

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-55411
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 27, 2012
County: Genesee (25-06)

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 August 27, 2012, at Flint, Michigan. Participants on behalf of Claimant included Claimant and his Authorized Representative, [REDACTED]. 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) 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 19, 2011, Claimant filed an application for MA benefits. The application requested MA retroactive to July 1, 2011.
2. On March 7, 2012, the Department denied Claimant's application.
3. On May 17, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is forty-six years old [REDACTED] has a high school diploma and one or two years of college.

5. Claimant last worked full time in 2008, when he worked as a drywaller at a construction company. Claimant also performed relevant work as a student office assistant at a community college, a vocational case manager, a quality control assistant at a factory, and a restaurant manager. Claimant's relevant work history consists exclusively of unskilled, light, medium and heavy strength work activities.
6. Claimant has a history of cervical radiculopathy and surgery. His onset date is [REDACTED].
7. Claimant was hospitalized [REDACTED], as a result of cervical surgery. The discharge diagnosis was post-cervical discectomy and fusion with instrumentation.
8. Claimant currently suffers from pain and numbness in both hands, severe neck and lower extremity pain, right foot dragging, and weakness.
9. Claimant has severe limitations of the basic 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 these 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 that is available in significant numbers in the national economy.

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 that is available in significant numbers in the national economy.

The following is an examination of Claimant's eligibility 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 federal Supplemental Security Income eligibility test in evaluating applicants for Michigan's Medicaid disability program. 42 CFR 435.540.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked full time since 2008, when he worked as a drywaller for a construction company. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and Claimant is not engaged in substantial gainful activity. 20 CFR 404.1520(a)(4)(i), 416.920(b), 416.921 *et seq.*

Second, in order to be eligible, Claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset date is [REDACTED], fourteen months ago. Claimant's neck impairment required surgery and six days in the hospital in [REDACTED]. He continues to experience pain, weakness, and loss of basic skills. Based on this information of record, it is found and determined that Claimant's impairment is 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 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 does not meet the definition of a specific listed impairment in the federal Listing of Impairments, or an equivalent. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments; 20 CFR 416.911.

As Claimant is not found eligible for MA based solely on a physical or mental impairment, it is necessary to proceed further to the last two eligibility steps of the five-step Medicare eligibility sequence (Steps 4 and 5). These steps require an advance evaluation of Claimant's current basic skills. 20 CFR 404.1520(e), 404.1545, 416.946(b).

The evaluation of Claimant's basic skills is called a Residual Functional Capacity (RFC) Assessment. It examines Claimant's ability to sit, stand, walk, lift, carry, push and pull. At the hearing, Claimant testified he can sit for one and 1½ hours, and stand for 15 minutes. He stated he can walk ¼ mile and will then experience shallow breathing and tiredness. Claimant can lift, carry, push and pull no more than 20 lbs. He has limited range of motion of his arms while reaching overhead. He testified he is in constant pain, regardless of what he is doing. *Id.*

Claimant testified that because of limited basic skills, he has decreased activities of daily living. His hands are numb and he cannot feel them, and this makes him fearful of dropping objects. He stated he can "barely hold on to things any more." He does no driving, he performs housework with breaks, his sleep is erratic because pain awakens him, and he naps 1½ -2 hours two or more times a day. He experiences weakness, although he uses no assistive devices. He can perform personal hygiene tasks but only slowly. He walks much more slowly than he did before the surgery, and he drags his right foot. He is afraid he will fall and has fallen a few times. His cooking consists of small, simple items cooked in the microwave. Also, because he is less active, he has gained 15 pounds.

Based on Claimant's credible and un rebutted testimony regarding his basic skills at this time, it is found and determined that Claimant does not have the basic skills for any type of full-time work. It is found and determined that Claimant cannot sit, stand, and walk sufficiently to maintain employment requiring a routine, 40-hour work week. Claimant, at this time, does not have such capacity. Accordingly, Claimant's RFC assessment is that he is capable of less than sedentary work at this time. *Id.*

As it is found and determined that currently Claimant has a less than sedentary capacity for work, it is now necessary to take this finding of fact and review Claimant's prior relevant work. The question to be answered is whether any of Claimant's previous jobs can be performed by him at his current, less than sedentary work capacity. 20 CFR 404.1520(f).

Under consideration are Claimant's prior relevant work as a drywaller, an office worker and a restaurant manager. Claimant testified that these were full-time jobs requiring him to sit, stand and walk in varying amounts 8 hours a day, 40 hours a week. Also, the drywalling job, his most recent fulltime job (2005-2008), required heavy lifting, carrying, pushing and pulling.

Based on Claimant's credible and unrebutted testimony, and all of the evidence in this case taken as a whole, it is found and determined that Claimant is not capable of the walking, standing and sitting required at his previous full-time office, restaurant and construction jobs. It is found and determined that all these jobs require basic skills which Claimant does not now possess. Claimant is not capable of sitting, walking and standing 40 hours a week, and he is not capable of the heavy lifting, carrying, pushing and pulling required of a drywaller at a construction company.

Based on all of the above information of record, and all of the testimony considered as a whole, it is found and determined that Claimant is incapable of returning to any prior relevant work as defined by Medicaid standards. Step 4 of the MA eligibility test has been completed. Now, it must be determined if there is other work that Claimant can perform and that is available in significant numbers in the national economy (Step 5). *Id.*; 20 CFR 416.920(g), 404.1505(a), 416.905.

If now, at the fifth step, Claimant is found to be 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 other work is readily available. 20 CFR 404.1560(c), 416.920(f).

As the Department has the responsibility, or burden of proof, to establish that other work exists, and the Department failed to do so, there is no duty on the Claimant to produce evidence to disprove the point. Therefore, it is found and determined that there is no other work that is available in significant numbers in the national economy which Claimant can perform. *Id.*

In sum, 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 other work that is available in significant numbers in the national economy. 20 CFR 404.1520.

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, should he choose to apply for them. BEM 261 (2012).

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 [REDACTED].

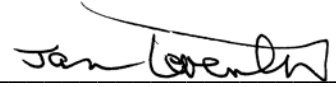
The Department's decision is

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 October 19, 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 retroactive 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 November 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: October 19, 2012

Date Mailed: October 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:

