

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

**IN THE MATTER OF:**

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

Reg. No.: 2013-36480  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: July 3, 2013  
County: Oakland (03)

**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 July 3, 2013, at Walled Lake, Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of Claimant were ██████████, her daughter, and ██████████, her niece, who acted as interpreter. Participants on behalf of the Department of Human Services (Department) were ██████████ ██████████, Eligibility Specialist.

**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 9, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to April 1, 2012.
2. On March 11, 2013, the Department denied the application.
3. On March 20, 2013, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is forty-three years old (██████████), has a sixth-grade education.
5. Claimant never worked fulltime outside the home.

6. Claimant has a history of lumbar spinal stenosis, ovarian cancer and ovarian cyst, and blood clots in her lungs and left leg. Her disability onset dates are 2006 (lower back pain, ovarian cyst and cancer) and 2010 (blood clots).
7. Claimant was hospitalized in 2006, 2010 and 2012 as a result of ovarian cysts, cancer and blood clots. The discharge diagnosis was in stable condition.
8. Claimant currently suffers from lumbar spinal stenosis and blood clotting.
9. Claimant is severely limited in the basic living skills of sitting, standing, 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 (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:

1.04C Lumbar spinal stenosis.

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 never worked fulltime outside the home. 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. 362.

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 dates are 2006 (lower back pain, ovarian cysts and ovarian cancer) and 2010 (blood clots). Claimant testified that in 2006 she had uterine and ovarian cancer and underwent surgical removal of one ovary. Claimant testified that this was when her lower back pain began. Then in 2010, she had a cyst, and her other ovary was removed. From then on, the pain became worse. Nowadays she usually spends the day lying down with her legs elevated. 20 CFR 404.1520(c), 404.1521.

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 1.04C, Lumbar spinal stenosis. This Listing is set forth as follows:

1.04C Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 1.04C; *see also*, 20 CFR 404.1520(d).

Initially, Claimant was diagnosed in 2009 with spinal stenosis in an MRI. The MRI revealed minimal disc degeneration at L3-4 causing mild foraminal stenosis, which was greater on the left side from associated facet hypertrophy. There was no central canal stenosis at L3-4.

Also, at L4-5 there was a disc bulge with a posterior annular tear, which caused mild bilateral foraminal stenosis but no central canal stenosis. Dept. Exh. 1, p. 98. This establishes the requirement that there be findings on appropriate medically acceptable imaging, the first requirement of 1.04C. Listing 1.04C.

Next, there must be pseudoclaudication, which is false lameness, caused by stenosis. This must be shown by (1) chronic nonradicular pain and weakness and (2) result in the

inability to ambulate effectively. Listing 1.04C. Claimant's testimony at the hearing shall be reviewed to determine if nonradicular pain, weakness, and inability to ambulate, are present in Claimant's case.

Claimant testified that her entire left leg hurts, including at the knee and ankle. She stated she also has back and chest pain and shortness of breath. She stated that if she does not move the pain is a level of eight on a ten-point scale, and when she moves, the pain is at ten on a ten-point scale. She cannot take pain medication because she is using Coumadin (Warfarin) and is not permitted to take pain medication at the same time. The pain includes a swelling phenomenon which also is painful to her.

With regard to lower back pain, Claimant testified that she began having back pain after her 2006 surgery. When she walks, she has to stop because of lower back pain, and then start walking again.

Having carefully reviewed this testimony and all of the evidence in this case as a whole, it is found and determined that Claimant has demonstrated that she has nonradicular pain as described in Listing 1.04C.

Next, with regard to weakness, Claimant testified she does not have the strength to walk because of lower back and left leg pain. She stated she cannot lift more than two pounds, the weight of her purse. She cannot carry two pounds for more than five minutes. Her house is small, and she holds onto walls and cabinets sometimes in order to move around the house. Housecleaning takes her a long time, because her back hurts. Washing dishes, for example, causes back pain for her.

Claimant testified she cannot put a contour sheet on the bed, although she can make the rest of the bed. She can vacuum only one room and then stops because of back pain. She cannot move furniture. She does not go grocery shopping. Her primary activity during the day is lying down with her legs elevated.

Having reviewed all of this testimony, and all of the evidence in this case as a whole, it is found and determined that Claimant has demonstrated she has physical weakness as a result of her back impairment. The third and last requirement to examine is whether Claimant demonstrates an inability to ambulate effectively.

With regard to walking ability, Claimant testified she can walk only ten minutes, but that even ten minutes walking will be painful for her because of left leg pain. She can stand for only ten minutes. She can sit for only ten minutes without pain, and shifted in her seat during the hearing. She also accepted an extra chair on which to elevate her left leg during the hearing.

Claimant testified that she cannot stand in an upright posture, but tilts forward and to the right so that more of her weight is on the right leg. She stated that with regard to her gait, she first tilts to the right, then halfway to the left to balance herself, and then more on the right. This results in a back-and-forth, side-to-side gait.

Based on Claimant's testimony, and having carefully reviewed all of the evidence presented in this case, it is found and determined that Claimant has demonstrated that she has an inability to ambulate effectively, as described in Listing 1.04C.

In summary, having reviewed Claimant's MRI, nonradicular pain, weakness, and inability to ambulate effectively, and, having reviewed all of the evidence in this case as a whole, it is found and determined that Claimant's medical impairment meets, or is equivalent to, Listing of Impairment 1.04A, Disorders of the spine. Claimant therefore has established eligibility for Medicaid based on her physical impairment. Listing of Impairment 1.04.

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.*

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 July 9, 2012, application, to determine if all nonmedical eligibility criteria for MA benefits are 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 retroactive 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 19, 2013

Date Mailed: July 19, 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]  
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