulder strain, history of tendinitis, chronic degenerative joint disease, and atypical chest pain.(2012).
8. Claimant currently suffers from lumbar disc space narrowing at L2-L3, cervical stenosis and foraminal space narrowing at C3-C4 through C6-C7, chest pain, gastresophageal reflex disorder, and high blood pressure.
9. Claimant has severe limitations of the basic living skills of sitting, standing, walking, lifting, carrying, pushing and pulling. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning her/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).

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):

Disorders of the Spine (e.g. herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine). 20 CFR 404, Sec 1.04.

The following is a five-step examination of Claimant's eligibility for Medicaid. The Michigan Department of Human Services is required by the U.S. 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, 404.1505; 416.920; 42 CFR 435.540.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant testified he has not worked since 2007. 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 404.1520(b), 416.920(b); Dept. Exh. 1, p. 14.

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 2007. Claimant testified that in January, 2007, he suffered an injury at work when store merchandise fell on his back. 20 CFR 404.1520(c), 404.1521.

Based on this information of record, it is found and determined that Claimant's impairments are of sufficient severity and duration to fulfill the second eligibility requirement. 20 CFR 404.1520(c), 404.1521, 416.920(c).

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 meets the definition in Listing 1.04, Disorders of the Spine, and its subpart, section I.04A. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments; see *also*, 20 CFR 404.1520(d).

The Listing presents six requirements the Claimant must fulfill in order to qualify for Medicaid based solely on medical impairment, without reference to the Claimant's ability to work. These six elements are:

1. Disorders of the Spine (e.g. herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture).
2. Resulting in compromise of a nerve root (including the cauda equina) or the spinal cord.
3. Neuro-anatomic distribution of pain.
4. Limitation of motion of the spine.
5. Motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss.
6. If there is involvement of the lower back, positive straight-leg raising test (sitting and supine). 20 CFR 404, Sec 1.04 and 1.04A.

The following discussion is an analysis of whether Claimant has demonstrated these six legal requirements. The first question is whether he has been diagnosed with a spinal disorder. In January, 2012, Claimant had a CT-Scan which showed multilevel degenerative changes at C-3/4 through C6-7, with associated moderate spinal canal stenosis and neural foraminal space narrowing. Also in January, 2012 Claimant had an X-ray showing minimal chronic degenerative change of the lower lumbar spine with disc space narrowing and anterosuperior endplate spurring at L2-L3. In June, [REDACTED], Claimant was seen in [REDACTED] and was diagnosed with cervical radiculopathy. The medical records show that Claimant's family doctor diagnosed him with degenerative disc disease on July 20, 2012. Clmt. Exh. 1, pp. 1, 5, 17, 19. Based on the medical records cited, it is found and concluded that Claimant has two spinal disorders, spinal stenosis and degenerative disc disease, in the cervical and lumbar spine. Accordingly, the first element of Listing 1.04 is met.

The second element that Claimant must prove is that his spinal disorder results in nerve root compromise (compression). Claimant's January, 2012, CT-Scan and X-ray show nerve root compression. *Id.*, pp. 17, 19. Accordingly, Claimant has presented sufficient evidence to prove that he has nerve root compression.

Third, Claimant must show evidence of neuroanatomic distribution of pain. Claimant testified he has pain in his lower back, bilateral lower extremities, left arm and hand, and bilateral shoulders. The areas of narrowing in his spine are C3-7 and L2-3. The C3-7 nerve roots control sensation in the shoulders, arms and hands. The L2-3 spinal area controls sensations in the thighs. Thus, it is found and determined that Claimant is suffering pain in the areas that are controlled by the nerves emanating from the identified narrowed spinal areas. His reported pain is consistent with his spinal disorder. He has therefore established the third element of Listing 1.04A.

Turning next to the fourth element of Listing 1.04A, this element requires that there be limited range of motion of the spine. Nicola observed this upon physical examination of

Claimant. Claimant reported to [REDACTED] Emergency Department, [REDACTED], that he experienced pain in rotating his left shoulder. Claimant reported to [REDACTED], D.O., Emergency Department, [REDACTED], that he experienced back pain, and pain and muscle spasms in his left hip and thigh, and that he sometimes experiences a shooting pain down his left leg. *Id.*, pp. 1, 5, 29-31.

The fifth requirement is motor loss accompanied by sensory or reflex loss. Claimant's family doctor, [REDACTED] Internal Medicine, observed decreased range of motion and tenderness at the low back (lumbar) area. She also indicated that Claimant reported numbness in both lower extremities, and back pain. *Id.*, pp. 1-3.

[REDACTED] prescribed physical therapy, a cane, [REDACTED] and [REDACTED] for Claimant. She gave him restrictions of no lifting over 10 lbs, no standing and walking over two hours in an 8-hour work day, and no sitting more than six hours in an 8-hour work day. *Id.*

Comparing Claimant's testimony with his medical status, it is found and determined that his testimony is consistent with the medical reports about him. He testified to numbness and the loss of control of both legs. He testified he can walk only to the end of his driveway without a walker (he currently uses a walker, not a cane). He can stand for only fifteen minutes. He cannot raise his arms over his head. He cannot lift more than a gallon of milk. He testified [REDACTED] also restricted his lifting, bending, twisting and turning. He cannot climb up and down stairs.

Based on Claimant's testimony and the medical evaluations of his condition considered as a whole, it is found and determined that Claimant has presented sufficient evidence to establish that he is suffering motor loss (muscle weakness) accompanied by sensory loss. The fifth requirement is established.

Moving to the sixth and last element of Listing 1.04A, this requirement is that Claimant must have a positive straight-leg-raising test in two positions, sitting and supine. Unfortunately, Claimant was not subjected to these tests. However, even though Claimant was not subjected to the tests, it is found and determined that the Xray, CT-Scan and other tests he received are equivalent to the straight-leg-raising tests, in that these other tests define Claimant's impairment with specificity and clarity, and are diagnostically equivalent for purposes of, for example, treatment with [REDACTED].

It is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 1.04A, Disorders of the spine with nerve root compression. Therefore it is found and determined that Claimant has established his eligibility for Medicaid based solely on his physical impairment. Listing of Impairment 1.04A.

As Claimant is found by the undersigned to be eligible for MA based solely on his physical impairment, it is not necessary to proceed further to Steps 4 and 5 of the five-step Medicare eligibility sequence. 20 CFR 416.920(a)(4)(iii), (d).

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

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(s) as of the onset date of January, 2007.

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 26, 2012, 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 December, 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: November 2, 2012

Date Mailed: November 2, 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/tm

cc:

