

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-71447
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 26, 2012
County: Oakland (04)

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 November 26, 2012, at Pontiac, Michigan. Participants on behalf of Claimant were the Claimant, her Authorized Representative, [REDACTED], Independent Medical Networks, and [REDACTED], Case Manager, Training and Treatment Innovations. Participating on behalf of the Department of Human Services (Department) was [REDACTED] Eligibility Specialist.

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 11, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to February 1, 2012.
2. On June 8, 2012, the Department denied the application.
3. On August 13, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is forty-three years old ([REDACTED]), has a(n) Graduate Equivalency Diploma from high school. She is Learning Disabled and was enrolled in special education classes while she was in school.

5. Claimant last worked in 2011 as a circuit board assembler. Claimant also performed relevant work as a customer service representative in a store, a driver in a warehouse, and as a plastic injection molder. Claimant's relevant work history consists exclusively of unskilled, light-exertional work activities.
6. Claimant has a history of a spinal disorder resulting in spinal cord and nerve root compromise. Her onset date is 2001, at approximately the time she began working at [REDACTED]
7. Claimant was hospitalized March 29-31, 2012 as a result of syncope after a fall. The discharge diagnosis was improved condition with medication and follow-up treatment.
8. Claimant currently suffers from degenerative disc disease, radiculopathy, syncope, hypertension, hyperthyroidism and traumatic brain injury.
9. Claimant has severely limited of 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 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).

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:

Disorders of the Spine (e.g. herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

- A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine). 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 1.04, Disorders of the spine.

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 2011. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and Claimant is not engaged in substantial gainful activity. 20 CFR 404.1520(b), 416.920(b); Dept. Exh. 1, p. 48.

Second, in order to be eligible for MA, Claimant's impairment must be sufficiently serious and at least one year in duration. In this case, Claimant gave credible and un rebutted testimony that the onset date of her spinal disorder is 2001. This testimony is accepted. 20 CFR 404.1520(c), 404.1521.

Based on this information of record, 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 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 the definition in Listing 1.04, Disorders of the Spine, or its equivalent, and its subpart, section 1.04A, or its equivalent. 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).

It now becomes necessary to analyze whether Claimant meets the diagnostic requirements set forth in Listing 1.04 and subsection 1.04A. First, Claimant must present evidence of a spinal disorder. On November 9, 2011 and December 7, 2011, [REDACTED] D., Anesthesiology and Pain Medicine, diagnosed Claimant with L3-4 and L4-L5 disc bulges, a L4-5 annular tear, bilateral radiculopathy and paresthesia. This diagnosis is consistent with Claimant's MRI results of May 11, 2011. Dept. Exh. 1, pp. 14-15, 35-37, 97-102. However, the Claimant must not only have the disorder in order to meet the Listing 1.04 requirements. The Claimant must also demonstrate that the disorder results in compromise of a nerve root or of the spinal cord itself. The four required features of this compromise are found in the subsection of Listing 1.04, entitled subsection 1.04A.

Subsection 1.04A requires that four specific results of spinal cord or nerve root compromise must be present. The four results are: (1) neuro-anatomic distribution of pain, (2) limitation of motion of the spine, (3) motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, (4) if there is involvement of the lower back, positive straight-leg raising test (sitting and supine). Listing 1.04A. With regard to the first feature, neuro-anatomic distribution of pain, Claimant reported to ██████████ on two occasions that she had pain radiating down her left leg to her toes. She also reported left-side pain radiating down her leg to ██████████ ██████████. Orthopedic Spine Surgery, in June, 2011. *Id.*, pp. 36, 97, 100. It is found and determined that these medical reports document the existence of neuro-anatomic pain distribution.

Second, with regard to resulting limitation of motion of the spine, Claimant was examined for range of motion in her cervical and lumbar spine by Dr. Thakur, and was found to have pain on flexion and rotation at less than normal ranges. *Id.*, pp. 98, 101. Accordingly, it is found and determined that there is sufficient evidence to establish the presence of limited spinal motion.

The third requirement set forth in subsection 1.04A is that there must be motor loss with sensory or reflex loss. ██████████ examination of Claimant on two occasions indicated loss of motion in that she experienced pain when her extremities were flexed as much as only 30% in some instances. He also noted spasms and paresthesia, which constitute reflex and sensory loss. *Id.* Thus, it is found and determined that the evidence establishes the third requirement of Listing 1.04A. There remains only one last requirement to be fulfilled.

The fourth and last requirement of subsection 1.04A is that there must be a positive straight-leg raising test in sitting and supine positions. ██████████ and ██████████ both got positive straight-leg raising test results when they examined Claimant's left lower extremity, and ██████████ also got a positive result on the right. Dr. Thakur got these results on two separate examinations. While the records do not state whether the tests were given in the supine and sitting position, it is found and determined that the three examinations by two doctors over a six-month period are the equivalent of the combination of supine and sitting test procedures, as these results were used by two treating physicians to make working diagnoses of Claimant. *Id.*, pp. 36, 98, 101.

It is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 1.04A, Disorders of the spine. Claimant therefore has established her eligibility for Medicaid based on her impairment. Listing of Impairment 1.04 and its subsection 1.04A, or their equivalents.

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 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 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 2001.

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 11, 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 5, 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:

