

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-60660
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: October 3, 2012
County: Wayne (82-18)

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 October 3, 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 (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 March 26, 2012, Claimant filed an application for MA and SDA benefits. The application requested MA retroactive to December 1, 2012.
2. On June 12, 2012, the Department sent a Notice to Claimant, denying the application.
3. On June 19, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age fifty-two [REDACTED] has a high school diploma and two years of college.

5. Claimant last worked in 2010 as a painter. Claimant has not performed other relevant work. Claimant's relevant work history consists exclusively of semi-skilled, medium exertional work activities.
6. Claimant has a history of stomach and chest pain. His onset date is February 2011.
7. Claimant was never hospitalized as a result of stomach and chest pain.
8. Claimant currently suffers from severe stomach and chest pain, numbness in both upper and lower extremities and dizziness.
9. Claimant has severe limitations of his ability to stand, walk, lift, carry, climb, eat and, at times, talk. 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 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 Code of Federal Regulations (CFR). 20 CFR 416.905, 416.920. The State of Michigan is required to use the five-step federal Supplemental Security Income (SSI) eligibility test in evaluating applicants for Michigan's Medicaid disability program. 42 CFR 435.540.

First, the Claimant must not be engaged in substantial gainful activity. Substantial work activity is work activity involving significant physical or mental activities. Gainful work activity is work activity done for pay or profit. Generally, activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs are not considered substantial gainful activity. 20 CFR 416.972.

In this case, Claimant testified he has not worked since November 2010, almost two years ago. Accordingly, it is found and determined that Claimant has demonstrated that he is not engaged in substantial gainful activity, and the first requirement of eligibility is fulfilled. *Id.*

Second, in order to be eligible for MA, Claimant's impairment must be sufficiently severe and at least one year in duration, or the impairment must be expected to result in death, in order to meet the duration requirement. 20 CFR 404.1509; 416.909.

With regard to the duration requirement, Claimant testified that the onset date of his impairment was February 2011, twenty months ago. Based on this information of record, it is found and determined that Claimant's impairment is of sufficient severity and duration to fulfill duration, the second eligibility requirement. *Id.*

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 any impairment in the federal Listing of Impairments. Claimant has not had sufficient physical examination, diagnostic testing and medical history to demonstrate that his impairment meets a definition in the Listings. 20 CFR 416.908.

As Claimant is not found eligible for MA based solely on a physical or mental impairment, it is necessary to proceed to the last two eligibility steps of the five-step SSI eligibility sequence. 20 CFR 404.1560.

Before considering Steps 4 and 5, the trier of fact must define, or assess, the Claimant's residual functional capacity, i.e., the Claimant's basic skills, strength and working skills at the present time. 20 CFR 404.1545, 404.1546.

The three terms, basic skills, strength and working skills, are defined as follows: basic skills are the abilities and aptitudes necessary to do most jobs, including walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, handling, seeing, hearing, speaking, understanding, carrying out and remembering simple instructions, using judgment, responding appropriately to supervision, co-workers and usual work situations, and dealing with changes in a routine work setting. The types of strength or physical exertion, which are taken from the U.S. Department of Labor *Dictionary of Occupational Titles*, are sedentary, light, medium, heavy and very heavy work. Work skills are divided into four categories: unskilled, semi-skilled, skilled, and skills that can be used in other jobs. 20 CFR 416.921, 416.967, and 416.968.

Assessing first the Claimant's basic skills, it is necessary to consider the medical evidence and other testimony of record. 20 CFR 416.920(e)-(f).

Claimant testified he has had stomach and chest pain, including extreme epigastric pain, since 2011. Claimant testified he has a "mass" inside him which is causing the pain. Claimant stated he has extreme pain and numbness in his upper and lower extremities. The pain is constant, and he can walk only about thirty steps, he can stand less than five minutes, and he needs help getting up from a sitting position. He can lift only a one-half gallon of milk and the newspapers. He is afraid to drive because of dizziness and pain, and is concerned that he will not be able to react quickly to driving events. His fiancée drove him to the hearing.

With regard to sleep, Claimant testified he wakes up every couple hours because of pain. He can make himself a cup of coffee but cannot do much cooking. He cannot vacuum, and his ability to bend is very different from what it used to be. He experiences weakness, and lost nine pounds in three weeks.

Claimant testified that sometimes it hurts to talk. He can get dressed by himself, but finds shaving very difficult. He stated that climbing stairs is very difficult for him. He needs help taking a shower.

██████████ Claimant's family physician, prescribes pain medication and gas relief medication for him. A CT Scan conducted on ██████████, indicated a filling defect in one vein (superior mesenteric vein) and mild mucosal thickening of the gastroesophageal junction. ██████████ physical examination of Claimant showed that Claimant's abdomen was hard, and that his epigastric area was tender to palpation. ██████████ recommends an esophagogastroduodenoscopy (EGD) exam to diagnose the problem further.

Also, at the hearing, Claimant presented the testimony of ██████████. Monteleone has known Claimant for twelve years. She testified he used to be an active person but he has gotten worse and worse. She stated that he has a hard time eating and talking, and sometimes gets stuck while he is saying something.

██████████ testified that Claimant does not stand up straight and is always curved over. His hands and feet get numb, and he limps on one side. She stated his medications do not help him.

Further testimony was provided by ██████████ from the Department. ██████████ met with Claimant on May 12, 2012, and also represented the Department at the hearing. She testified she observes that Claimant is hunched over at the hearing today, and he is in more pain today than he was in May. She stated his head was closer to the table, he held his head, and he was forcing words out of his mouth. She stated he was squinting and clutching his face as well.

Based on the medical and other testimony of record in this case, it is found and determined that Claimant cannot perform basic skills of work, i.e., standing, walking, sitting, lifting, carrying, pushing and pulling, because he is experiencing pain, weakness, numbness and dizziness. Also, it is found and determined that Claimant's ability to concentrate is impaired by the pain, lack of sleep, and diminished energy.

With regard to the amount of Claimant's strength at the present time, based on the medical and other evidence of record in this case, it is found and determined that Claimant cannot perform even sedentary work. He cannot lift more than a half-gallon of milk. Third, with regard to work skills, based on all of the medical and other evidence of record, it is found and determined that Claimant's work skills at this time fall in the unskilled category. Claimant has upper and lower extremity numbness as well as the pain and dizziness described above, and this impairs his ability to do anything but unskilled work.

Combining the three parts of the residual functional capacity assessment together, it is found and determined that Claimant lacks basic skills, his strength level is less than sedentary, and his work skill level is unskilled. Having made the necessary residual functional capacity assessment, it is now appropriate to turn to Steps 4 and 5 of the eligibility test. 20 CFR 404.1560.

It shall now 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). Step 4 requires the trier of fact to determine, or assess, what Claimant's prior relevant work consisted of, and to compare this to Claimant's residual functional capacity at the present time. *Id.*

With regard to prior relevant work, Claimant worked as a house painter from the 1980s to November 2010. He performed no other prior relevant work. Claimant testified that his duties as a painter were to roll a paint roller up and down walls, climb ladders, carry paint cans and rollers, sandpaper surfaces for painting, and affix masking tape to the areas to be painted.

Medium strength work demands frequently lifting and carrying 25 lbs., standing and walking six hours of an eight-hour day, and frequent bending and stooping. Semi-skilled work is work which needs some skills but does not require doing more complex work duties. Claimant's testimony establishes that the labor of painting involves these capacities. 20 CFR 416.967, 416.968.

Based on Claimant's testimony presented above, it is found and determined that Claimant's prior relevant work as a painter requires all of the basic skills, and consists of medium-strength, semi-skilled duties, as defined in CFR. 20 CFR 404.1521, 404.1545, 404.1569a, 416.921, 416.945 and 416.969a.

Step 4 now requires a factual determination as to whether Claimant's current residual functional capacity permits him to perform his prior relevant work as a painter. At the hearing, Claimant gave credible and un rebutted testimony that he could not return to painting work because of his physical impairments. Claimant testified that he could not roll a paint roller up and down walls, climb up and down a ladder, carry paint and equipment, sand surfaces to be painted, and apply masking tape to wall areas. He stated he could not raise his arms if he had to carry more than 10 lbs.

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 Medicaid standards. It is found and determined that Claimant's residual functional capacity assessment impacts his ability so severely as to limit him to less than sedentary unskilled work; but, his work as a painter requires basic skills, medium strength and semi-skilled abilities. Claimant has none of these at this time due to his impairment.

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. 20 CFR 416.920(g).

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 other work that is available in significant numbers in the national economy. *Id.*

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.

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

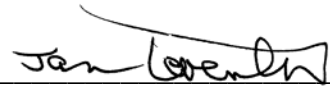
the definition of medically disabled under the Medical Assistance and State Disability Assistance programs as of the onset date of February 2011.

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 March 26, 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 MA and SDA benefits to Claimant, including any supplements for retroactive 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 15, 2012

Date Mailed: October 16, 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:

