

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-66011
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 3, 2012
County: Wayne (82-19)

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) 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 May 1, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to February 1, 2012.
2. On July 5, 2012, the Department sent a Notice to Claimant, denying the application.
3. On July 16, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age fifty-eight [REDACTED] has a twelfth-grade education and two years of college.

5. Claimant last worked in April 2012 as an office clerk. Claimant also performed relevant work as a face-to-face advertising sales representative, assistant store manager, store manager, and a telephone customer service representative. Claimant's relevant work history consists exclusively of unskilled light-exertional work activities.
6. Claimant has a history of pituitary macroadenoma. Her onset date is [REDACTED], when she experienced trouble seeing, even though she had just gotten new glasses.
7. Claimant was hospitalized [REDACTED] as a result of a CT scan and other testing procedures. The discharge diagnosis was pituitary macroadenoma, and she was instructed to follow up with her neurologist, [REDACTED].
8. Claimant currently suffers from pituitary macroadenoma resulting in loss of peripheral vision, deteriorating vision, weakness, and lack of ability to concentrate and remember.
9. Claimant has severe limitations of her ability to see, maintain adequate energy levels, concentrate and remember. 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 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 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 gainful activity is work activity that is both substantial and gainful. In 2011, substantial gainful activity was defined as monthly earnings more than \$1,000 for non-blind individuals. In 2012, the monthly amount increased to \$1,010. 20 CFR Sec. 416.972, 416.974.

At the hearing, Claimant testified she had gross income of \$5,000 in 2011, and that for January-April, 2012, her gross income was \$1,800. Claimant has not worked since April 2012. Based on the evidence of record, it is found and determined that Claimant's monthly gross income is less than \$1,000 a month in 2011 and less than \$1,010 in 2012. Claimant, therefore, is not engaged in substantial gainful activity. Step 1 of the five-step eligibility test is satisfied. *Id.*

Step 2 requires that in order to be eligible for MA, Claimant's impairment must be sufficiently serious to be at least one year in duration. In this case, Claimant's onset date is [REDACTED], when she began experiencing vision difficulties. Claimant

testified that since then, she has lost all peripheral vision, and her vision continues to deteriorate. She saw an ophthalmologist once but cannot afford to continue treatment. She also has experienced weakness, and before she received treatment, she was experiencing frequent headaches. In [REDACTED], Claimant left her part-time seasonal office job at [REDACTED] because she was unable to report to work more than one day a week. Claimant testified she is unable to return to work, and [REDACTED], advised her to rest for at least one year before doing anything.

Based on the evidence 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. It is found and determined Claimant is undergoing testing procedures at this time and does not have a definitive diagnosis, so it is not possible to determine that she meets any specific Listing. 20 CFR III, Appendix 1 to Subpart P of Part 404 – Listing of Impairments.

As Claimant is not found eligible for MA based solely on a physical or mental impairment, it is necessary to proceed to Steps 4 and 5 of the five-step SSI eligibility test sequence. 20 CFR 404.1520(f).

It will now be considered whether Claimant can perform prior relevant work (Step 4). If Claimant can perform prior relevant work, Medicaid benefits must be denied. If she cannot perform prior relevant work, Step 5 must be considered, i.e., whether Claimant can perform other work that is available in significant numbers in the national economy.

Claimant's previous work experience consists of general office work, face-to-face ad sales, store management, and customer service. Claimant testified that as a customer service representative in 1997-98, she answered phones, took orders, and received and followed up on customer complaints. As an assistant store manager and store manager in 1999-2002, she ordered products, stocked shelves, scheduled staff, arranged store displays, and made bank deposits, and also as a manager she supervised twelve staff. As an advertising sales representative from 2002-2006, she made personal calls to prospective customers in the field and followed up on advertising orders. She has not worked full time since 2006.

Claimant testified that from 2006-2012, she held a part-time, seasonal office job during [REDACTED]. She also held temporary, full-time office jobs in the summertime. Claimant testified she has not been employed since April 2012, when she worked at [REDACTED]. Claimant testified she worked ten hours a week in October 2011, and increased to 30-45 hours a week in January 2012. Claimant testified that because of weakness, headaches and poor vision, she was unable to work more than one day a

week on a regular basis. Because of these difficulties, she stopped working at [REDACTED], even though the job did not end until [REDACTED].

Claimant testified that in [REDACTED] she had surgery to remove a pituitary macroadenoma, and she may need a second surgery to remove a cyst (syrinx tumor) at the base of her brain stem. [REDACTED], advised Claimant she will have a slow recovery from the first surgery, and may experience seizures. He advised rest for a year after her surgery.

Claimant testified that next week she has two MRI exams and an appointment with [REDACTED]. Depending on the MRI results, she may have a second surgery, laser treatment, radiation treatment, and medication. Currently, she is not experiencing headaches, but she is having neck pain.

Claimant testified that in addition to the neurosurgeon, she treats with an endocrinologist because of hormonal problems related to the functioning of her pituitary gland. She also has a primary care physician, [REDACTED] who treats her for high blood pressure, diabetes, and anxiety attacks. She takes medications for all three, including Xanax for her anxiety attacks. In addition to Xanax, her neurosurgeon, [REDACTED] prescribes Tylenol 3 with codeine for her.

Claimant testified she cannot perform the work she did at any of her previous jobs because her vision is deteriorating and she has no peripheral vision. She cannot read, she cannot stay awake, and she has no strength. She testified she thought she could work a maximum of three hours a day on a regular basis. She can only drive a short distance. She forgets names, people and places.

Claimant testified she cannot work on her computer because she does not have the energy. She estimated her ability to stand is 5-10 minutes at a time; at that point she becomes weak and wobbly, and her legs buckle. She testified she can only walk the length of one house lot without getting dizzy. She generally confines her walking activity to the inside of her house.

Claimant testified that with regard to sitting, she can sit for only one hour at a time, because she has anxiety attacks and begins to bounce from hip to hip. She sleeps only three hours a night, wakes up at 3:00 a.m. with anxiety attacks, and returns to sleep from 6:00-7:30 a.m. She falls asleep at the kitchen table and in the car. [REDACTED] Claimant's mother, testified she observed Claimant fall asleep in the middle of cooking dinner.

Claimant testified she could not sit, stand, walk, and drive as required in any of her previous jobs. She testified she also has problems with concentration and remembering things, and stated she could not even remember training and instructions.

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 defined by the Medicaid test Step 4. Claimant has demonstrated that her vision, concentration, memory, alertness and wakefulness, driving, sitting, standing and walking skills are sufficiently impaired so as to prevent her from performing the skills required for all of her previous jobs.

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 the Claimant to produce evidence to disprove the point. Therefore, it is found and determined that there is no other work which Claimant can perform and which is available in significant numbers in the national economy.

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.

Based on the Findings of Fact and Conclusions of Law above and all of the evidence and testimony considered as a whole, 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 should she 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 May 1, 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 retroactive 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 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.

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:

