

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-55444
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 9, 2012
County: Oakland (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 hearing was held on August 9, 2012, at Walled Lake, Michigan. Participants on behalf of Claimant were the Claimant and her Authorized Representative, [REDACTED]. Participants on behalf of the Department of Human Services (Department) were [REDACTED], Family Independence Manager.

ISSUE

Did the Department correctly determine that Claimant is not disabled for purposes of the Medical Assistance (MA or Medicaid) program(s)?

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 28, 2011, Claimant filed an application for MA benefits. The application requested MA retroactive to September 1, 2011.
2. On March 26, 2012, the Department denied the application.
3. On May 21, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is sixty-one years old ([REDACTED]), has a(n) high-school education.
5. Claimant last worked in 2011 as a school laundry worker and security monitor. Claimant also performed relevant work as a fire security officer and an apartment cleaner. Claimant's relevant work history consists exclusively of unskilled, medium-exertion work activities.

6. Claimant has a history of uncontrolled diabetes, diabetic neuropathy, joint pain, arthritis, rheumatic fever, acute cerebrovascular accidents, and migraine headaches. His/her onset date is September 30, 2011, when she was diagnosed with diabetic neuropathy.
7. Claimant was hospitalized September 30-October 2, 2011 as a result of paresthesia, nonspecific, uncontrolled Type II diabetes, and hypertension. The discharge diagnosis was with the following medications: Adalat, Metformin and Amaryl. Claimant was counseled to take aspirin and was also counseled on the use of a Glucometer, to test her blood sugar level daily.
8. Claimant currently suffers from diabetes, diabetic neuropathy, joint pain, arthritis, rheumatic fever, acute cerebrovascular accidents, and migraine headaches.
9. Claimant has severe limitations of her 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 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).

The Administrative Law Judge concludes that Claimant **IS DISABLED** for purposes of the MA program, for the following reason:

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):

9.08 Diabetes mellitus. With:

A. *Neuropathy* demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

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 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).

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 September 30, 2011. On that date Claimant sought treatment for paresthesia, uncontrolled diabetes and hypertension. Clmt. Exh. 1, p. 30. She was diagnosed with diabetes and possible diabetic neuropathy. She was seen afterwards in April and June, 2012, and was diagnosed with diabetic neuropathy on both occasions. 20 CFR 404.1520(c), 404.1521; *Id.*, pp. 12, 30; Clmt. Exh. 3, 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. 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, or is the equivalent of, an impairment in the federal Listing of Impairments. The Listing of Impairments is 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, or is the equivalent of, diabetes mellitus as defined in Listing 9.08, Diabetes mellitus, and its subpart, section 9.08A. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments; see *also*, 20 CFR 404.1520(d).

Listing of Impairment 9.08 requires first that the Claimant must demonstrate she has diabetes mellitus. Claimant's medical records reflect that she has consistently reported a history of longstanding diabetes to her health care providers. She also testified she has diabetes at the hearing. Dept. Exh. 1, p. 25; Clmt. Exh. 1, pp. 9, 10, 12, 30; Clmt. Exh. 3, pp. 2, 3, 5, 8, 15, 18, 19.

It is found and determined therefore that the first requirement of Listing 9.08 is fulfilled. Next, the Claimant must demonstrate she has diabetic neuropathy. The medical records indicate that Claimant was first diagnosed with diabetic neuropathy on September 30, 2011, at [REDACTED]. The records state she had possible neuropathy related to diabetes, and she was given Adalat, Metformin and Amaryl. The Discharge Summary states her blood sugar did decrease and was "much improved for this patient." She was instructed to check her blood sugar daily before breakfast using a Glucometer, and also to use aspirin to keep her blood sugar down. Clmt. Exh. 1, p. 30.

Next, on April 3, 2012, Claimant was seen at [REDACTED] for dizziness. She reported she had numbness in both feet at night. [REDACTED] diagnosed bilateral paresthesia and diabetic neuropathy. *Id.*, pp. 10, 12.

Then, on June 12, 2012 a third incident occurred involving right-hand numbness. Claimant went to the [REDACTED], and during the course of treatment she reported "constant numbness in both her feet, which was unchanged." She reported a "pin-like" sensation in her feet and her palms when they were lightly touched. Upon examination there were findings of length-dependent neuropathy in her lower and upper extremities. [REDACTED] Resident, Neurology, prescribed Gabapentin for Claimant and recommended outpatient nerve conduction studies (EMG/NCV) to assess the neuropathy. Clmt. Exh. 3, pp. 2, 4, 5.

Based on the medical records and the testimony in this case considered as a whole, it is found and determined the Claimant has demonstrated she has diabetic neuropathy in both lower extremities. It now must be asked whether Claimant has significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of her gross movements or her gait. Listing of Impairment 9.08A.

Claimant's hearing testimony is relevant with regard to the question of motor function. Claimant testified she has poor circulation in her feet and the soles of her feet feel like bricks. She experiences numbness in both feet, as well as in her fingers. Her eyesight is deteriorating. With regard to ability to stand for a length of time, Claimant testified she cannot stand longer than one-half hour, and then she experiences back spasms and has to sit down. She can walk only one block, and can lift only a gallon of milk (8.8 lbs.). She needs 5-10 minute breaks when she is doing housework, such as making her bed and using a light-weight vacuum cleaner.

Based on Claimant's credible and un rebutted testimony, and having considered all of the evidence in this case taken as a whole, it is found and determined that Claimant meets the last requirement of Listing 9.08A, or its equivalent, i.e., that she has a significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross movements and gait. Listing 9.08A. Claimant has met all of the requirements of Listing 9.08, and this concludes the examination of the third step of the Medicaid eligibility requirements.

It is therefore found and determined that Claimant's physical impairment meets, or is equivalent to, the requirements of Listing of Impairment 9.08, Diabetes mellitus. Claimant therefore has established her eligibility for Medicaid based solely on her physical impairment. Listing of Impairment 9.08.

As Claimant is found by the undersigned to be 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 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, should she choose 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(s) as of the onset date of September 30, 2011.

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 28, 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.
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 February, 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: January 7, 2013

Date Mailed: January 7, 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:

