

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2012-27317  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: April 9, 2012  
County: Wayne (82-82)

**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 April 9, 2012, at Detroit, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED]

Participants on behalf of the Department of Human Services (Department) included [REDACTED].

At the hearing on April 9, 2012, Claimant presented additional medical records which were accepted into evidence. This additional evidence required the Administrative Law Judge to return all records to the State Hearing Review Team (SHRT) for a second evaluation, taking the new records into consideration in its decision.

On May 25, 2012, SHRT denied Claimant's application and returned all of Claimant's records to the undersigned for a determination.

**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 September 21, 2011, Claimant filed an application for MA benefits. The application also requested MA retroactive to June 1, 2011.

2. On or about October 24, 2011, the Department denied Claimant's application.
3. On January 9, 2012, Claimant filed a hearing request appealing the Department's denial.
4. Claimant, age thirty-seven [REDACTED] has a high-school Graduate Equivalency Diploma (GED). He completed eleventh grade.
5. Claimant last worked in 2007 as a printing press operator. Claimant's relevant work history consists exclusively of unskilled work activities requiring heavy exertional effort.
6. Claimant has a history of cervical radiculopathy at C5-6, and seizures. The onset date of his cervical impairment is [REDACTED], when his car was hit from behind by another car. The seizures began in [REDACTED].
7. Claimant was hospitalized [REDACTED], as a result of a grand mal seizure. The discharge diagnosis included the possibility of future seizures such that he was prohibited from driving for six months.
8. Claimant currently suffers from cervical radiculopathy and grand mal seizure.
9. Claimant has severe limitations in his ability to drive, lift, carry, push, pull, stand, sit, walk, bend, twist, and reach. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning these 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(s):

Impairment Listing No.: 1.04 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) of 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...

20 CFR III, Appendix 1 to Subpart P of Part 404 – Listing of Impairments, 1.00, Musculoskeletal System, 1.04, Disorders of the spine.

**OR**

- 2. Claimant is not capable of performing other work.

The Administrative Law Judge concludes and determines that Claimant **IS NOT DISABLED** for the following reason (select ONE):

- 1. Claimant is engaged in substantial gainful activity.

**OR**

- 2. Claimant's impairment(s) do not meet the severity and one-year duration requirements.

**OR**

- 3. Claimant is capable of performing previous relevant work.

**OR**

- 4. Claimant is capable of performing other work.

The following is an examination of Claimant's eligibility as required by the federal Code of Federal Regulations (CFR). 20 CFR Ch. III, Secs. 416.905, 416.920. The State of Michigan is required to use the five-step Medicare eligibility test in evaluating applicants for the state's Medicaid disability program.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since 2007. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and the Claimant is not engaged in substantial gainful activity.

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 [REDACTED]. He had cervical spine MRIs in [REDACTED] documenting disc herniation and posterior osteophyte formation at C5-C6 with a mild degree of stenosis. In [REDACTED] Claimant had a positive EMG showing bilateral C5-C6 radiculopathy. Department Exhibit 1, pp. 135, 136, 176, 192.

In [REDACTED], Claimant was hospitalized five days for seizures and he cannot drive for six months. 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.

Turning now to the third requirement for MA disability eligibility approval, the fact finder 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 of Listing 1.04, Disorders of the Spine, and its subpart, section I.04A. This Listing is set forth above in full.

Listing 1.04A opens with a list of five examples of spinal disorders, in parentheses. The list indicates five types of spinal disorders the Listing is intended to cover. Claimant's medical records indicate he has two of the five types of spinal disorders identified in the opening parenthetical description, specifically, herniated nucleus pulposus and spinal stenosis. Listing of Impairment 1.04 above; Department Exhibit 1, pp. 135, 136, 176 and 192.

Sentence 1 of the Listing continues on to state the second part of the requirement of the impairment. The second requirement of the impairment is that there must be compromise of a nerve root.

There are three features that must be present to prove compromise of a nerve root:

1. Neuro-anatomical 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...

Listing of Impairment 1.04A above.

Claimant's EMG showed bilateral radiculopathy at the C5-C6 nerve, and this EMG report establishes the first additional requirement of 1.04A. Second, on April 2, 2012, Claimant's family doctor, [REDACTED], disabled Claimant from work of any kind and specifically from standing, sitting and walking in an 8-hour work day setting. Department Exhibit 1, p. 192; Claimant Exhibit 1, p. 2.

[REDACTED] current work restrictions are consistent with work restrictions Claimant operated under in the past from [REDACTED]. In [REDACTED], diagnosed cervical pain and back spasms, and restricted Claimant to work with no repetitive bending, no repetitive twisting, and a weight limitation of 10 lbs. Claimant was prescribed a work reconditioning program 3-5 times per week for 4 weeks. In [REDACTED], Claimant was laid off from work. Department Exhibit 1, pp. 6, 154,159.

Also, on [REDACTED] restricted Claimant from reaching, pushing/pulling, fine manipulating, and operating foot/leg controls. Claimant Exhibit 1, pp. 1-2.

Having reviewed the medical records in this case, it is found and determined that his information of record establishes the second and third features of a compromised nerve root, i.e., limitation of motion of the spine and motor loss accompanied by sensory or reflex loss. Listing of Impairment 1.04A, above.

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 he is eligible for Medicaid based on his medical impairment.

As Claimant is found by the undersigned to be eligible for MA based solely on a medical 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

Although Claimant did not apply for State Disability Assistance (SDA) benefits, he may now be eligible for them by virtue of this decision. 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.

An 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 program as of the onset date of [REDACTED]

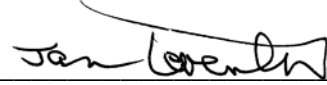
The Department's decision is

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 21, 2011, application, to determine if all nonmedical eligibility criteria for MA and MA-retroactive 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 MA retroactive 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 July 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: June 5, 2012

Date Mailed: June 5, 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.

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:

