

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-47286
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 21, 2012
County: Oakland (63-03)

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 and his wife, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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 December 22, 2011, Claimant filed an application for MA benefits. The application also requested MA retroactive to September 1, 2011.
2. On March 26, 2011, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On April 11, 2011, Claimant filed a request for an Administrative Hearing.
4. Claimant, age fifty-two [REDACTED] has a college education.

5. Claimant last worked in 2008 as a [REDACTED]. Claimant also performed relevant work as a [REDACTED]. Claimant's relevant work history consists exclusively of light, medium and heavy-exertional work activities.
6. Claimant has a history of chronic obstructive pulmonary disease and asthma. His onset date is [REDACTED].
7. Claimant was hospitalized in [REDACTED] as a result of pneumonia. The discharge diagnosis was post-pneumonia.
8. Claimant currently suffers from chronic obstructive pulmonary disease and asthma.
9. Claimant has severe limitations of his ability to breathe, bend, climb stairs, walk, run, and other activities. 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 following is an examination of Claimant's eligibility 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 disability program.

First, the claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since 2008. 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. 16.

Second, in order to be eligible for MA, the claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset date is [REDACTED]. Claimant takes five prescription medications for his impairment: Avelox, Advair, Symbicort, Singulair, and Spiriva. He has used prescription medication for his impairment since [REDACTED]. He also uses Ibuprophen for his impairment. Other than prescription treatment, Claimant is not currently receiving medical treatment. He was hospitalized for pneumonia in [REDACTED]. He cannot walk more than one block, and he cannot climb stairs. *Id.*, p. 5.

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 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 does

not meet the definitions in Listing 3.02, Chronic pulmonary insufficiency, and Listing 3.03, Asthma.

As Claimant is not found by the undersigned to be eligible for MA solely on his physical impairment, it is necessary to proceed further to the last two eligibility requirements of the five-step Medicaid eligibility sequence. It is necessary to consider whether Claimant can perform work, either his previous work or some other type of employment. This requires use of the fourth and fifth steps of the MA evaluation process, i.e., whether Claimant can perform prior relevant work (Step 4) and whether Claimant can perform other work that is available in significant numbers in the national economy (Step 5).

With regard to prior relevant work, Claimant gave credible and un rebutted testimony that his previous job as a [REDACTED] required him to be in excellent physical condition. He needs to be able to run, and to ride in vehicles such as a [REDACTED]. He testified that, at the present time, he can walk only one block and he has to sit down to catch his breath after he climbs stairs. He runs out of breath very quickly and suffers shortness of breath. He suffers asthma attacks 6-7 times per year, when there is moisture in the air. He was hospitalized in [REDACTED] one night for pneumonia. He watches television or listens to the radio 8-10 hours per day. *Id.*, p. 17-19. It is found and determined that Claimant is incapable of returning to his work as an [REDACTED].

Claimant's other prior relevant work was as a [REDACTED]. Although this job does not require the excellent physical condition required of an advisor [REDACTED], Claimant's shortness of breath, his inability to walk more than one block, and his 6-7 asthma attacks per year, make it impossible for him to perform this job as well. It is found and determined that Claimant is unfit to perform his previous work as a [REDACTED].

Based on the evidence of record, it is found and determined that Claimant is incapable of returning to work as a [REDACTED] because of his physical limitations. The fourth step of the MA eligibility test has been completed, and it must now be determined if there is other work available in significant numbers in the national economy that Claimant can perform (Step 5).

If now, at the fifth step, Claimant is found capable of performing other work that is available in significant numbers in the national economy, MA must be denied. The Department presented no evidence to substantiate its assertion that Claimant is capable of performing other work and also did not present evidence to show that any such work is readily available. As the Department has the responsibility, or burden of proof, to establish that such other work exists and the Department failed to do so, there is no duty on Claimant to produce evidence to disprove the point. Therefore, it is found and determined that there is no other work which Claimant can perform that is available in significant numbers in the national economy.

In conclusion, it is found and determined that Claimant meets the eligibility requirements of the Medical Assistance (MA or Medicaid) program by virtue of being disabled from prior relevant work and from other work that is available in significant numbers in the national economy.

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, if he should elect to apply for them.

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 the onset date of 2000.

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 December 22, 2011, application, to determine if all nonmedical eligibility criteria for MA and retroactive 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 and retroactive 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 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,
 - 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.

2012-47286/JL

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:

