

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-59138
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 13, 2012
County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

**AMENDED HEARING DECISION
TO CORRECT APPLICATION DATE**

This matter having come before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37 and on the Claimant's Request for Hearing. A hearing was held on September 13, 2012, resulting in a Hearing Decision mailed on December 28, 2012. Participants on behalf of Claimant were Claimant and his Authorized Representative, [REDACTED], Advomas. Participants on behalf of the Department of Human Services (Department) were [REDACTED] Family Independence Specialist.

This decision is **AMENDED** to accurately identify the correct application date.

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 January 23, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to October 1, 2011.
2. On March 14, 2012, the Department denied the application.
3. On June 22, 2012, Claimant filed a request for an Administrative Hearing.

4. Claimant, who is fifty-one years old ([REDACTED]), has a(n) twelfth-grade education.
5. Claimant last worked in 2009 as a part-time food server and preparer. Claimant has no other relevant work experience. Claimant's relevant work history consists exclusively of unskilled, heavy-exertional work activities.
6. Claimant has a history of anemia, seizures, cerebrovascular accident and bipolar disorder. His/her onset date is 2002 for seizures and bipolar disorder.
7. Claimant was hospitalized for shortness of breath and anemia (2012), twice for seizure disorder (March and April, 2011), and alcohol withdrawal (2010) as a result of his impairments.
8. Claimant currently suffers from seizure disorder, bipolar disorder, schizophrenia, anxiety, shortness of breath and anemia.
9. Claimant has severe limitations of the 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 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).

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

2. Claimant is not capable of performing other work that is available in significant numbers in the national economy.

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 2009, when he stopped working in food service because of health problems. 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); Dept. Exh. 1, p. 51.

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 2002 for seizures and bipolar disorder. In 2002, Claimant withdrew from alcohol use and learned that he had other problems. He was treated for bipolar disorder for two-and-one-half years by a psychiatrist in [REDACTED]. Also, on March 18, 2002, he experienced shaking, dizziness, dry mouth, and his eyes rolled back in his head. He was treated at a free clinic, where they prescribed Dilantin, Paxil, Xanax and Trazadone for him. He has been on seizure and other medications for ten years. He has an appointment with his primary care physician, [REDACTED], M.D., Internal Medicine, on September 19, 2012, six days after the administrative hearing in this case. [REDACTED] diagnosed both seizure and bipolar disorders. Claimant sees Dr. Asmar on a monthly basis. 20 CFR 404.1520(c), 404.1521; Clmt. Exh. 1, pp. 1, 4-20.

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 impairments are 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 impairments do not meet the definition of a specific listed impairment in the federal Listing of Impairments. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments; 20 CFR 404.1511, 416.911, 416.926.

As Claimant is not found eligible for MA based solely on a physical or mental impairment, it is necessary to proceed further to eligibility Steps 4 and 5 of the five-step Medicaid eligibility sequence. These two steps require an advance evaluation of Claimant's current basic living 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. The Assessment examines Claimant's ability to sit, stand, walk, lift, carry, push and pull. At the hearing, Claimant testified he can sit for one hour, and stand for 30-45 minutes. He stated he can walk one block and then experiences shortness of breath. He also experiences vertigo. He testified that he can lift, carry, push and pull 35-40 lbs, although his doctor limits him to twenty lbs. He cannot grasp objects with his right hand due to an injury sustained during a seizure and fall in July, 2010. *Id.*; Dept. Exh. 1, p. 84.

Claimant testified that because of limited basic skills he has decreased his activities of daily living. He stated he cannot drive, take a bus or ride a bicycle. His doctor restricts him from driving. Dept. Exh. 1, pp. 49, 97.

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

It shall now be considered whether Claimant can perform prior relevant work (Step 4), and if not, whether Claimant can perform other work that is available in significant numbers in the national economy (Step 5). 20 CFR 404.1520(e), (f), 416.920(e), (f).

With regard to prior relevant work, Claimant was a food service worker. Claimant testified that he cannot stand and walk the required amount of time to perform this work. He also testified that he cannot grip objects with his right hand, and this would prohibit him from carrying heavy trays of food. He testified that because of the bipolar disorder and schizophrenia he forgets to take his medications, and when he was working, he forgot orders and requests from customers. He stated that his doctors told him not to return to work because of the risks involved with working with knives and other kitchen utensils, and having a seizure.

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 prior relevant work as defined by the Medicaid standards. The fourth step of the MA eligibility test has been completed, and it must now be determined if there is other work that Claimant can perform and that is available in significant numbers in the national economy (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 other work is readily available. 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. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir 1984).

As a last and final requirement in this case, it must be recognized that Claimant has a history of alcohol abuse. The federal regulations require a determination that Claimant's substance abuse is not a contributing factor material to the determination of his impairments. 20 CFR 404.1535; 416.935. Claimant testified that he quit drinking in 2002. Medical records indicate that in January, 2012, at the hospital he reported he

was not using alcohol. No hospital or medical record shows high alcohol consumption at the time services were rendered. Dept. Exh. 1, p. 17.

In order to evaluate whether Claimant's history of substance abuse is material to this case, the factfinder must determine if Claimant would still be disabled if he stopped consumption of alcohol. 20 CFR 404.1535; 416.935. In this case Claimant stopped using alcohol on at least one occasion, in 2002, and, he claimed not to be using it when he was at the hospital in January, 2012. Also, there is no evidence of alcohol abuse on any of the eight occasions that Claimant saw Dr. Asmar or a member of his staff in 2012.

It would appear therefore that Claimant has indeed stopped using alcohol at this time, and that he stopped during the time that the seizures and other impairments continued. Stated in other words, this is a case where the evidence of record demonstrates that Claimant's impairments did continue after he stopped using alcohol. Based on all of the evidence in this case, it is found and determined that Claimant's impairments continued to exist when he stopped using alcohol. It is found and determined that Claimant's use of alcohol is not material to the determination in this case and the materiality test in the CFR is resolved in Claimant's favor.

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 other work that is available in significant numbers in the national economy.

Further, 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

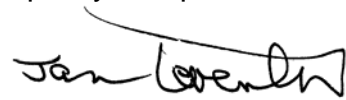
the definition of medically disabled under the Medical Assistance program(s) as of the onset date of 2002.

The Department's decision is

AFFIRMED REVERSED

THE DEPARTMENT SHALL INITIATE WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER, THE FOLLOWING:

1. Initiate processing of Claimant's January 23, 2012, 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 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 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 31, 2013

Date Mailed: February 1, 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:

