

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-73185
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 11, 2012
County: Wayne (43)

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 December 11, 2012, from Detroit, Michigan. Participants on behalf of Claimant were the Claimant and her daughter, [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) 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 July 1, 2012, Claimant filed an application for Medicaid benefits. The application requested MA retroactive to April 1, 2012.
2. On August 13, 2012, the Department denied the application.
3. On August 20, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is forty-seven years old (DOB [REDACTED]), has a twelfth-grade education and a Graduate Equivalency Diploma (GED).

5. Claimant last worked in July, 2010 as a part-time home health care provider. Claimant also performed relevant work as a part-time group home health care provider. Claimant's relevant work history consists exclusively of unskilled, heavy-exertional work activities.
6. Claimant has a history of diabetes mellitus, pancreatitis, diabetic ketoacidosis, right knee arthritis, paresthesia in both legs and feet, acute kidney injury, major depression and chest pains. The onset date of Claimant's diabetes mellitus is July, 2010.
7. Claimant was hospitalized May 4-9, 2012 as a result of diabetes mellitus, diabetic ketoacidosis, alcohol intoxication and pancreatitis. She was discharged in stable condition.
8. Claimant currently suffers from diabetes mellitus, hypertension, arthritis in her right knee, and paresthesia in both feet and legs due to diabetic peripheral neuropathy.
9. Claimant is severely limited in the basic living skills of sitting, 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).

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 impairment meets a U.S. Social Security Act Listing of Impairment or its equivalent.

State the Listing of Impairment(s):

9.08 Diabetes mellitus. With:

A. Neuropathy demonstrated by 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).

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 testified she has not worked since 2010. 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 2010. In July, 2010 Claimant experienced pain in her legs and hands, and she could not stand up because her legs gave out on her. She was diagnosed with diabetes and she stopped working because she could no longer handle the physical requirements of the work. 20 CFR 404.1520(c), 404.1521.

Based on this testimony of record, and all of the evidence in this case taken as a whole, 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 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 9.08, Diabetes mellitus, and its subpart, section 9.08A. 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 following is an analysis of the facts of this case for the purpose of determining whether Claimant's condition meets the federal diabetes disability definition. If Claimant's condition meets the federal definition of diabetes, then she has established her disability based solely on a medical impairment. If her condition does not meet the federal definition, the factfinder must proceed forward through steps four and five of the SSI five-step evaluation procedure.

The first requirement of Listing 9.08 is that the Claimant must have a diagnosis of diabetes mellitus. This diagnosis is evidenced by Claimant's credible and un rebutted testimony that in July, 2010, she suffered leg and hand pain, and lost the use of her legs. She was diagnosed with diabetes at that time. Her impairments caused her to

stop working as a health care worker, because she could no longer fulfill the responsibilities of her job. She was prescribed a walker by Henry Ford Health Systems. She also bought a cane for home use.

In addition to the Claimant's testimony at the hearing, the medical records in this case are replete with references to Claimant's diabetes diagnosis. Claimant reported she has a glucometer, she takes insulin, and she checks her blood sugar three times a day. Dept. Exh. 1, pp. 18-19, 30-31, 37-38, 40, 43-44.

Having considered all of this evidence, and all of the evidence in this case as a whole, it is found and determined that the evidence does establish that Claimant has diabetes. This is the first fact that must be established in line with the requirements of Listing 9.08.

Next, it must be determined whether Claimant has neuropathy. The neuropathy must be present in two extremities, and it must result in sustained disturbance of either gross and dexterous movements of the upper extremities, or gait and station of the lower extremities. Gait and station is also defined in another federal listing as an interference with locomotion. Listing of Impairment 11.00C.

In this case the Claimant has pain in both legs and testified that she cannot walk more than a couple of feet without a walker. With the walker she testified she can walk one-half block. She testified she can stand for five minutes without the walker, and for fifteen minutes with the walker. She uses the cane to move about inside the house. Claimant testified that if she wishes to carry something, she has to use the walker, and can carry only five lbs. for a couple feet.

This testimony is found to be credible and unrebutted, and it is determined to be fact in this case.

In addition to Claimant's testimony about her current basic physical abilities, Claimant presented credible and unrebutted testimony that in 2010, after fifteen years as a health care worker, she was diagnosed with diabetes and was forced to stop working because her legs were undependable. This history also evidences that Claimant's locomotion, i.e., her gait and station, is grossly disturbed as described by Listing 9.08A. Accordingly, it is found and determined that Claimant has a gross disturbance of her gait and station, in that the degree of interference with her locomotion, as caused by diabetes, is significant and serious.

These two requirements, the diabetes diagnosis and the gross disturbance of gait and station, are the two federal requirements for a finding of eligibility based solely on the individual's medical condition. It is found and determined that both requirements are met in this case.

Having analyzed the requirements of Listing 9.08 and 9.08A in order to determine whether Claimant meets the federal definition of diabetes, it is found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of

Listing of Impairment 9.08 and subpart 9.08A, diabetes mellitus with gross disturbance of gait and station. Claimant therefore has established her eligibility for Medicaid based on her physical impairment. Listing of Impairment 9.08, 9.08A.

Before this determination can be concluded, however, there is one further issue that must be addressed, and that is Claimant's use of alcohol and controlled substances. The Claimant testified that in October, 2010, her sister was diagnosed with cancer, and this caused Claimant to use alcohol. In May, 2011, she also began use of controlled substances. Claimant's sister died on or about May 1, 2012. Claimant gave credible and un rebutted testimony that she joined Alcoholics Anonymous then, and that since May, 2012 she is no longer using alcohol or drugs.

The conclusion to be drawn from the credible and un rebutted testimony is that Claimant's diabetes began before the substance abuse began, and continued after the substance abuse ended. Pursuant to 20 CFR 404.1535 and 416.935, substance abuse is material only if the Claimant would not be found disabled if she stopped the substance abuse. 20 CFR 404.1535, 416.935. In this case, Claimant was diabetic both before and after the substance abuse occurred. This history indicates that Claimant suffers from diabetes whether or not she engages in substance abuse. Therefore, it is found and determined that Claimant's substance abuse is not material to the determination of disability in this case. *Id.*

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.

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 also whether Claimant is disabled for purposes of State Disability Assistance (SDA) benefits, 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(s) as of the onset date of July, 2010.

The Department's decision is

AFFIRMED REVERSED

THE DEPARTMENT SHALL INITIATE WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER, THE FOLLOWING:

1. Initiate processing of Claimant's July 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 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 May, 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: April 17, 2013

Date Mailed: April 18, 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:

