

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 2013-20307
Issue No.: 2009
Case No.: ██████████
Hearing Date: July 2, 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 April 15, 2013, at Detroit, at Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of Claimant were the Claimant's husband, ██████████ and Claimant's 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 December 16, 2011, Claimant filed an application for MA benefits. The application requested MA retroactive to September 1, 2011.
2. On March 9, 2012, the Department denied the application.
3. On January 2, 2013, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is thirty-nine years old (██████████), has a high-school education and some college credits.

5. Claimant last worked in 2005 as a Manager Trainee. Claimant also performed relevant work as a hotel desk clerk, grocery store clerk and meat slicer. Claimant's relevant work history consists exclusively of unskilled, light and medium exertional work activities.
6. Claimant has a history of an acute cerebrovascular accident, sarcoidosis, Bell's palsy, hydrocephalus and vertigo. Her onset date is 2006 for sarcoidosis and Bell's palsy.
7. Claimant was hospitalized twice in 2011 and twice in 2012 as a result of her condition. The discharge diagnosis was stable with regular follow-up examinations.
8. Claimant currently suffers from sarcoidosis, Bell's palsy, hydrocephalus and vertigo.
9. Claimant is severely limited in the basic living skills of standing, sitting, walking, 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).

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

1. 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 2005. 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 testified that her onset date was 2006. In 2011, Claimant was admitted twice at Garden City Hospital for treatment, and gave a history of Bell's Palsy in 2007. Claimant was also hospitalized twice in 2012 and had surgery in which two shunts were inserted to treat hydrocephalus. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1, pp. 27, 47, and 9-127; Clmt. Exh. A, pp. 10-16, 23-55.

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, a federal Listing of Impairment, 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 the definition of a specific listed impairment in the federal Listing of Impairments. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments; 20 CFR 404.1511, 416.911, 416.926.

As Claimant is not found eligible for MA based 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 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 and carry. At the hearing, Claimant testified she can sit for one-half hour, and stand for ten minutes. She stated she can walk one block. Claimant stated she can lift and carry no more than fifteen lbs.

Claimant testified that she experiences "bad vertigo," and holds onto the wall to walk around. She stated, "Things seem off," she has balance issues, and she walks with a leaning posture. She has "big" memory loss and hearing loss of 48%. She has had seizures and takes seizure medication. She cannot drive because of a seizure within the last six months.

Claimant testified that she experiences dizziness and falls down at times. She has shortness of breath. She testified she goes grocery shopping with her husband, but has

to hang onto the cart because of dizziness. She needs help with most household chores and can only cook small items. She uses a walker at times.

Claimant's husband testified that Claimant needs help with paperwork and forgets to take her medications or takes the wrong medications. He helps her in and out of the shower. He stated she holds onto the walls to keep her balance, she has shortness of breath, and, she has an "altered mental state." He testified that she sometimes cannot talk and cannot understand others. He does not believe her condition is improving.

Based on Claimant's and Claimant's husband's credible and un rebutted testimony regarding Claimant's basic skills, 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 forty-hour work week. Claimant at this time 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 has not been employed since 2005. When she was asked if she could work at any of her previous jobs today, she testified that she could not return to any of the jobs because of her poor health. She also referred to the fact that her two treating physicians have concluded that she is unable to work.

Claimant's physicians are Fredrick Junn, M.D., Neurosurgery and Vladimir Ognenovski, M.D., Rheumatology. Both of her physicians reported that she is unable to work at any type of employment. Clmt. Exh. A, p. 4; Clmt. Exh. B.

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 work is readily available.

As the Department has the responsibility, or burden of proof, to establish that other 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 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 2006.


The Department's decision is

AFFIRMED REVERSED

THE DEPARTMENT SHALL BEGIN THE PROCESS OF THE FOLLOWING STEPS WITHIN TEN DAYS OF THE MAILING OF THIS ORDER:

1. Initiate processing of Claimant's December 16, 2011, 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 August, 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: July 8, 2013

Date Mailed: July 9, 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: [REDACTED]
[REDACTED]
[REDACTED]
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