

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-38622
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: May 21, 2012
County: Wayne (82-76)

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 May 21, 2012, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. 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) and State Disability Assistance (SDA) programs?

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 November 4, 2011, Claimant filed an application for MA and SDA benefits. The application also requested MA benefits retroactive to August 1, 2011.
2. On February 27, 2012, the Department sent Claimant a Notice of Case Action, denying the application.
3. On March 8, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age forty-five [REDACTED] has a high-school Graduate Equivalency Diploma.

5. Claimant last worked in 1993 as a maintenance worker, performing groundskeeping work and lifting boats in and out of the water. Claimant performed no relevant work within the past fifteen years. Claimant's work history consists exclusively of unskilled, heavy-exertional work activities more than fifteen years ago.
6. Claimant has a history of grand mal seizures, low back pain and pancreatitis. His onset date for seizure disorder is [REDACTED].
7. Claimant has been hospitalized three times as a result of seizure disorder, and once for pancreatitis. Since [REDACTED], he has had 10-12 seizures and visited [REDACTED] several times in addition to the hospital admissions.
8. Claimant currently suffers from seizure disorder and low back pain.
9. Claimant has severe limitations of his ability to drive, bathe, perform odd jobs and work on cars. 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).

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.

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 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):
_____:

OR

2. Claimant is not 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. First, the Claimant must not be engaged in substantial gainful activity. In this case, as Claimant has not worked since 1993, 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 of at least one year in duration. In this case, Claimant's onset date is

In regard to the severity of his disorder, Claimant gave credible and un rebutted testimony that his seizures occur often while he is sleeping, and when he wakes up there is blood on his pillow, indicating that he bit his tongue sleeping. Claimant lives with his son and his mother, and both have called 911 on his behalf. His most recent seizure was _____ ago.

At the hearing, Claimant gave credible and un rebutted testimony that, at the hospital, he was told he should not drive, bathe, and perform odd jobs, landscaping or auto mechanic work. Claimant testified he can no longer play basketball and use his minibike and go-carts. Claimant has stopped visiting friends and only sees them if they stop by. Accordingly, it is found and determined that Claimant's impairment is of sufficient severity and duration to fulfill the second eligibility requirement.

Turning now to the third requirement for MA disability eligibility, the factfinder must determine if Claimant's impairment is listed as an impairment in the federal Listing of Impairments. There are no medical records provided in this case and, therefore, there is nothing in the case record on which to base a positive finding that Claimant meets a federal medical Listing of Impairment. Therefore, Claimant is not found eligible for MA based solely on his medical condition. As a result, Claimant's employability must be evaluated in order to determine if he is eligible for MA. If Claimant is determined to be employable pursuant to MA requirements, then he is ineligible for MA.

First, Claimant's work history for the past fifteen years must be evaluated to determine if he is capable of performing any "prior relevant work" from this period. In this case, Claimant did not work in the past fifteen years. As no evaluation can be made, it is found and determined that there is no prior relevant work that Claimant is capable of performing.

Next, it must be determined if Claimant is capable of performing other work that is available in significant numbers in the national economy. With regard to this fifth requirement for eligibility, it is the Department that must prove that such work is available. Unless the Department proves that such work is available, the Claimant does not have to prove at the hearing that it is *not* available.

With regard to other work, it is found and determined that the Department failed to present evidence to establish by a preponderance of the evidence that Claimant is capable of performing other work that is available in significant numbers in the national economy. Therefore, it is found and determined that Claimant is eligible for MA benefits, as he has fulfilled the five requirements of eligibility for the MA program.

Based on the Findings of Fact and Conclusions of Law above, 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 Item 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 MA program as of the onset date of August 9, 2011.

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 November 4, 2011, application, to determine if all nonmedical eligibility criteria for MA, MA-retroactive and SDA 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, MA retroactive, and SDA benefits to Claimant, including any supplements of 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 review date for review of Claimant's continued eligibility for program benefits no earlier than June 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: May 24, 2012

Date Mailed: May 29, 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:

