

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-42189
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 14, 2012
County: Oakland (02)

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 November 14, 2012, at Madison Heights, Michigan. Participants on behalf of Claimant were Claimant and his Authorized Representative, [REDACTED], Advomas. Participants on behalf of the Department of Human Services (Department) were [REDACTED], Assistance Payments Supervisor.

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 October 10, 2011, Claimant filed an application for MA benefits. The application requested MA retroactive to July 1, 2011.
2. On February 1, 2012, the Department denied the application.
3. On March 22, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is fifty-one years old ([REDACTED]), has a high school diploma.

5. Claimant last worked in 2011a producer of plays and comedies. Claimant also performed relevant work as a construction worker. Claimant's relevant work history consists exclusively of skilled and unskilled heavy-exertional work activities.
6. Claimant has a history of congestive heart failure, kidney disease, hypertension and diabetes. His onset date is 2001, when he first had a heart attack.
7. Claimant was hospitalized four times in 2012 as a result of systolic and diastolic heart failure. The discharge diagnosis was post-status with advice for follow-up care and medication.
8. Claimant currently suffers from congestive heart failure, kidney disease, hypertension and diabetes.
9. Claimant has severe limitations of the basic living skills of sitting, standing, walking, lifting, carrying, pushing and pulling. 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).

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 impairment meets a Federal SSI Listing of Impairment or its equivalent.

State the Listing of Impairment:

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

B. Resulting in one of the following:

2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b(ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c). 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 4.02, Chronic heart failure (*italics in original*).

The following is a five-step examination of Claimant's eligibility for Medicaid. The State of Michigan Department of Human Services is required by the U.S. Code of Federal Regulations (CFR) to use the U.S. Social Security Act Title XVI Supplemental Security Income five-step test, for evaluating applicants for the Michigan Medicaid disability program. 20 CFR 416.905, 404.1505; 416.920; 42 CFR 435.540.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since October, 2011. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and the Claimant is not engaged in substantial gainful activity. 20 CFR 404.1520(b), 416.920(b); Dept. Exh. 1, p. 230.

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 2001. In 2001, Claimant had his first heart attack, and has been hospitalized over twenty times for congestive heart failure since then. In October, 2011 he had urgent coronary artery triple-bypass graft surgery. In 2012, he was diagnosed with both systolic and diastolic heart failure and was hospitalized four times. At his fourth discharge on September 25, 2012 he was identified as a high risk for readmission because of his new diagnosis of an ongoing/chronic illness. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1, p. 25; Clmt. Exh. 1, pp. 1-2, 41, 55, 105, 111, 113, 151.

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. 20 CFR 404.1520(c), 404.1521, 416.920(c).

Turning now to the third requirement for MA eligibility approval, the factfinder 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 4.02, Chronic heart failure, or its equivalent, and its subparts, subsections A2 and B2. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 4.02, Chronic heart failure; see *also*, 20 CFR 404.1520(d).

The separate requirements of Section 4.02, subsection A2 and subsection B2 will be examined next. First, Section 4.02 requires that the heart failure occur while the Claimant is on a regimen of prescribed treatment, and second, that the required signs and symptoms be present. Listing of Impairment 4.02.

Medical records indicate that Claimant was under the care of Mohammad Qureshi, M.D., Cardiology, on a long-term basis, and that Claimant had stents already in place in 2011 when urgent surgery became necessary. This evidence meets the requirements of a regimen of prescribed treatment. Dept. Exh. 1, p. 139.

With regard to signs and symptoms, at Claimant's last hospital admission on September 23, 2012, his chest x-ray showed moderate enlargement of the cardiac silhouette which was likely related to cardiomegaly. Also, lab results for Brain Natriuretic Peptide (BNP) were at the high level, indicating probable congestive heart failure. He was diagnosed with right-sided pleuritic chest pain, diastolic congestive heart failure, failure of obstructive pulmonary disease therapy, and recurrent pneumonia. Claimant's symptoms included chest pain, cough, exertional dyspnea, orthopnea and wheezing. It is found and determined that this evidence fulfills the requirements of signs and symptoms of congestive heart failure. Clmt. Exh. 1, pp. 101-110.

With regard to subsection A2, diastolic heart failure (inability of the heart to relax and fill normally), Claimant's documented cardiomegaly and high BNP level on September 23, 2012, is found and determined to be the equivalent of the subsection A2 requirements. The Claimant has met the requirement of subsection A2, or its equivalent. *Id.*, pp. 109-110.

Third, with regard to subsection B2, the Claimant must have had three or more hospitalizations within a consecutive 12-month period. Claimant was hospitalized or seen on an emergency basis five times in 2012: January 24-31, May 23-24, July 24, August 31-September 4, and September 23-26. *Id.*, pp. 2, 36, 41, 113, 151. Based on this evidence of record, it is found and determined that Claimant meets the subsection B2 requirement of multiple episodes of acute congestive heart failure.

Next, the second requirement of subsection B2 is that fluid retention must be present. This can be demonstrated by hepatomegaly (sic), ascites, increased jugular venous distention or pressure, rales, peripheral edema, or rapid weight gain. Listing of

Impairment 4.00D2b(ii). Claimant's medical records for January 24-31, 2012 indicate that during his hospital stay he lost over 4 kg of fluid. The May 23, 2012 records show moderate vascular congestion, bilateral effusions and bilateral peripheral edema. On July 24, 2012, Claimant reported a ten-pound weight gain. Rales were noted during Claimant's August 31-September 4, 2012 hospital stay. On September 1, 2012, Claimant had bilateral loculated pleural effusions and pleural thickening on the left, and a small amount of fluid in the right minor fissure. Claimant's September 23, 2012 records indicate fluid retention. Also in September, Claimant reported a seven-pound weight gain. *Id.*, pp. 9, 16, 37, 46, 95,105,152.

Based on this evidence and taking into consideration all of the evidence of record, it is found and determined that Claimant presented competent evidence of fluid retention as required by subsection B2. It remains only to determine whether the third requirement of subsection B2 has been fulfilled.

The third requirement of subsection of B2 is that there must be acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more. Listing B2. It is found and determined that this requirement is amply demonstrated by Claimant's 2012 hospital records, which document hospital stays of one to seven days in January, May, August-September, and September, 2012, and an emergency room visit in July, 2012. Clmt. Exh. 1, pp. 2, 36, 41, 113, 151. In summary, Claimant has fulfilled all of the requirements of Listing 4.02, including the requirements of subsections A2 and B2.

It is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 4.02, Chronic heart failure. Claimant therefore has established eligibility for Medicaid based solely on his physical impairment. Listing of Impairment 4.02.

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 sequence. *Id.*

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 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 his onset date of 2001.

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 October 10, 2011, application, to determine if all nonmedical eligibility criteria for MA 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 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 March, 2014.
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: February 1, 2013

Date Mailed: February 1, 2013

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/tm

cc:



