

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

IN THE MATTER OF:

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Reg. No.: 2013-29992
Issue No.: 2009
Case No.: ██████████
Hearing Date: May 22, 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 May 22, 2013, at Detroit, Michigan. Participants on behalf of Claimant were the Claimant and his mother, ██████████. Participants on behalf of the Department of Human Services (Department) were ██████████, 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 January 9, 2013, Claimant filed an application for MA benefits. The application requested MA retroactive to October 1, 2012.
2. On January 18, 2013, the Department denied the application.
3. On February 1, 2013, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is thirty years old (DOB ██████████), has an eleventh-grade education.
5. Claimant last worked in 2003 as a part-time truck loader. Claimant also performed relevant work as a part-time salesperson, stockperson, and cashier.

Claimant's relevant work history consists exclusively of unskilled, light and heavy exertional work activities.

6. Claimant has a history of diabetes mellitus, neuropathy, gastroparesis, gastroesophageal reflux disease, constipation and abdominal pain. His onset date is 2009.
7. Claimant was hospitalized November 4-5, 2012 as a result of elevated blood sugar (hyperglycemia). The discharge diagnosis was stable, and, he was sent for follow-up treatment.
8. Claimant currently suffers from diabetes mellitus, neuropathy, gastroparesis, gastroesophageal reflux disease, constipation and abdominal pain.
9. Claimant is severely limited in the basic living skills of standing, walking, sitting, and lifting and carrying. 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).

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

- X 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):

9.08 Diabetes mellitus. With:

A. Neuropathy demonstrated by 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). 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 9.08.

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 2003. 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).

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 2009 Claimant began losing weight; he was constantly thirsty and hungry; he had blurred vision and sleep difficulties. He was diagnosed with diabetes and began monthly treatment at the Waller Advantage Clinic, Detroit. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1, p. 7.

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 to, 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 or is the equivalent of Listing 9.08, Diabetes Mellitus, Listing 9.08A. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments 9.08; see *also*, 20 CFR 404.1520(d).

The following is a discussion as to whether the testimony and documents of record in this case meet the requirements of Listing 9.08. First, the Claimant must be diagnosed with diabetes mellitus. Claimant's testimony at the hearing was credible and un rebutted. He testified that in 2009 he was diagnosed with diabetes on an emergency basis and began monthly treatment, which continues to this day. He further testified that he was diagnosed with diabetic neuropathy in 2011 by doctors at both [REDACTED]

It is found and determined that the medical records are consistent with Claimant's testimony. The record contains Emergency Department admission records from September 4, 2012, November 4-5, 2012 and December 2, 2012. Claimant testified he was seen also on January 3, 2013 and in April, 2013. Dept. Exh. 1, pp. 25-79.

On September 4, 2012, Claimant was discharged from the hospital with a diagnosis of improved, and with instructions to continue oral and intravenous insulin, Metformin and Simvastatin. Dept. Exh. 1, p. 92.

On November 4, 2012, Claimant was diagnosed with diabetes, hyperglycemia and ketonuria at DMC, and was admitted for one night. He was discharged in improved condition and was given insulin upon discharge. Outpatient follow-up was recommended. *Id.*, pp. 67, 69.

On December 2, 2012, a doctor at ██████ diagnosed Claimant with possible diabetic gastroparesis. He was discharged in improved condition, with a prescription and follow-up instructions to see a gastroenterologist the following week. *Id.*, p. 37, 39.

Furthermore, Claimant testified that he was seen in 2013 in the hospital at least twice for hyperglycemia and diabetic neuropathy.

Having considered all of the testimony and the records in this case in their entirety, it is found and determined that Claimant has proved that he has a diagnosis of diabetes mellitus or its equivalent. The first requirement of Listing of Impairment 9.08 is satisfied, and the second requirement shall be considered.

The second requirement of Listing 9.08 is that there must be significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or, gait and station. This evaluation requires reference to another Listing, Listing 11.00C, which gives a more detailed definition of what is meant by persistent disorganization of motor function. Listing of Impairment 11.00C.

Listing 11.00C states that persistent disorganization of motor function must consist of paralysis, tremor or other involuntary movement, ataxia (defective muscular coordination, especially in voluntary muscle movements) and sensory disturbances, which must occur singly or in various combinations. The degree of interference with locomotion must be evaluated. Listing of Impairment 11.00C.

At the hearing in this case Claimant gave credible and un rebutted testimony that the diabetic neuropathy, a diagnosis he received from at least two doctors, causes fiery pain which shoots up both feet and both legs. He also experiences numbness and tingling in both lower extremities. He can stand for only thirty minutes and then experiences pain. He can walk only one block and then the pain begins, and he can sit for only an hour. He can lift and carry only one gallon of milk.

At the hospital on November 4, 2012, Claimant reported that Neurontin did not help with the leg pain, but he has tried Vicodin and felt "some relief." He also reported fatigue, leg pain and cramps, polydipsia (excessive thirst), polyuria (excessive urination), and stomach pain. Dept. Exh. 1, p. 69.

Claimant testified that diabetic neuropathy occurs when his blood sugar is extremely high and interferes with his nerves. He stated his nerves are “shot.”

Claimant testified that he lost forty lbs. in the past year, and he attributes this to his diabetic condition. He currently weighs 115 lb., and is 5’9” tall.

Claimant has been treating for four years at the [REDACTED], but there is no gastrointestinal specialist there. He testified that he is on the whole compliant with medical treatment requirements.

In [REDACTED], Claimant’s mother, testified at the hearing. She stated that, “He never feels good,” and that he is in “starvation mode.” She feels she is watching him die of starvation.

In response to a Department questionnaire, “Activities of Daily Living,” Claimant wrote that he is weak and needs help sometimes to stand up in the shower. He is also having difficulties with transportation to the doctor, with laundry, and with preparing food. He does no housework or shopping, and he has no energy, and too much pain, for hobbies and activities in which he previously engaged. *Id.*, pp. 17-23.

Having reviewed all of the evidence in this case in its entirety, it is found and determined that Claimant has established a persistent disorganization of motor function in his lower extremities. Claimant’s testimony, combined with the history contained in the medical records, demonstrates that Claimant is unable to stand for more than one-half hour, and can walk only one block, because of the “fiery” pain that he experiences shooting up from his feet and legs. Also, he can lift and carry only one gallon of milk. He has weakness and fatigue, loss of appetite, and weight loss, and this affects his motor skills as well. In conclusion, it is found and determined that Claimant has met the second requirement of the diabetes description in Listing of Impairment 9.08. Listing of Impairment 9.08.

It is therefore found and determined that Claimant’s medical impairment meets, or is equivalent to, the requirements of Listing of Impairment subpart 9.08A, Diabetes Mellitus. Claimant therefore has established his eligibility for Medicaid based on his physical impairment. Listing of Impairment 9.08.

As Claimant is found by the undersigned to be eligible for MA at the third step of the evaluation process, based solely on his physical impairment, diabetes mellitus with neuropathy, it is not necessary to proceed further to the last two eligibility requirements of the five-step Medicare eligibility sequence. *Id.*

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 he 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 2009.

The Department's decision is

AFFIRMED **REVERSED**

X THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING ACTION WITHIN TEN (10) DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate processing of Claimant's MA 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 10, 2013

Date Mailed: June 12, 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]
[REDACTED]
[REDACTED]
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