

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-45151
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: June 14, 2012
County: Wayne (82-43)

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 14, 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 August 24, 2011, Claimant filed an application for MA and SDA benefits. The application also requested MA retroactive to May 1, 2011.
2. On March 28, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On April 4, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age forty-four [REDACTED] has a high-school diploma and an Associates Degree in [REDACTED]

5. Claimant last worked in 2004 as a sales and cashier person. Claimant also performed relevant work as a telemarketer and customer service person. Claimant's relevant work history consists exclusively of unskilled and semi-skilled light exertional work activities.
6. Claimant has a history of arthritis, diabetes, chronic obstructive pulmonary disease, diabetic neuropathy, panic disorder, vision problems and depression. Her onset dates are [REDACTED] (panic attacks and diabetes) and [REDACTED] (vision problems).
7. Claimant was hospitalized in [REDACTED] for cardiac observation as a result of a panic attack. The discharge diagnosis was panic attacks.
8. Claimant currently suffers from arthritis, diabetes, chronic obstructive pulmonary disease, diabetic neuropathy, panic disorder, vision problems and depression.
9. Claimant has severe limitations of her ability to sit, stand, walk 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: _____.

OR

2. Claimant is not capable of performing other work.

The following 5-step analysis is required to determine if Claimant is eligible for Medicaid. This discussion uses the federal Medicare five-step evaluation procedure. The federal Medicare five-step guidelines must be used to evaluate all Medicaid cases at the state level. 20 CFR Ch. III, Secs. 416.905, 416.920.

The first of the five steps considers whether the claimant is engaged in substantial gainful employment for a period of one year. In this case, Claimant has not worked since 2004, and the first step is clearly established. 20 CFR III, Sec. 404.1571, *et seq.*

The second step in the evaluation process is whether Claimant's impairment is severe and of a duration of at least one year. Claimant testified that she was diagnosed with diabetes in [REDACTED] diagnosed with panic attacks in [REDACTED], and is currently receiving treatment for both impairments. Therefore, she meets the second step of the evaluation test.

The third test question is whether a claimant's impairment meets a federal Listing of Impairment, which is a codified description of physical and mental impairments listed in the federal Code of Federal Regulations (CFR). If a claimant's impairment is the same as an impairment described in the Listing of Impairments, or its equivalent, then she or he is eligible for Medicaid benefits. 20 CFR III, Appendix 1 to Subpart P of Part 404 – Listing of Impairments.

Having reviewed the Listing of Impairments, it is found and determined that Claimant's impairments do not meet any Listing definition, and Claimant is not found eligible for Medicaid based solely on her impairments. The next two steps of the 5-step review of Claimant's application relate to her employability, that is, whether she can perform prior

relevant work and, if not, whether she can perform other work that is available in significant numbers in the national economy.

Considering first whether Claimant is capable of performing prior relevant work, Claimant testified that she could not return to her sales job at [REDACTED]. This was a part-time job, not a full-time job, and Claimant testified that the first problem would be public transportation. Claimant does not drive, she has no driver's license, and she has poor vision in her left eye. When she uses public transportation, the social contact with other people and the voices and noise of the environment cause her to have panic attacks. As a result, Claimant does not feel she can use public transportation on a reliable basis.

Claimant testified she could not operate a cash register because of her vision problems. She testified she is losing vision in her left eye and sees black spots. She can only read 1-2 pages at a time. Also, she can stand for only 15-20 minutes at a time because of back pain, and this limitation would prevent her from standing at a cash register for a full work shift. Claimant can sit for only 15-20 minutes at a time, and testified that she lies down most of the time in order to be comfortable. This also presents a limitation on her physical ability to fulfill a work obligation.

In addition, Claimant testified that her concentration is poor because the panic attacks are random and happen at all times during the day, and this would cause her to have to stop working to attend to her personal needs.

Claimant further testified that she can walk for only a few blocks at a time and if she walks further than that, she feels as if she is passing out. She cannot carry more than 2-3 lbs., approximately the weight of her purse.

Another limitation about which Claimant testified was in regard to working with customers and co-workers. She testified that all social contact is harmful to her, and she needs a quiet environment, preferably an environment where she can be alone.

Having first reviewed Claimant's ability to return to her [REDACTED] job, Claimant next testified with regard to her job at [REDACTED] as a cashier. Claimant testified that she left this job because of the panic attacks, and because she could not tolerate the social contact required on the job, similar to the [REDACTED] experience she had. She testified she could not return to [REDACTED] also because the job required standing all the time, and this caused her to have pain, breathing irregularity and heart palpitations.

Claimant's third job was at [REDACTED] as a telemarketer and customer service representative. This was a full-time job which she performed in 2002-2004. Claimant testified that she could not do this job today because of her social anxiety, and because she cannot concentrate fully to accomplish the requirements of the job. Also, this job required sitting up to eight hours a day, and she has back and knee pain, restless leg syndrome, and numbness in her feet due to diabetic neuropathy.

Claimant testified that she is currently treating with [REDACTED] family practice, for diabetes and panic attacks. Claimant is prescribed Paxil, Abilify, Effexor, Vantin, Enalapril and Metformin, and is seeing a psychotherapist twice a month. Claimant cannot afford insulin medication.

Having reviewed Claimant's testimony and all of the evidence in this case as a whole, it is found and determined that Claimant is not capable of performing prior relevant work. Thus, the fourth step of the 5-step evaluation is completed, and the fifth step must be considered before eligibility can be approved.

The fifth step in the evaluation process asks whether Claimant can perform other work that is available in significant numbers in the national economy. For this question, the Department bears the responsibility, or burden of proof, to come forward with evidence to show that other work exists. Unless the Department presents such evidence, the Claimant has no responsibility to address this question.

In this case, the Department failed to present evidence to establish that other work is available in significant numbers in the national economy. Therefore, Claimant is not required to present evidence as to this point. Accordingly, Claimant is found to be eligible for MA at the fifth step of the MA evaluation process.

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 2005.

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 August 24, 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 18, 2012

Date Mailed: June 19, 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:

