

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-39054
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: May 23, 2012
County: Wayne (82-49)

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 23, 2012, at 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 September 29, 2011, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to June 1, 2012
2. On February 17, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On February 29, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age fifty [REDACTED] has an eleventh-grade education.

5. Claimant last worked in 2004 as a maintenance and repair technician. Claimant also performed relevant work as a cook. Claimant's relevant work history consists exclusively of unskilled medium exertional work activities.
6. Claimant has a history of left lower extremity fracture. His onset date is [REDACTED].
7. Claimant was hospitalized [REDACTED], as a result of left tibia and fibula fractures. The discharge diagnosis was post-fracture with an external fixator for stabilization of the fractures.
8. Claimant currently suffers from left tibia and fibula impairments.
9. Claimant has severe limitations of his ability to stand, walk, lift and carry. 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 reasons and rationale for the decision which is checked above are as follows. The Medicaid program requires that the fact finder apply the Social Security Act (SSA) five-step evaluation process to determine if an individual is eligible for MA benefits with the State of Michigan. 20 CFR III, Sec. 416.920 Evaluation of disability of adults, in general.

The first of the five steps is to determine whether the individual has substantial gainful employment in the past year. As Claimant, in this case, has not worked since 2004, it is determined that he is not engaged in substantial gainful employment.

The second of the five steps is to determine whether Claimant's impairment is sufficiently severe, and that can also mean that the duration of the impairment is more than one year. In this case, on [REDACTED] Claimant was injured when he fell off a roof and fractured his left tibia and fibula. He was hospitalized for three days and an external fixator mechanism was attached to his left leg. He could not engage in weight-bearing activity on the left leg for at least three months. He had to use two crutches at first in order to move around and is now using only one crutch. He can bear weight on the leg as tolerated. Based on this evidence of record, it is found and determined that Claimant has an impairment of sufficient severity to meet the second step requirements and go on to the third step.

At the third step, the individual's impairment is examined to determine if it meets SSA impairment definitions. Claimant's impairment falls within the category of lower extremity fractures, which appears in the SSA Listing of Impairment 1.06 Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones. This Listing requires that there be an x-ray to document that solid union has not occurred and the leg is not clinically solid. 20 CFR III, Appendix 1 to Subpart P of Part 404-Listing of Impairments, Section 1.06 and 1.06A.

In this case, Claimant's last x-ray was [REDACTED]. It is found and determined that, in this situation, an [REDACTED] old x-ray is insufficient to determine if there has been sufficient healing. The record in this case does not contain the requisite medical findings for a disability determination at the third step, and Claimant's application must be examined further, with a fourth and possibly a fifth, question remaining.

The fourth step requires a determination as to whether Claimant is capable of doing prior relevant work. In this case, Claimant worked as a mechanic, repairperson, and as a cook. Claimant gave credible and un rebutted testimony that he cannot do any of these jobs because he has to use a crutch. The use of the crutch limits his ability to lift and carry, both of which are required in Claimant's past relevant jobs. The need for a crutch also limits his ability to stand and walk. In addition, on [REDACTED], an orthopedic specialist standing in for Claimant's regular doctor [REDACTED] disabled him from work for 2-3 months, stating that although Claimant is able to bear weight as tolerated, it is "likely" he is "not yet safe for heavy manual labor/climbing." Claimant Exhibit 1.

Based on all of the above evidence taken as a whole, it is found and determined that Claimant is incapable of performing prior relevant work, and it is necessary to look at whether the fifth step is fulfilled.

The fifth step in the evaluation process is to ask whether Claimant is capable of performing other work that is available in significant numbers in the national economy. At this fifth step, it is the Department's burden to prove that such other work is available. If the Department does not come forward with evidence to prove that other work exists in significant numbers in the national economy, then Claimant need not come forward to prove that there is *not* such work. 20 CFR III, Secs. 416.960(c)(2) and 416.966.

In this case, the Department failed to present evidence that other work exists in significant numbers in the national economy and, accordingly, it is found and determined that Claimant is eligible for MA benefits at the fifth step of the evaluation process.

Further, 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 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 Medical Assistance and SDA programs 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 29, 2011, application to determine if all nonmedical eligibility criteria for MA, retroactive MA 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, retroactive MA, and SDA 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: May 31, 2012

Date Mailed: May 31, 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:

