

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

IN THE MATTER OF:



Reg. No.: 2012-44356
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 21, 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 21, 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 June 1, 2011, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to March 1, 2011.
2. On February 28, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On April 2, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age forty-nine [REDACTED] has an Associate's Degree in Liberal Arts.

5. Claimant last worked in 2006 as a production worker. Claimant's relevant work history consists exclusively of medium-exertional unskilled activities.
6. Claimant has a history of degenerative disc disease, obstructive sleep apnea, headaches, depression and fibromyalgia. Her onset date is [REDACTED], when she was involved in an auto accident.
7. Claimant was not hospitalized as a result of her impairments.
8. Claimant currently suffers from degenerative disc disease, obstructive sleep apnea, headaches, depression and fibromyalgia.
9. Claimant has severe limitations of her ability to sit, 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 her 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:

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 following is an examination of Claimant's eligibility as required by the 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 program.

First, the claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since 2006. 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. 13.

Second, in order to be eligible for MA, Claimant's impairment must be sufficiently serious and must be at least one year in duration. In this case, Claimant's onset date is [REDACTED]. Claimant testified that, as a result of the auto accident, she became disabled from work. She was treated in the Emergency Department on the day of the accident.

In [REDACTED] she began treating with [REDACTED]. She continues treating with him and his associate, [REDACTED] and has biannual appointments with them.

In [REDACTED] referred Claimant to [REDACTED]. [REDACTED] diagnosed probable radiculopathy with possible nerve root stretch injury. He asked to see the MRI studies performed by [REDACTED]. *Id.*, p. 31.

In [REDACTED] referred Claimant to [REDACTED] for further examination. [REDACTED] performed cervical and lumbar spine MRI tests. The cervical MRI indicated

“[m]ultiple disk protrusions posteriorly with the most significant at C4-C5 extension to the left with mild effacement of the anterior surface of cord (*sic*)”

and “C6-C7 mild foraminal narrowing in the left.” The lumbar MRI indicated

“hypertrophic facet arthropathy at L3-L4, L4-L5 with mild disk bulges at L4-L5 and S1 (*sic*).” *Id.*, p. 23.

[REDACTED] the orthopedic specialist, took a patient history from Claimant. Claimant advised [REDACTED] she had an auto accident in [REDACTED] and has had cervical and lumbar pain since then. She described her lumbar pain to [REDACTED] as “constant” and rated her pain at ten on a scale of 1-10. She described the pain as “sharp in nature” and that it “radiates to both hips and upper back. It gets worse with sitting and standing.” *Id.*, p. 23.

Also, Claimant described her cervical spinal pain to [REDACTED] as ten on a scale of 1-10, sharp in nature, and she also described “numbness and tingling in bilateral upper extremities.” *Id.*

Claimant advised [REDACTED] she had had physical therapy and cervical and lumbar epidural injections in the past, and all of these treatments failed to alleviate her pain. *Id.*

[REDACTED] stated his impression was that Claimant had a “longstanding history of lumbar and cervical pain.” *Id.*, p. 24.

Claimant was also seen by [REDACTED]. He conducted a physical examination of her in which he observed mild weakness and decreased effort in her legs, positive straight leg raising test bilaterally, deep tendon reflexes 1+ in the upper extremity, and a slightly unsteady gait. *Id.*, p. 31.

[REDACTED] gave as his assessment and plan that Claimant had

“[s]evere intractable pain in the neck and the back. She likely appeared to have radiculopathy with possible nerve root stretch injury versus traumatic disc herniation.” *Id.*

Also, in [REDACTED] prepared a report in which he diagnosed disc disease, depression, cephalgia and anemia. *Id.*, p. 9.

At the hearing on June 22, 2012, Claimant testified that her pain continues to the present, and her inability to sit, stand, walk, lift and carry continues as well.

Based on this information of record, and on the entire record considered as a whole, it is found and determined that Claimant’s impairments are of sufficient severity and duration to fulfill the second eligibility requirement. Therefore, this analysis will continue on to the third MA evaluation test requirement.

Turning now to the third requirement for MA eligibility approval, the factfinder must determine if the 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 1.04, Disorders of the spine, and its subpart, section 1.04A, Evidence of nerve root compression. This Listing is set forth above in full.

Listing 1.04 opens with a list of seven examples of spine disorders presented in parentheses. Claimant’s medical records indicate she has three of the seven examples of spinal disorders identified in the opening, specifically, spinal stenosis (narrowing), facet arthritis and degenerative disc disease. Listing of Impairment 1.04, above; Department Exhibit 1, pp. 9, 15, 26. The next issue is whether these impairments are defined by Claimant’s doctors to be at the same level of medical complication or severity as found in Listing of Impairment 1.04.

Sentence 1 of the Listing continues on to state the second requirement of the impairment, which is that there must be compromise of a nerve root due to the above conditions. Claimant’s records document nerve root compromise at the C4-5, C6-7, L3-4, L4-5 and L5-S1 levels. At C4-5, there are multiple disk protrusions with the most significant on the left and mildly effacing the anterior surface of the spinal cord. At C6-7, there is mild foraminal narrowing on the left. At L3-4, L4-5 and L5-S1, there is hypertrophic facet arthropathy. Finally, at L4-5 and L5-S1, there are mild disk bulges.

Claimant’s complaints of pain and the patient histories in the medical records reflect pain at a ten of ten level, radiating to the hips and legs. Claimant had a positive straight leg raising test and a positive deep tendon reflex test. With regard to the cervical spine, Claimant complained of sharp pain in both arms with numbness and tingling as well. *Id.*, pp. 23, 26, 31. Based on all of the above evidence of record, including Claimant’s consistent and credible testimony, and the entire record considered as a whole, it is found and determined that Claimant presents compromise of nerve roots based on her spinal impairments.

To summarize, Claimant has established that she has three spinal disorders and cervical and lumbar radiculopathy. In addition to these proofs, Claimant must go one step further and establish three features of nerve root compression (radiculopathy) to qualify for benefits. The three features of nerve root compression that must be present are:

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.

Regarding the first feature, neuro-anatomical distribution of pain, there must be radiating pain attributable to a compressed nerve root. ██████████ performed a positive straight-leg raising test bilaterally, and he also found loss of deep tendon reflexes in the upper extremities. These tests are accompanied by Claimant's complaints of sharp pain, numbness and tingling, all of which are consistent with radiculopathy. *Id.*, pp. 26, 31.

The second feature of compromised nerve roots is limitation of motion. This was documented by Dr. Sethi in his physical examination of Claimant, where he found decreased range of motion of the cervical spine in all directions. Also, ██████████ found that Claimant had an unsteady gait and that she was not able to walk on her heels and toes. *Id.*, p. 31.

██████████ physical examinations of Claimant both present results that are consistent with Claimant's reports of pain and inability to use her upper and lower extremities. Claimant's testimony was credible and was consistent with all of the examinations and the medical histories she gave the doctors. Based on this information of record, and on the entire record, it is found and determined that Claimant has limitation of motion in her upper and lower extremities as a result of compromised nerve roots.

Continuing on to the third required feature of nerve root compression, there must also be a finding that motor loss is present. Motor loss is defined in the Listing as

“motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss.”

In this case, Claimant's physicians conducted physical examinations of claimant. ██████████ observed mild weakness in the legs and reflex loss in the upper extremities. Also, during the physical examination Claimant reported to him that she had sensory loss in both legs, more in the right than the left. *Id.*

findings establish the third and last feature of nerve root compression. Based on his positive findings, it is found and determined that Claimant has established the third feature of nerve root compromise, and the entire MA third-step analysis is complete.

It is, therefore, found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 1.04, Disorders of the spine, and Listing 1.04A, Evidence of nerve root compression. Claimant, therefore, has established eligibility for Medicaid based on her physical impairment.

As the undersigned finds Claimant eligible for MA based solely on her physical impairment, it is not necessary to proceed further to the last two eligibility requirements of the five-step Medicaid 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**

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 August 23, 2006.

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 June 1, 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: June 26, 2012

Date Mailed: June 26, 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,

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- 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:

