

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-73121
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: December 6, 2012
County: Oakland (02)

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 December 6, 2012, at Madison Heights, Michigan. Participants on behalf of Claimant were the Claimant and her cousin, [REDACTED]. Participants on behalf of the Department of Human Services (Department) were [REDACTED] Eligibility Specialist.

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 April 13, 2012, Claimant filed an application for MA and SDA benefits. The application requested MA retroactive to January 1, 2012.
2. On August 16, 2012, the Department denied the application.
3. On August 23, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is fifty-two years old (DOB 1/23/1961), has a(n) high-school education.

5. Claimant last worked in 2011 as an Administrative Assistant. Claimant also performed relevant work as a cashier. Claimant's relevant work history consists exclusively of light skilled and unskilled work activities.
6. Claimant has a history of multiple sclerosis, asthma, and bipolar disorder. Her onset date for multiple sclerosis is 2003.
7. Claimant was hospitalized twice as a result of asthma. The discharge diagnosis was status post-treatment.
8. Claimant currently suffers from multiple sclerosis, asthma and bipolar disorder.
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 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 that Claimant **IS DISABLED** for purposes of the MA program, for the following reason:

1. Claimant's physical impairment meets a Federal SSI Listing of Impairment(s) or its equivalent.

State the Listing of Impairment:

11.09 Multiple sclerosis. With:
A. Disorganization of motor function as described in 11.04B.
20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-
Listing of Impairment 11.09.

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); Dept. Exh. 1, p. 8.

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 2003. In 2003 Claimant was diagnosed with multiple sclerosis. 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. The second step of the MA evaluation process has been met. 20 CFR 404.1520(c); 404.1521; 416.920(c); Dept. Exh. 1, p. 9.

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 11.09, Multiple sclerosis, and its subpart, 11.09A. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 11.09; see *also*, 20 CFR 404.1520(d).

First, in order to meet the requirements of Listing 11.09, the Claimant must establish that she has multiple sclerosis. Claimant's medical records establish that as early as 2006 she sought medical treatment for and was tested and diagnosed with multiple sclerosis by two physicians at the Michigan Institute for Neurological Disorders. Claimant testified she had no treatment from 2006-2012 because of lack of insurance. In 2012, Ramiz Putrus, M.D., tested Claimant and diagnosed multiple sclerosis. He recommended further treatment. Claimant had additional testing, diagnosis and treatment for multiple sclerosis on four more occasions in 2012. Dept. Exh. 1, pp. 29-45; Clmt. Exhs. 1, 5, 7, 8.

It is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 11.09, Multiple sclerosis. Claimant meets the requirement of Listing 11.09 that she have multiple sclerosis. Listing of Impairment 11.09.

Next, the requirement in subsection A of Listing 11.09 must be met. This requirement is that there must be evidence of disorganization of motor function. Listing of Impairment 11.09A. Subsection A references a definition of disorganization of motor function which

must be applied in this case. The definition is found elsewhere in the listings, in Listing of Impairment 11.04B:

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). Listing of Impairment 11.04B.

Gait and station are the primary symptoms of motor disorganization Claimant testified to at the hearing. Claimant testified that she has trouble with her balance and standing, and cannot walk every day. She uses a cane four out of seven days a week, and also experiences falls. She testified she cannot stand for longer than two hours and cannot walk more than four blocks. She can only lift and carry 3-5 lbs., and testified that to carry a package from the car to the kitchen she carries the package first to the back door, sets it down on the step, catches her breath, then picks it up and takes it up 5-6 more steps to the kitchen. She testified that sometimes it takes 25-35 minutes to get out of bed in the morning, because it takes that length of time for her to get her legs under her so she can stand on them.

Virginia McCluney, Claimant's cousin, also testified at the hearing. She said they have known each other for a long time, and she visits Claimant every day. She cooks, drives, helps Claimant remember things, watches out for her so she doesn't fall, and is there with Claimant to "be her legs." McCluney testified that Claimant's condition is worsening and Claimant is less active in family activities than she was 5-6 years ago. She stated that Claimant cannot set up and cook for company, and that Claimant used to be outgoing but is now more isolated. She testified that Claimant has less energy than before.

Claimant's medical records also document recurring right lower extremity weakness, which would clearly affect gait and station. Clmt. Exh. 5, p. 25; Clmt. Exh. 7, p. 4; Clmt. Exh. 8, pp. 1, 2, 4; Dept. Exh. 1, pp. 32-45.

Another item of evidence which reflects Claimant's disorganization of motor function as to gait and station is the Department questionnaire, Activities of Daily Living, Form DHS-49-G. Claimant stated in the questionnaire that she has trouble dressing, toileting and bathing once or twice a week. She never needed this help before she got sick. She takes 4-5 hours to wash and dry two loads of laundry. She can spend only 10-15 minutes on her feet at a time washing dishes. She uses the electric cart for shopping at the grocery store. She needs help from her family to maintain her garden. Her eyesight has deteriorated to the point that she does not feel safe driving a car. She cannot read anything. She also walks into walls. Dept. Exh. 1, pp. 15-19.

Taking into consideration all of the above evidence of record, and having considered all of the evidence in this case as a whole, it is found and determined that Claimant has established by a preponderance of the evidence that she has a significant and

persistent disorganization of motor function which results in a sustained disturbance of her gait and station. It is found and determined that Claimant meets the requirements of Listing 11.09A with regard to motor disorganization.

This concludes the analysis required to complete the MA third-step evaluation. Based on all of the evidence in this case considered as a whole, it is found and determined that Claimant is eligible for MA benefits based solely on her physical impairment, multiple sclerosis. Her onset date is 2003.

As Claimant is found by the undersigned to be eligible for MA based solely on a physical impairment, it is not necessary to proceed further to the last two eligibility requirements of the five-step Medicaid 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.

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

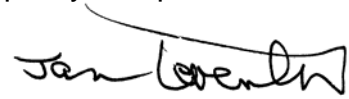
the definition of medically disabled under the Medical Assistance and State Disability Assistance programs as of the onset date of 2003.

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 April 13, 2012, application, to determine if all nonmedical eligibility criteria for 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 March, 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 30, 2013

Date Mailed: January 30, 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:

