

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

IN THE MATTER OF:

██████████
██
██

Reg. No.: 2013-20308
Issue No.: 2009
Case No.: ██████████
Hearing Date: March 13, 2013
County: Wayne (17)

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 March 13, 2013, at Detroit, Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of Claimant were ██████████, Authorized Representative, and Claimant's husband, ██████████. Participants on behalf of the Department of Human Services (Department) were Zaineb Hussein, Medical Contact Worker.

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 December 20, 2011, Claimant filed an application for Medicaid benefits. The application requested MA retroactive to September 1, 2011.
2. On March 20, 2012, the Department denied the application.
3. On January 2, 2013, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is sixty-five years old (DOB ██████████), has a high-school education.

5. Claimant last worked in April, 2011 as a janitor. Claimant also performed relevant work as an ordering processor in a warehouse. Claimant's relevant work history consists exclusively of unskilled, light and heavy exertional work activities.
6. Claimant has a history of chronic obstructive pulmonary disease. Her onset date is May, 2009.
7. Claimant was hospitalized October 17-18 as a result of chest pain and abnormal coagulation. The discharge diagnosis was with follow-up instructions to return to the clinic in two days to check her anticoagulation level (PT/INR).
8. Claimant currently suffers from pulmonary embolism.
9. Claimant is severely limited in the basic living skills of walking, standing, sitting, lifting and carrying. 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.

X 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

X 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 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. 55.

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 2009. In May and July, 2009, Claimant had recurrent pulmonary emboli. In March, 2010, she reported nine months of left-sided chest pain, moderate in nature, constant and stabbing in character, felt also in the mid-sternal area and the lower neck. She reported that the pain was worsening. She had frequent diaphoresis (profuse sweating), and shortness of breath in the position of lying flat as well as in upright positions. She also reported a worsening dry cough, and leg pain when walking and sometimes when sitting down. 20 CFR 404.1520(c), 404.1521; Clmt. Exh. 3, p.19-21.

In October, 2011, she was hospitalized for one night due to abnormal coagulation. She was prescribed Coumadin to prevent blood coagulation, and Meloxicam for deep vein

thrombosis. In January, 2012, Claimant's primary care physician, after sending Claimant to a cardiologist, diagnosed pulmonary embolism, hypercoagulopathy, chronic back pain, disc disease, knee problems and high cholesterol. Dept. Exh. 1, pp. 17, 39-51; Clmt. Exh. 1.

Based on this information of record, and all of the evidence in this case taken as a whole, 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 impairment is the same as, or equivalent in severity to, an impairment in the federal Listing of Impairments. The Listing of Impairments is 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 does not meet and is the equivalent of Listing 4.04, Ischemic heart disease, or any other Listing of Impairment. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments; see *also*, 20 CFR 404.1520(d).

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 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 she cannot sit for long because of the pain, and she can stand for only one hour. She cannot walk for long periods of time. Dept. Exh. 1, p. 49.

Claimant testified that gripping and grasping is painful, and she can lift and carry only ten lbs. Claimant testified that because of her limited basic skills she cannot do any housework. She has continuing pain, and swelling in both legs, wrists, hands and fingers. See *also*, Dept. Exh. 1, p. 53.

Based on Claimant's credible and un rebutted testimony regarding her basic skills, and all of the evidence in this case taken as a whole, 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, walk, lift and carry sufficiently to maintain employment requiring a routine 40-hour work week. It is found and determined that Claimant currently does not have such capacity. Accordingly, Claimant's Residual Functional Capacity assessment is that she 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 janitor and was also a clerk in a warehouse. These are light and heavy-exertional jobs. Claimant's current condition is rated as less than sedentary. Therefore, having considered all of the evidence and testimony in this case, it is found and determined that Claimant is not currently able to return to her prior work classifications.

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 Medicaid standards. The fourth step of the MA eligibility test has been completed, and it must now be determined if there is other work available in significant numbers in the national economy, that Claimant can perform (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 any work is readily available. As the Department has the responsibility, or burden of proof to establish that other suitable 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).

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, 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(s) as of the onset date of .

The Department's decision is

AFFIRMED REVERSED

X THE DEPARTMENT SHALL INITIATE THE FOLLOWING STEPS WITHIN TEN DAYS OF THE MAILING DATE OF THIS ORDER:

1. Initiate processing of Claimant's January 27, 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 June, 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: June 4, 2013

Date Mailed: June 4, 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: [REDACTED]
[REDACTED]
[REDACTED]
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