

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-8292
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 24, 2012
County: Oakland (63-04)

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 May 24, 2012, at Detroit, Michigan. Participants on behalf of Claimant included Claimant and her friend, [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 July 6, 2011, Claimant applied for MA benefits. Her application also requested MA retroactive to November 1, 2010.
2. On September 22, 2011, the Department sent a Notice of Case Action to Claimant, denying the application.
3. On October 13, 2011, Claimant filed a request for an Administrative Hearing.
4. Claimant, age forty-two [REDACTED] has a high school education.

5. Claimant last worked in 2004 as a fabrication painter. Claimant also performed relevant work as a gas station manager. Claimant's relevant work history consists exclusively of unskilled, medium exertional work activities.
6. Claimant has a history of epilepsy with grand mal and petit mal seizures. Her onset date is [REDACTED], at the age of four.
7. Claimant was hospitalized in [REDACTED] as a result of grand mal seizures. The discharge diagnosis was grand mal seizures.
8. Claimant currently suffers from epilepsy, chronic back pain, and bipolar disorder.
9. Claimant has severe limitations of her ability to perform activities of daily living. 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.

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): _____.

OR

2. Claimant is not capable of performing other work.

The rationale or reason for the above disability determination is as follows. This evaluation adheres to the required procedure used in Social Security Administration determinations of disability. This procedure is required in State of Michigan Medicaid determinations. It involves five steps. 20 CFR III, Sec. 416.920, Evaluation of disability of adults, in general.

First, the MA applicant must meet the requirements of steps one and two in order to qualify. Then, if the applicant meets the medical requirements of the third step, she/he may be found eligible for the MA program at this step. If not, the application must be examined further through the fourth and fifth steps.

The fourth and fifth steps involve a determination about the types of work a customer can perform. Step four looks at the customer's prior work experience to determine if the customer can perform work they did previously. If the customer can perform prior relevant work, then the conclusion that is required is that she/he is not eligible for MA benefits. If, however, the customer cannot perform prior relevant work, the investigation proceeds to step five.

Step five of the procedure looks at whether the customer can perform other work that is available in significant numbers in the national economy. It is the Department's responsibility, or burden, to show that this situation exists. If the Department does not prove that this is true, then the customer must be found eligible for MA benefits.

In Claimant's case, looking first at steps one and two, it is found and determined that Claimant is unemployed and has been for at least one year. Therefore, Claimant meets the requirement of step one, i.e., unemployment for at least one year.

Next, step two requires that Claimant's impairment be severe and of a duration of at least one year. The medical records and the testimony in this case establish that Claimant began suffering from epilepsy at the age of four in [REDACTED]. She has been

hospitalized 10-20 times, about twice a year since [REDACTED] for this condition. She was disabled due to seizures since [REDACTED]. Department Exhibit 1, p. 23.

Currently, Claimant is not permitted to drive by her treating physician, [REDACTED] (primary care physician). Claimant sees [REDACTED] monthly, most recently on [REDACTED]. Claimant cannot afford treatment with a neurologist, as she is uninsured.

Claimant's epilepsy is documented medically by the positive EEG of [REDACTED], which showed

“... very frequent bursts of generalized bifrontally predominant 4-5 Hz polyspike-wave discharges with a duration of 1-5 seconds. Excellent behavioral testing was performed early in the study and the patient did not exhibit behavioral arrest with bursts lasting up to 4 seconds.”

[REDACTED] reported a positive EEG, uncontrolled absences and generalized tonic-clonic seizures. *Id.*, pp. 37, 50.

Accordingly, it is found and determined that Claimant meets the requirements of step two of the evaluation process, in that her impairment has lasted longer than one year and is of a serious and severe nature. Next, the requirements of step three shall be reviewed.

Step three requires an evaluation as to whether the Claimant's impairment is sufficiently serious as set forth in the federal regulations entitled "Listing of Impairments." These listings define specific levels of seriousness which, if the customer meets these specifications, shall entitle the customer to MA benefits. 20 CFR III, Appendix 1 to Subpart P of Part 404-Listing of Impairments, Sections 11.00, Neurological, 11.02, Epilepsy, convulsive, and 11.03, Epilepsy, nonconvulsive.

In this case, step three requires examination of Listings 11.02 and 11.03, which are the Listings for convulsive and nonconvulsive epilepsy. These two Listings are set forth as follows:

11.02 Epilepsy – convulsive epilepsy (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment. With:

- A. Daytime episodes (loss of consciousness and convulsive seizures)
or
- B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

11.03 Epilepsy – nonconvulsive epilepsy (petit mal, psychomotor, or focal), documented by detailed description of a typical seizure pattern including all associated phenomena, occurring more frequently than once weekly in spite of at least 3 months of

prescribed treatment. With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

In this case, upon review of the medical records, it is found and determined that Claimant's medical records are not sufficiently detailed to meet the standards of either of the two Listings. Claimant's medical records do not establish that Claimant's serum drug levels have been therapeutically inadequate over a three-month treatment period. Therefore, Claimant is not determined to be eligible at the third step, and steps four and five must be considered as well.

Step four of the MA evaluation procedure is a determination as to whether Claimant can perform prior relevant work at the present time. Claimant testified she cannot work as a fabrication painter because of her fatigue. Claimant has daytime and nocturnal seizures, and has been found on the floor on several occasions by her friend, Michelle Sheffer. On one occasion, the seizure was near-fatal.

Claimant testified she has been to the Emergency Department three times in [REDACTED] [REDACTED] for epilepsy and other reasons.

Claimant testified also that she is in constant pain and cannot sit, stand and walk as she did before because, after her grand mal seizures, her muscles tighten up and remain in this condition for as long as two weeks. She can walk 10-16 minutes without pain, and stand only five minutes.

Claimant testified she has had seven grand mal seizures in [REDACTED], and she has 100 petit mal seizures every day. When the seizures are at night, she wakes up soaking wet and bloody. She has fallen on numerous occasions, once breaking a toilet seat, and she has stitches on her eyebrows and facial scars from falling incidents.

Claimant's physician does not permit her to drive and sees her on a monthly basis. Claimant can bathe and dress herself, but cannot bathe without another person ready to assist her in case she has a seizure while bathing.

Claimant testified she decreased her cooking activity by 75%, and stated in her responses to Department questionnaires that she has trouble keeping appointments. She can do housework but only very slowly, and has to take breaks more often than a person would who is not impaired. She cannot stand long enough to wash the dishes.

Claimant's friend, Michelle Sheffer, testified that she is at Claimant's home 85% of the time, she takes care of her, and drives her to doctors appointments and the grocery store. Sheffer has witnessed many grand and petit mal seizures, and she was the person who, [REDACTED], found her "almost dead on the floor."

On another Department questionnaire, Claimant described her previous work as requiring her to stand all the time with no sitting.

Based on all of the testimony and documents taken together as a whole in this case, it is found and determined that Claimant is not capable of performing prior relevant work. She cannot stand more than five minutes, she cannot stand long enough to do the dishes, and this translates into an inability to stand at a job 8-10 hours per day, five days a week. She needs more break time than would be allowed at her prior relevant work. She is fatigued and would not be able to complete her prior relevant work assignments. Also, her frequent daily seizures could endanger herself and others at work.

As it is found and determined that Claimant cannot perform prior relevant work, which is the step four question, it now becomes necessary to move to step five of the MA eligibility process.

Step five requires a determination as to whether Claimant can perform other work that is available in significant numbers in the national economy. The Department failed to present evidence to establish this point. Unless the Department presents such evidence for the case record, the Claimant bears no responsibility to come forward with evidence on this point. Accordingly, it is found and determined that Claimant is eligible for MA benefits based on the step five determination that the Department failed to prove that other jobs are available in significant numbers in the national economy.

In conclusion, based on the Findings of Fact and Conclusions of Law above, 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

Claimant may also be eligible for SDA benefits by virtue of this decision. In order to be found eligible for 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 Item 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 as of the onset date of 2005.

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 July 6, 2011, application to determine if all nonmedical eligibility criteria for MA and retroactive 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 and retroactive 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 July 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: May 31, 2012

Date Mailed: June 4, 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:

