

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-68873
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: December 17, 2012
County: Wayne (35)

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 December 17, 2012, at Redford, Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of Claimant were her uncle [REDACTED], and her Authorized Representative, [REDACTED]. 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) and State Disability Assistance (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 September 28, 2009, Claimant filed an application for MA and SDA benefits. The application requested benefits retroactive to June 1, 2009.
2. On June 6, 2012, the Department denied the application.
3. On August 2, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is thirty-eight years old ([REDACTED]), has a seventh-grade education.

5. Claimant has not worked since at least 1998. Prior to 1998, she worked as a cashier. Claimant's work history consists exclusively of unskilled, light-exertional work activities prior to 1998.
6. Claimant has a history of seizure disorder. Her onset date is her date of birth, 1974. Her symptoms began in 1985, when she was eleven years old.
7. Claimant was hospitalized approximately twenty times in her life as a result of seizure disorder. Her most recent hospitalization in 2012 was for elbow contusion, pregnancy and seizure disorder. Prior to that, she was hospitalized for four days from September 25-29, 2009, for seizure disorder.
8. Claimant currently suffers from seizure disorder.
9. Claimant is severely limited in the basic living skills of standing, walking, lifting and carrying. 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 that Claimant **IS DISABLED** for purposes of the MA program, for the following reason:

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:

11.02 Epilepsy – convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena;

occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment. With:

A. Daytime episodes (loss of consciousness and convulsive seizures) or

B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments, Listing of Impairment 11.02.

The following discussion is a five-step examination of Claimant's eligibility for Medicaid. The State of 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 has not worked since before 1998. 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).

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 at her birth, which is 1974. Claimant testified that her first symptoms were in 1985 at the age of eleven. She has been hospitalized at least twenty times, most recently for three days, from February 22-25, 2012, at which time her history of seizure disorder was noted.

In 2009, Claimant was hospitalized for four days (September 25-29, 2009), for seizure disorder. On July 23, 2010, Claimant went to the Emergency Room because of left arm pain. Her seizure disorder, and pregnancy, were noted in the medical records. Dept. Exh. 1, pp. 23-71; Clmt. Exh. 2, pp. 1-23.

On May 8, 2011, and September 3, 2011 Claimant was seen in the Emergency Department for alcohol intoxication and seizure. On March 5, 2012 and September 27, 2012, she went to the Emergency Department with seizures. She takes Dilantin and Phenobarbital for seizure disorder. At the hearing, Claimant's testimony and the testimony of her uncle, Douglas Fletcher, were consistent with the information in Claimant's medical records. 20 CFR 404.1520(c), 404.1521; Clmt. Exh. 2, pp. 24-182; Clmt. Exh. 3.

Based on this information of record, and all of the evidence in this case taken as a whole, it is found and determined that Claimant's impairment is 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 the same as, or equivalent to, 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, or is the equivalent of, Listing 11.02, Convulsive Epilepsy, and its subpart, section 11.02A. 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 first fact that Claimant must establish is that she has a diagnosis of epilepsy, i.e., seizure disorder. Claimant testified at the hearing that she was diagnosed at age eleven and has been on seizure medication beginning at the age of eleven. The medication is for the purpose of controlling her seizures. She received treatment for the disorder while she was a child.

Claimant testified that she was hospitalized, including Emergency Department visits, ten times before 2009, and another ten times since then. Her frequent hospital visits are caused by the lack of sufficient medication in her system, leaving her vulnerable to seizures.

Claimant described her seizures as follows. She is sitting somewhere, and then makes sounds, jumps up and falls on the ground choking. If her uncle is present, he squeezes her mouth, puts her on her side, and takes her in to bed. When she wakes up, she does not know where she is. She suffers cuts on her face as a result of the falls.

Claimant testified the seizures are 3-4 times per week, and that sometimes she doesn't even know she has had a seizure. When she has one, she can hardly move or walk.

Claimant admitted that for three or four years (about 2006-2009), she was abusing alcohol and drugs. However, she testified that when she was hospitalized in 2009, she stopped using substances and has been in remission since then.

Claimant testified that she had fifty seizures in 2010 and again in 2011. Claimant's uncle, Douglas Fletcher, confirmed the number of seizures. He stated that even if she takes medication, she has seizures.

Fletcher also testified that he has lived with Claimant since 2010, and has had many occasions to help her out when a seizure occurs. He stated that when she is coming out of a seizure, he talks her out of it, and makes sure that she stays still for one-half hour afterwards. He stated that the frequency of the seizures is variable: sometimes twice a day, then none for a week, and then 3-4 in a week's time.

Having considered all of the evidence as a whole, it is found and determined that Claimant has established that her diagnosis is epilepsy or the equivalent. Next, it must be considered whether her seizures are of a typical seizure pattern and whether this is documented in the medical records. Listing of Impairment 11.02.

In order for a seizure to be considered typical, it must meet the definition supplied in Listing of Impairment 11.00A: there must be the presence or absence of aura, tongue bites, sphincter control, injuries associated with the attack, or postictal phenomena. Listing of Impairment 11.00A. In this case Claimant testified to facial injuries from falls. She also testified to postictal (after-seizure) phenomena such as not knowing that she had a seizure, and not being able to move and walk.

Claimant's testimony is consistent with the medical records in this case. All of Claimant's medical records document her history of seizure disorder since childhood, her treatment for seizure disorder, and on those occasions when she sought medical attention for issues other than seizures, her seizure history is always noted. Dept. Exh. 1, pp. 23-71; Clmt. Exhs. 2 and 3.

While the medical records from Oakwood, Botsford and Henry Ford do not provide a detailed description of Claimant's seizures, it is found and determined that the Claimant's testimony, and her uncle's testimony, about the seizure events, are credible and un rebutted and do establish that Claimant has a typical seizure pattern or the equivalent. Listing of Impairment 11.00A.

It is therefore found as fact in this case that Claimant has provided a detailed description of a typical seizure pattern, including all associated phenomena, or the equivalent. Going on now to the third requirement of Listing 11.02, the Claimant next must prove that her seizures occur more frequently than once a month in spite of at least 3 months of prescribed treatment. Listing of Impairment 11.02.

Claimant's medical records in this case consist solely of treatment at hospitals. Claimant presented no records from a private physician and testified she cannot afford private treatment. However, Claimant sought hospital treatment seven times in three years (September, 2009-October, 2012), and she and her uncle testified to the frequency of her seizures as more than once a month.

In addition, Claimant's history of seizures is from childhood and she received treatment throughout her lifetime. Considering all of this evidence as a whole, it is found and determined that the evidence establishes that Claimant's seizure disorder meets or is the equivalent of seizures more than once a month, with at least three months of prescribed treatment. Listing 11.02.

The fourth and last requirement to consider in proving a physical impairment concerns Subpart A of Listing 11.02, whether there is loss of consciousness and convulsive seizures. Listing of Impairment 11.02A. It is found and determined that Claimant's testimony and her uncle's testimony both establish that Claimant loses consciousness, and her seizures involve jumping, choking, falling, and facial injuries from the falls. Both Claimant and her uncle testified that these incidents occur in the daytime. Based on this testimony and all of the evidence in this case considered as a whole, it is found and determined that Claimant has established the fourth requirement in the Listing, i.e., that

she has loss of consciousness and convulsive seizures during the daytime, or their equivalent.

In conclusion, it is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 11.02, Convulsive Epilepsy, and its subpart, 11.02A,. Claimant therefore has established her eligibility for Medicaid based solely on her physical impairment. Listing of Impairment 11.02.

Before a final decision can be made in this case however, there is one further question to be answered. The question of alcohol and substance abuse does appear in this case. The May 8, 2011 Emergency Department visit concerned alcohol and seizure disorder. Clmt. Exh. 2, pp. 24-41. Also, Claimant testified that she used alcohol and controlled substances in the past, but that she was in remission since her hospitalization in 2009.

In this case therefore there must be a determination as to whether the drug and alcohol abuse (DAA) is material to the impairment alleged by the Claimant. The definition of "material" is in the federal regulations. It states that if the person stopped using drugs or alcohol, and they were no longer disabled, then the substance abuse is material to the impairment. 20 CFR 404.1535; 416.935.

In the case under consideration herein, it is clear that the Claimant's impairment, her seizure disorder, continued after she stopped using these substances. Accordingly, it is found and determined that Claimant's use of alcohol and drugs is not material to her impairment and does not make her ineligible for MA benefits.

As Claimant is found by the undersigned to be eligible for MA based solely on a physical impairment, it is not necessary to proceed further to the last two eligibility requirements of the five-step Medicare eligibility sequence. *Id.*

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.

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 program(s) as of the onset date of 1985.

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 September 28, 2009, 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 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 June, 2014.
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: May 15, 2013

Date Mailed: May 16, 2013

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:

