

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-64347
Issue No(s): 2009
Case No.: [REDACTED]
Hearing Date: October 8, 2012
County: Oakland (63-03)

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 October 8, 2012, at Walled Lake, Michigan. Participants on behalf of Claimant included Claimant, his Authorized Representative, [REDACTED], his brother and legal guardian [REDACTED], and his sister and caregiver, [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 February 15, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to November 1, 2011.
2. On April 6, 2012, the Department sent a Notice to Claimant, denying the application.
3. On May 30, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is forty-seven years old [REDACTED] has a twelfth-grade education.

5. Claimant last worked on February 3, 2012, as a warehouse stock clerk. Claimant has no other relevant work experience. Claimant's relevant work history consists exclusively of unskilled, heavy-strength work activities.
6. Claimant has a history of cardiac arrest. His/her onset date is [REDACTED].
7. Claimant was hospitalized [REDACTED], as a result of cardiac arrest. The discharge diagnosis was post-cardiac arrest.
8. Claimant currently suffers from fatigue, depression, and anxiety post-cardiac arrest.
9. Claimant has severe limitations of his basic skills of standing, walking, sitting, 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 his physical 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 a five-step examination of Claimant's eligibility for Medicaid. The State of Michigan Department of Human Services is required by the 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 has not worked since [REDACTED]. Claimant's cardiologist, [REDACTED] advised him in [REDACTED] that he is "no longer able to work." 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. 13; 20 CFR 404.1520(b), 416.920(b).

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]. Claimant received Short-Term Disability benefits from his employer, and is currently receiving Long-Term Disability. As stated in the paragraph above, Claimant's cardiologist told him he cannot go back to work as a stock clerk. 20 CFR 404.1520(c), 404.1521, 416.920(c).

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. The evidence supports a conclusion that Claimant's impairment is expected to last for one year or more. *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 a specific listed impairment in the federal Listing of Impairments. 20 CFR 404.1511, 416.926.

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, which are Steps 4 and 5.

Step 4 requires an evaluation as to whether Claimant can perform prior relevant work. If he cannot, the factfinder must make a Step 5 evaluation. A Step 5 evaluation requires an evaluation as to whether Claimant can perform other work that is available in significant numbers in the national economy. 20 CFR 404.1520(e), (f), (g), 416.920(e), (f), (g).

With regard to prior relevant work, Claimant has not worked since February 4, 2012. He received Short Term Disability benefits from his employer, and is currently receiving Long Term Disability benefits. Considering first whether he has the basic skills needed to work, such as sitting, standing, walking, lifting, carrying, pushing and pulling, Claimant's cardiologist, [REDACTED] disabled him from performing his previous work. Claimant is under [REDACTED] care, and [REDACTED] restricted him from working on [REDACTED]. Department Exhibit 1, p. 6; *Id.*

Claimant's testimony at the hearing was consistent with the work restriction from [REDACTED]. Claimant testified that he cannot stand for more than one hour. He can walk only one block. He can lift 20-30 lbs. He also testified that he is exhausted all of the time, his "bones hurt," bending too fast causes lightheadedness, and he is depressed and suffers anxiety. Claimant testified that he sleeps only one-half to one hour at a time and takes naps during the day. Based on all of this evidence of record, and considering the record also in its entirety, it is found and determined that Claimant lacks the basic skills needed in order to sustain work on a routine basis.

Looking next specifically at the work skills required in Claimant's work as a stock clerk, Claimant testified that he loaded and unloaded freight, wound wire on large spools, and checked in and packaged freight. He stated that the job required walking 6-7 hours a day, sitting one-half hour to forty-five minutes a day, and standing one-half hour to forty-five minutes a day. He frequently lifted and carried 70 lbs., and occasionally with a coworker, pulled large spools weighing 130 lbs.

Next, juxtaposing the skills required to perform Claimant's job, and his current abilities, it is found and determined that Claimant cannot now perform the job of a stock clerk. Claimant cannot now lift or pull 70 lbs., and he cannot walk 6-7 hours a day. In addition, he cannot bend quickly without experiencing lightheadedness, and he cannot get a full night's sleep, without which he cannot perform this job.

Accordingly, based on all of the above information of record, and all of the evidence considered as a whole, it is found and determined that Claimant is incapable of returning to prior relevant work. 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). *Id.*; 20 CFR 404.1520(f), 416.920(f).

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 416.966.

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

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 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 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 February 15, 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 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 18, 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:

