

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-25234
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 15, 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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on March 15, 2012, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED], Claimant's Authorized Hearing Representative. 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 April 6, 2011, Claimant filed an application for Medicaid benefits. The application also requested MA-P retroactive to February 1, 2011.
2. On January 3, 2012, a Notice of Case Action was sent to Claimant advising Claimant his application was denied.
3. On January 11, 2012, Claimant filed a hearing request appealing the Department's denial.
4. Claimant, age forty-six [REDACTED] has an eleventh-grade education.

5. Claimant last worked in 2009 as a video cameraman and editor. Claimant also performed relevant work as a telephone sales representative. Claimant's relevant work history consists exclusively of unskilled light and heavy exertional work activities.
6. Claimant has a history of bilateral inguinal hernias dating from [REDACTED] (right) and about [REDACTED] (left).
7. Claimant has not been hospitalized for the hernias.
8. Claimant currently suffers from bilateral inguinal hernias, both of which require surgery at this time.
9. Claimant has severe limitations in his sitting, standing, bending, walking and driving abilities. 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 the medical evidence and 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 Impairment Listing No(s): **N/A**

2. Claimant is not capable of performing other work.

YES **NO**

Additionally, Claimant gave credible and un rebutted testimony that he cannot walk, sit, stand or bend sufficiently to tolerate light or medium exertional unskilled work. The Department failed to present evidence of other work Claimant is capable of doing. The Department presented the opinion of an examining, not a treating, doctor who gave an

unfounded opinion that Claimant was capable of sedentary and standing work. The doctor failed to identify Claimant's race correctly (Claimant is white and not African-American); he failed to notice that Claimant has a lopsided gait due to a prior fracture causing one leg to be shorter than the other; he identified Claimant as "her;" he mischaracterized Claimant's statement that he was in "constant" pain and stated in his report that Claimant was "sometimes" in pain; and the doctor stated Claimant could do clerical work when, in fact, Claimant has no experience or training in clerical work.

It is found and determined that Claimant is not employed, he has an impairment that is severe and has lasted longer than twelve months, he is not automatically medically disabled by virtue of meeting a federal Listing of Impairment, he cannot do his previous work, and there is no other work he is capable of performing.

Further, based on the Findings of Fact and Conclusions of Law above, the Claimant is found to be:

DISABLED **NOT 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, if he seeks 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

meets **does not meet**

the definition of medically disabled under the MA program as of the onset date of 1990.

Accordingly 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 April 6, 2011, application, to determine if all nonmedical eligibility criteria for MA and MA-retroactive 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-P and MA-P retroactive benefits to Claimant, including any supplements for lost benefits to which Claimant is entitled in accordance with Department 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 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: March 19, 2012

Date Mailed: March 19, 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.

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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:

