

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-71248
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 3, 2012
County: Wayne (82)

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 3, 2012, at Detroit, Michigan. Participants on behalf of Claimant were the Claimant and his Authorized Representative, [REDACTED], [REDACTED]. Participants on behalf of the Department of Human Services (Department) were [REDACTED], Family Independence Manager.

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 17, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to February 1, 2012.
2. On May 30, 2012 or thereafter, the Department denied the application.
3. On August 14, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is fifty-seven years old ([REDACTED]), has a high-school education and some college.

5. Claimant last worked in May, 2012 as a driver. Claimant also performed relevant work as an airline custodian and warehouse worker. Claimant's relevant work history consists exclusively of unskilled medium and heavy-exertional work activities.
6. Claimant has a history of acute stroke (cerebrovascular accident), hypertension and congestive heart failure. His onset date is May 11, 2012.
7. Claimant was hospitalized May 13, 2012 as a result of acute stroke. The discharge diagnosis was stable.
8. Claimant currently suffers from acute stroke (cerebrovascular accident), hypertension and congestive heart failure.
9. Claimant has severely limited 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 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:

11.04 Central nervous system vascular accident. With one of the following more than 3 months post-vascular accident:

B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C). 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 11.04.

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 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 May, 2012, when he experienced a stroke or cerebrovascular accident. Claimant's treating physician, [REDACTED], Internal Medicine, stated Claimant is permanently disabled from work. 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. 3B; Clmt. Exh. 2, "Medical Needs," DHS Form 54A.

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 May 11, 2012. On that date Claimant had a stroke on his right side, and was hospitalized and treated. [REDACTED] states that Claimant has a chronic ongoing illness for which lifetime medical treatment is necessary. 20 CFR 404.1520(c), 404.1521; Clmt. Exh. 2.

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 or is the equivalent of the definition in Listing 11.04, Central nervous system vascular accident, and its subsection 11.04B. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 11.04; see *also*, 20 CFR 404.1520(d).

The following is an analysis as to how Claimant's impairment meets or is the equivalent of the federal standard for this type of disability. Listing of Impairment 11.04 first requires that there be a stroke or cerebral vascular accident. Claimant's medical records indicate that on Friday, May 11, 2012, Claimant experienced tingling and numbness in the lower right side of his face and his right arm, and weakness in his right arm causing him to be unable to use the steering wheel of his car. The symptoms continued for two days. Dept. Exh. 1, p. 4.

On Sunday, May 13, 2012, Claimant went to the Emergency Department for examination. He was admitted and diagnosed with a stroke. He was in the hospital approximately six days, and was released in stable condition. *Id.*, pp. 4-56. Claimant's testimony at the hearing was credible and was consistent with the medical records.

Based on all of the evidence taken in this case as a whole, it is found and determined that Claimant suffered a stroke in 2012. This finding meets or is the equivalent of the first of the two parts of the disability requirement in Listing of Impairment 11.04.

The second part of Listing 11.04 is set forth in subsection B of Listing 11.04. Subsection B requires that Claimant must demonstrate that after three months he has a significant, persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station. [REDACTED]

[REDACTED] states in his October 24, 2012 report, that Claimant cannot engage in work due to the extent of the care he requires. He states that Claimant cannot work at his usual occupation or any job because of his stroke. He states Claimant has a medical need for assistance with housekeeping, laundry and cooking, and that a spouse or parent is needed in the home to provide care. He states Claimant is nonambulatory and must be accompanied to medical appointments. He states Claimant should be seen twice a month. Clmt. Exh. 2.

In addition, [REDACTED] states in his Medical Examination Report that Claimant has extreme dysplasia (impaired blood flow or stenosis). He states Claimant can lift no more than ten lbs. and cannot stand and walk more than two hours in an eight-hour workday. He states Claimant's limitations are not temporary and are expected to last more than ninety days. Clmt. Exh. 1, "Medical Examination Report," DHS Form 49.

Claimant's testimony is in general consistent with [REDACTED] restrictions. Claimant testified he can walk three city blocks before feeling discomfort, he can stand for 15-20 minutes at a time, and he can lift only 15-20 lbs.

Having taken into consideration these medical records and all of the evidence in this case as a whole, it is found and determined that Claimant does have a significant and persistent disorganization of motor function in his lower extremities in that his doctor has restricted him from standing and walking for more than two hours at a time, and from lifting more than ten lbs. Accordingly, it is found that the subsection B requirement of persistent disorganization of motor function, or its equivalent, has been met. *Id.*

Claimant has at this point met, or demonstrated the equivalent of, the federal requirements for establishing that he has a recognizable disability. It is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 11.04, Central nervous system vascular accident. Claimant has therefore established eligibility for Medicaid based on his physical impairment. Listing of Impairment 11.04.

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, 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 May 11, 2012.

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 17, 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 March, 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: February 5, 2013

Date Mailed: February 6, 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:

