

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-42132
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 4, 2012
County: Wayne (82-57)

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 June 4, 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 April 1, 2011, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to January 1, 2011.
2. On January 18, 2012, the Department denied the application.
3. On February 14, 2012, and March 15, 2012, Claimant filed requests for an Administrative Hearing.
4. Claimant, age thirty-eight [REDACTED] has a twelfth-grade education.

5. Claimant last worked on November 18, 2010, as a sales representative. Claimant also performed relevant work as a drugstore stocker. Claimant's relevant work history consists exclusively of unskilled medium-exertional work activities.
6. Claimant has a history of fractured left tibia, rotator cuff injury and Hill-Sachs deformity of the right shoulder. His onset date is [REDACTED].
7. Claimant was hospitalized in [REDACTED] as a result of the fractured left tibia and underwent reconstructive surgery. The discharge diagnosis was post-surgery for the left tibia.
8. Claimant currently suffers from a permanent deformity of the left tibia.
9. Claimant has severe limitations of his ability to sit, stand, walk, push/pull, lift, carry, bend, and squat. 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):

1.03 Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, with inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset. 20 CFR Ch. III, Appendix 1 to Subpart P of Part 404 – Listing of Impairments, 1.03.

OR

2. Claimant is not capable of performing other work.

The following is an examination of Claimant's eligibility, which is required by the U.S. 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 [REDACTED]. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and Claimant is not engaged in substantial gainful activity. Department Exhibit 1, p. 15.

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]. On that date, Claimant was attacked at his home by two assailants, causing him to suffer a left tibia fracture and a left shoulder dislocation. Surgery was necessary to reconstruct the tibia bone. Since that time, Claimant has been physically disabled from work. *Id.*, pp. 21-23.

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 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 in Listing 1.00, Disorders of the Spine, and its subpart, section 1.03, Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint. Listing 1.03 is set forth above in full.

Listing 1.03 requires that the client has undergone reconstructive surgery or surgical arthrodesis. Claimant's surgery is documented at p. 23 of the Department Exhibit 1 as "open reduction and internal fixation of the left proximal tibia using a Zimmer NCB plate."

Next, Listing 1.03 requires that the Claimant be "unable to ambulate effectively." This term is defined elsewhere in another section of the Listings, Sec. 1.00B2b. It is, thus, necessary to refer to this additional subpart of the Listings to obtain the federal definition of the term.

Listing 1.00B2b(1) states as follows:

Definition. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. Listing of Impairment 1.00B2b1.

It is now necessary to determine whether Claimant's inability to ambulate effectively meets this Federal standard. Claimant testified that he has been disabled from all work by his family doctor and his orthopedic surgeon. Claimant testified he cannot sit, stand, walk, lift, carry, bend, squat, push and pull.

On [REDACTED], Claimant was permitted "weightbearing as tolerated" while wearing a brace on the left leg. Claimant was to continue using a wheelchair as well. Department Exhibit 1, p. 38.

On [REDACTED] Claimant's family doctor, wrote a Medical Statement disabling Claimant from all work, stating he was "unable to bear weight on

affected extremity.” No return-to-work date was given pending Claimant’s physical therapy regimen and the recommendation of Claimant’s orthopedic surgeon. Department Exhibit 1, p. 36.

On [REDACTED], examined Claimant and wrote that Claimant cannot perform prolonged standing, and that he should do no lifting or squatting, and should continue physical therapy. *Id.*, p. 32.

On [REDACTED] wrote that Claimant has a severe permanent knee disability. *Id.*, p. 34.

On [REDACTED] examined Claimant and wrote that Claimant has an “ongoing permanent restriction.” *Id.*, p. 35.

Most recently, on [REDACTED] wrote a letter stating that Claimant “will have persistent limitations in activity level” with regard to the left knee. Claimant uses a cane and wears a left knee immobilizer. He reported that he can sit, stand and walk for only ten minutes at a time. *Id.*, pp. 7, 21.

It is found and determined that this information of record establishes that Claimant needs a hand-held assistive device because of insufficient lower extremity functioning. It is further found and determined that Claimant’s need for this device limits the functioning of both of his upper extremities, in that Claimant cannot push, pull, lift and carry with both hands together because he needs to hold a cane in his right hand. Accordingly, as Claimant’s impairment makes him unable to ambulate effectively as defined and described in Listing 1.00B2b1, it is now necessary to return to Listing 1.03, the first Listing applicable to this case, to see if the final requirement of Listing 1.03 is also met.

The final requirement of Listing 1.03 is that “return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset.” Based on the medical information in the record, it is found and concluded that Claimant has not returned to effective ambulation since his onset date [REDACTED]). This onset date is clearly more than twelve months ago.

It is, therefore, found and determined that Claimant’s medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 1.03, Reconstructive surgery, etc. Claimant has, therefore, established his eligibility for Medicaid based on his physical impairment.

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 test.

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 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 State Disability Assistance programs as of the onset date of [REDACTED].

The Department's decision is

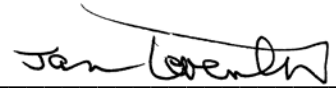
AFFIRMED REVERSED

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 April 1, 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 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 6, 2012

Date Mailed: June 6, 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:

