

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-57970
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: September 19, 2012
County: Wayne (82-15)

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 September 19, 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) 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 February 28, 2012, Claimant filed an application for MA and SDA benefits. The application requested MA retroactive to November 1, 2011.
2. On May 21, 2012, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On May 31, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, age fifty-six [REDACTED] has a high school diploma.

5. Claimant last worked in 2007 as a sheet metal worker. Claimant also performed relevant work as a meter reader. Claimant's relevant work history consists exclusively of unskilled light and heavy exertional work activities.
6. Claimant has a history of lower back pain, left knee pain and arthritis, and psoriasis. His onset date is [REDACTED], regarding lower back pain, left knee pain and arthritis. On [REDACTED], Claimant received injuries in an auto accident in which his vehicle was rearended.
7. Claimant was not hospitalized as a result of his impairments.
8. Claimant currently suffers from lower back pain, left knee pain and arthritis, and psoriasis.
9. Claimant has severe limitations of his ability to 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 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 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):
1.04 Disorders of the Spine.

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 federal Code of Federal Regulations (CFR). 20 CFR Ch. III, Secs. 416.905, 416.920. The State of Michigan is required to use the federal Social Security Administration five-step eligibility test in evaluating applicants for Michigan's Medicaid disability program.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked since 2007. 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. 19.

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 [REDACTED], when he was injured in an automobile accident. He experienced lower back pain, and a few months later he began experiencing left knee cramps. He began using a cane in late [REDACTED], and since [REDACTED] he has lost 30-40 lbs. 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 meets the definition in Listing 1.04, Disorders of the Spine, and its subpart, section 1.04C. This Listing is set forth here in full.

The Code of Federal Regulations, 20 CFR 404 §1.04, describes Disorders of the Spine as follows:

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) or 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 and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or
- B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or
- C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00(B)(2)(b). 20 CFR 404 Sec. 1.04.

Listing 1.04A opens with a list of five examples of spine disorders, which are presented in parentheses. The list indicates five examples of spinal disorders that the Listing is intended to cover. Claimant's medical records indicate he has three of them: spinal stenosis, osteoarthritis, and degenerative disc disease or their equivalents. Listing of Impairment 1.04, above; Department Exhibit 1, pp. 6, 31-34.

Page 31 of Department Exhibit 1 is a report of a lumbosacral spine MRI taken [REDACTED]. This report states that Claimant has mild degenerative changes in the lumbar spine at L3-4, L4-5 and L5-S1, and further, that he has mild narrowing of the right neural foramina at L4-5. *Id.*, p. 31.

Page 33 of Department Exhibit 1 is an MRI of Claimant's left knee, also taken [REDACTED]. The report states Claimant has moderate patellofemoral, mild lateral and medial femorotibial degenerative left knee joint disease. *Id.*, pp. 33-34.

Claimant's treating physician is Obioma Agomuh, M.D., general practice. [REDACTED] diagnosis of Claimant on [REDACTED], is lumbosacral, bilateral knee, and bilateral hip osteoarthritis. He prescribes Oxycodone to Claimant. He reports Claimant is unable to move freely because of pain in the low back, bilateral knees and bilateral hip areas. In his physical examination of Claimant, he observed decreased range of motion of the lower back, bilateral knees and bilateral hips. Claimant reported to [REDACTED] that he experiences numbness and tingling in bilateral lower and upper extremities. *Id.*, pp. 6-7.

██████████ restricts Claimant from returning to his former job and to any other jobs as well. He estimates Claimant requires continued medical treatment for more than one year. *Id.*, p. 8.

Claimant's testimony at the hearing was consistent with the medical reports and test results. Claimant testified that his daughter prepares breakfast, lunch and dinner for him, as he cannot prepare meals for himself. She also helps him get dressed and takes him to medical appointments.

Claimant testified he has "real sharp pain" in the left knee, and the knee stiffens in the middle, preventing him from getting up from a sitting position. The pain and stiffening come and go every day.

Claimant testified he has sharp pain in his lower back, and cannot get up from a supine position. He cannot lie on his back in a supine position because of pain. He has lost 30-40 lbs. over the last two years. He testified he can barely walk; he uses a cane and estimates he can walk only the distance from the bedroom to the living room without pain.

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 MRI record documents nerve root compromise, i.e., mild narrowing of the right neural foramina at the L4-5 level. *Id.*, p. 31.

Based on the medical documentation and Claimant's testimony taken as a whole, it is found and determined that Claimant meets the requirement of a spinal disorder as described in Listing of Impairment 1.04 above, or its equivalent.

Next, the factfinder must determine which, if any, subsection of Listing 1.04 has been met. It is found and determined that based on the MRI report of foraminal narrowing, Claimant has stenosis or its equivalent, as defined in subsection 1.04C. In order to meet the 1.04C requirement, the stenosis must result in pseudoclaudication, or lameness. Pseudoclaudication is defined in the Listing by four characteristics: appropriate test results, nonradicular pain, weakness, and inability to ambulate effectively.

Based on the evidence and testimony provided above, it is found and determined that Claimant has proved all four of the required elements of pseudoclaudication. First, his lumbosacral MRI displays foraminal narrowing. Second, Claimant has nonradicular pain, in that he reports left knee pain, while the MRI shows narrowing on the right lower extremity. Third, Claimant reports weakness, in that he can barely walk from the bedroom to the living room using his cane. Also, he cannot lift anything else but the cane itself.

Fourth, the term "inability to ambulate effectively" is defined elsewhere in the Listings as follows:

1.00 B2b. What we mean by inability to ambulate effectively.

- (1) Definition. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.)
- (2) To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation. Listing of Impairments 1.00B2b.

Having reviewed Claimant's testimony, his written statements and his reports to health care providers, and all of the evidence taken as a whole in this case, it is found and determined that Claimant has proved that he cannot ambulate effectively in accordance with the Listing 1.00B2b definition. Claimant can barely walk even with the use of a cane. His daughter prepares all his meals, helps him to get dressed, and takes him to medical appointments. He cannot travel on his own. He cannot lift and carry anything except for the cane itself, and he can stand for only ten minutes without pain. Claimant's description of his inability to ambulate is found to be consistent with the Listing definition of that feature.

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.

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 [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 February 28, 2012, application, to determine if all nonmedical eligibility criteria for retroactive and ongoing 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 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 October 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: September 25, 2012

Date Mailed: September 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.

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:

