

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-65348
Issue No(s): 2009
Case No.: [REDACTED]
Hearing Date: October 8, 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 hearing was held on October 8, 2012, at Walled Lake, Michigan. Participants on behalf of Claimant included Claimant, her Authorized Representative, [REDACTED], and her caregiver, [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 January 30, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to September 1, 2011.
2. On May 1, 2012, the Department sent a Notice to Claimant, denying the application.
3. On July 9, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is forty-six years old [REDACTED] has a high-school education.
5. Claimant last worked in April 2011 as a veterinary technician. Claimant worked as a veterinary technician from 1993-2011, and has not performed other relevant

work. Claimant's relevant work history consists exclusively of semi-skilled heavy-strength work activities.

6. Claimant has a history of aneurysm (nontraumatic subarachnoid hemorrhage), chronic back pain and memory loss. Her onset date is [REDACTED], when she suffered an aneurysm.
7. Claimant was hospitalized [REDACTED] (nine days) and [REDACTED] [REDACTED] (three days) as a result of nontraumatic subarachnoid hemorrhage and headaches. The discharge diagnosis was follow-up care with [REDACTED], neurologist and headache specialist.
8. Claimant currently suffers from headaches, dizziness, weakness, and memory loss.
9. Claimant has severe limitations of her basic skills such as standing, walking, sitting, 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).

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(s) a Federal SSI Listing of Impairment(s) or its equivalent.

State the Listing of Impairment(s):

11.04 Central nervous system vascular accident. With...

(B) [s]ignificant 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).

OR

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 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, 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 April 2011, one and one-half years ago. 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 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 [REDACTED], when she was first hospitalized. She was hospitalized a second time in [REDACTED], and visited the emergency department at least once since then. Her symptoms, i.e., daily headaches, throbbing, a swollen eye, and weakness, persist even with medication. A rolling walker was prescribed for her in January at the hospital, and she has used the walker since then because she experiences weakness. She is currently in treatment with a neurologist and is not allowed to drive or work. Her neurologist, [REDACTED], instructed her not to work, and advised her that her condition may not improve for three to four years. Her next appointment with [REDACTED] [REDACTED] 20 CFR 404.1520(c); 20 CFR 404.1521.

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 (Step 2).

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 11.04, Central Nervous System Vascular Accident, and its subpart, section 11.04B, or its equivalent. This Listing is set forth in full above. 20 CFR 416.925; 20 CFR 416.926.

Listing 11.04 covers two types of central nervous system vascular accidents, and the second of these, section B, is applicable in this case (the first type, section A, concerns ineffective speech or communication, and is not applicable here). Then, within Listing 11.04B there are two parts, or requirements. First, there must be present significant and persistent disorganization of motor function in two extremities. Second, this disorganization must result in sustained disturbance of gross and dexterous movements, or gait and station.

Turning to the evidence of record, the first consideration is whether there is significant and persistent disorganization of motor function in two extremities. Claimant testified that she has used a rolling walker since she was in the hospital in [REDACTED]. She was observed to have an unsteady gait when she was admitted in January. She testified that this was because of weakness. She was monitored in the hospital, in case she should fall. Since then she has fallen ten or more times because she is "unbalanced." She cannot go up and down stairs, and in August, she moved to an apartment without stairs for that reason. Claimant testified she has blurred vision and daily headaches. The headaches last the entire day, although they improve over the span of the day depending on the medication cycle. Department Exhibit 1, pp. 35-38, 80, 167, 254.

Claimant testified she takes the following medications: Pamelor (high blood pressure and headaches), Neurontin (headaches), Simvastatin (cholesterol), Cyclobenzaprine (severe headaches and back pain), Gabapentin (headaches), Nortryptilene (headaches), Proprinolol (headaches and high blood pressure), and Synoplus (nonprescription medication for joint stiffness). She stated her medications make her dizzy.

Based on this evidence of record, and all of the evidence in this case considered as a whole, it is found and determined that Claimant has proved she has significant, persistent disorganization of her two lower extremities. She uses a walker, she had to move her residence to avoid stairs, she is weak, dizzy and unbalanced, and she has fallen at least ten times since her first hospitalization in [REDACTED]. She has an unsteady gait, blurred vision and headaches, and uses significant headache pain medications, all of which contribute to the disorganization of her lower extremities or its equivalent.

Having established significant, persistent disorganization of the lower extremities, Claimant must next establish that the disorganization results in sustained disturbance of

either gross and dexterous movements, or of her gait and station. The evidence in this case shall be examined to determine if there is evidence of sustained disturbance of gait and station, and not of gross and dexterous movements, as gait and station are terms that apply to the lower extremities. Listing of Impairment 11.04B.

Gait is a term meaning the individual's way of walking. Claimant was observed to have an unsteady gait when she went into the hospital in [REDACTED]. Claimant testified she feels unbalanced, weak, dizzy, and slow, and she has fallen at least ten times since her discharge in [REDACTED]. She has used a rolling walker since [REDACTED] and relocated to an apartment without stairs in [REDACTED] as she cannot climb up and down stairs any more. She is not allowed to drive or work, and she can stand for only fifteen minutes at a time. She can walk for only 10-15 minutes without discomfort.

Station is a term referring to an individual's standing posture. Claimant responded to a Department questionnaire that her right side is "really weak," that the weakness extends from her head to her right knee, and that sometimes she cannot put on clothes and comb her hair on the right side. She testified that she has to sit down to put on a pair of pants. She testified she needs the walker to stand as well as to walk. Department Exhibit 1, pp. 35-36.

Based on the above evidence and testimony, and the entire record considered as a whole, it is found and determined that Claimant has established that she has a sustained disturbance of her gait and station resulting from the disorganization of her lower extremities. Claimant's testimony and responses to the Department questionnaire indicate that Claimant's station is unbalanced and shaky, and she cannot maintain her standing posture sufficiently to perform basic grooming and dressing. She needs the walker to stand as well as to walk, and this is a serious dependence on an assistive device.

In conclusion, it is found and determined that Claimant has established that she meets the medical definition of Listing of Impairment 11.04B, or its equivalent. Claimant has sustained her burden of proof to show that she is eligible for MA benefits based solely on her physical impairment, i.e., her central nervous system vascular accident. *Id.*

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 Medicaid eligibility sequence. *Id.*

In summation, 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 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 January 30, 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 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 17, 2012

Date Mailed: October 17, 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:

