

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

IN THE MATTER OF:



Reg. No.: 2013-39586
Issue No.: 2009
Case No.:
Hearing Date: January 31, 2013
County: Wayne (41)

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 January 31, 2013, at Detroit, Michigan. Participants on behalf of Claimant were the Claimant and his Authorized Representative, . 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 June 7, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to March 1, 2012.
2. On August 13, 2012, the Department denied the application.
3. On November 5, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is fifty-two years old (), has an eighth-grade education.

5. Claimant last worked in 2009-10 as a stock handler in a warehouse. Claimant also performed relevant work as a construction worker. Claimant's relevant work history consists exclusively of unskilled, heavy-exertional work activities.
6. Claimant has a history of seizure disorder, arthritis, back pain, shortness of breath, eczema, depression, post-traumatic stress disorder, severe depression and personality disorder. The onset date of Claimant's seizure disorder is 2008.
7. Claimant was hospitalized in 2012 as a result of infected dermatitis and infected eczema. The discharge diagnosis was for follow-up care with Claimant's primary care physician and with the [REDACTED] dermatology team.
8. Claimant currently suffers from seizure disorder, arthritis, back pain, shortness of breath, eczema, depression, post-traumatic stress disorder, severe depression and personality disorder.
9. Claimant is severely limited in the basic living skills of standing, sitting, walking and lifting. 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).

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):

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. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 11.02.

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 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 2009-10. 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 2008. In 2008, Claimant had a seizure while in the bathroom. He blacked out, and when he woke up he had a knot on the side of his head. From 2008-2012 he had 10-12 seizures. He began treating for seizure disorder in July, 2012. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1, p. 29; MRI Report, Basha Diagnostics, July 16, 2012; Electroencephelogram (EEG) Report, Oakwood Healthcare System, August 20, 2012.

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 impairment is 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 11.02, convulsive epilepsy, and its subpart, section 11.02A, daytime episodes. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 11.02; see *also*, 20 CFR 404.1520(d).

The evidence in this case reveals that Claimant began having seizures in 2008 but received no treatment. He experienced 10-12 seizures over the next five years.

On June 15, 2012, while he was at [REDACTED], he was referred to the neurology department based on a history of two recent seizures. Hospital records indicate his wife was aware of the seizures.

In July, he became a patient of [REDACTED], M.D., [REDACTED], in the Hospital's ongoing seizure evaluation program. Dept. Exh. 1, pp. 29, 61. [REDACTED] sent him for an MRI in July and an EEG in August, 2012, both of which were normal. MRI Report, [REDACTED] Diagnostics, July 16, 2012; EEG Report, [REDACTED], August 20, 2012.

On September 20, 2012, Claimant saw Dr. [REDACTED] and reported two seizures since his last visit (date unknown). Dr. M [REDACTED] wrote a report describing Claimant's seizures, as Claimant described them to him:

He has intermittent loss of awareness of the surroundings, which lasts for a few seconds to minutes, started six month (sic) ago and proceeded (sic) by feeling a buzzing noise in his head. There is no loss of bowel or bladder control, but there is some confusion after the event. He usually has significant headache (sic) after these events. Report, [REDACTED] 20, 2012, p. 1.

Dr. [REDACTED] diagnosed complex partial seizure disorder with transient loss of awareness of surroundings. No abnormal associated movement. He prescribed Depakote 250 mg twice daily. *Id.*

On November 18, 2012, Claimant advised Dr. [REDACTED] that he had had two seizures since his appointment in September. Dr. [REDACTED] reiterated his diagnosis and continued Claimant on Depakote twice daily. Report, [REDACTED], M.D., November 18, 2012.

On December 13, 2012, Claimant reported one seizure since his last visit. Dr. Maaz reiterated his diagnosis and increased Claimant's Depakote to three times daily. Report, [REDACTED], M.D., December 13, 2012.

On February 5, 2013, Claimant saw Dr. Maaz and reported two seizures since his last visit. [REDACTED] continued his diagnosis and continued Depakote three times daily. Report, [REDACTED], M.D., February 5, 2013.

At the hearing on January 31, 2013 Claimant testified about his seizures. Claimant testified that his head buzzes and vibrates, he blacks out and he wakes up on the floor. It is found and determined that Claimant's hearing testimony is consistent with the seizure description he gave [REDACTED] in September, 2012.

Having set forth the medical data in this case, it is now necessary to determine if Claimant's impairment meets federal requirements. First, there must be a detailed, documented description of a typical seizure pattern, including all associated phenomena. Listing 11.02.

In this case Dr. [REDACTED] documents a detailed description of Claimant's seizures. Report, [REDACTED], M.D. September 20, 2012. Further, [REDACTED] repeats this description in three more reports regarding the Claimant. Reports, [REDACTED], M.D., November 18, 2012, December 13, 2012 and February 5, 2013.

Having considered [REDACTED] report and the testimony of Claimant regarding the seizure events in 2008, 2012 and 2013, and all of the evidence in this case as a whole, it is found and determined that Claimant has established that he has seizures that are of a typical nature and which are documented in medical records. It is found and determined that the evidence meets, or is the equivalent of, the first requirement in Listing 11.02.

Next, the factfinder must consider whether Claimant's seizures meet, or are the equivalent of, the frequency requirement in the Listing. This requirement is that the seizures must occur more frequently than once a month in spite of at least three months of prescribed treatment. *Id.* In this case the evidence establishes that Claimant had an initial seizure in 2008. In September, 2012 he was diagnosed with complex partial seizure disorder. He has had one seizure per month since May, 2012, he has been treating with a neurologist for seven months, and even with increased medication, the seizures remain constant.

Having considered this evidence and all of the evidence in this case as a whole, it is found and determined that the frequency of Claimant's seizures is equivalent to the federal definition, even though the seizures are one per month and not more. Claimant's seizures are found to be equivalent to the federal frequency requirement because they have been continuing for eleven months, a longer period of time than three months, yet they are still not under control, and medication does not appear to be effective. To summarize then, it is found and determined that the frequency of Claimant's seizures is equivalent to the frequency requirement of Listing 11.02.

Next, the third and last requirement of Listing 11.02 is that the seizure activity must be either daytime episodes with loss of consciousness and convulsive seizures, or that they be nocturnal episodes with residuals that interfere significantly with daytime activity. Listing 11.02A and B. In this case the Claimant testified to daytime seizures during which he loses consciousness and falls on the floor. He also has a buzzing noise in his head before the seizure, and a headache afterwards. Having considered this evidence and all of the evidence in this case as a whole, it is found and determined that Claimant suffers from daytime episodes of seizure disorder, and that Claimant's episodes meet, or are equivalent to, the requirements of Listing 11.02A. Claimant experiences loss of consciousness and falls down, and his experience is consistent with Listing 11.02A.

It is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 11.02, convulsive epilepsy. Claimant therefore has established eligibility for Medicaid based on his physical impairment. Listing of Impairment 11.02.

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 Medicare 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

Additionally, considering 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 programs as of the onset date of 2008.

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 June 7, 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 May, 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: April 17, 2013

Date Mailed: April 17, 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.

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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:

