

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-27857
Issue No.: 2009
Case No.: ██████████
Hearing Date: July 15, 2013
County: Wayne (35)

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 15, 2013, at Redford, Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of the Claimant were his aunt, ██████████. 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 May 1, 2012, Claimant applied for MA benefits. The application requested MA retroactive to February 1, 2012.
2. On January 6, 2013, the Department denied the application.
3. On January 29, 2013, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is twenty-two years old (DOB ██████████), has a high-school diploma. He attended Special Education classes in school.

5. Claimant has never been employed, and has no relevant work history.
6. Claimant has a history of diabetes with neuropathy and amputation of one toe. His disability onset date is [REDACTED], when he was [REDACTED] old.
7. Claimant was hospitalized [REDACTED], 2012 and [REDACTED] 2012 as a result of gas gangrene of the right foot. The discharge diagnosis was extensive diabetic foot infection with follow-up care.
8. Claimant currently suffers from diabetes, a chronic right foot wound, and frequent incision and debridement treatments and dressing changes.
9. Claimant is severely limited in the basic living skills of 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 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/mental impairment meets a Federal SSI Listing of Impairment or its equivalent.

State the Listing of Impairment:

9.08 Diabetes mellitis. 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...

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 during his lifetime. 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, pp. 16, 21.

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 2002. In 2002, Claimant experienced dehydration, a constant need to use the bathroom facilities, loss of appetite and sleepiness. He was diagnosed with diabetes at C [REDACTED] and received insulin treatment. He continued on insulin until 2011, when his treating physician was no longer available. In April, 2012, he underwent a right toe amputation as a result of foot ulceration. He continues in treatment to this day. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1, p. 20.

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, and its subsection A, Neuropathy. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 9.08; see *also*, 20 CFR 404.1520(d).

Following the requirements of Listing 9.08, Claimant must first establish that he has a diagnosis of diabetes. In addition to the history stated above with regard to Step 2, the Claimant's most recent medical needs report from his podiatrist, [REDACTED], D.P.M., dated January 31, 2013, states Claimant has diabetes mellitus, and a chronic wound on the right foot requiring wound care consisting of debridement and dressing changes. [REDACTED] estimated Claimant needed six months of treatment, and, that Claimant has a medical need for assistance with personal care activities. He further stated that Claimant may not work at any job for eighteen months. Dept. Exh. 1, p. 119.

Based on Claimant's current diagnosis, and all of the evidence in this case considered in its entirety, it is found and determined that Claimant has diabetes mellitus, as required by Listing 9.08.

Next, in order to qualify for MA benefits on a medical basis, Claimant must establish that he has diabetic neuropathy as defined by subsection A of Listing 9.08. Subsection A requires that there be neuropathy of such severity that two extremities have significant and persistent disorganization of motor function, resulting in sustained disturbance of gross and dexterous movements or gait and station. Listing 9.08A.

Although Claimant has no other extremity with significant and persistent disorganization of motor function, in this case the severity of Claimant's right foot impairment is such that he is unable to walk without a post-operative surgical shoe, a walker, cane or crutches. Since Claimant's April, 2012 surgery he was seen at the [REDACTED] at least twelve times and was sent to the Emergency Department on one occasion from the clinic. He had two incision and debridement treatments in the hospital, and numerous excisional debridements at the Specialty Clinic. [REDACTED] disabled Claimant for eighteen months, and stated that Claimant has a medical need for assistance with personal care activities. Dept. Exh. 1, p. 119.

Also, at the hearing, Claimant testified that Dr. [REDACTED] directed him to "stay off his feet and let it heal on its own." Claimant was instructed not to bear his full weight on his right foot. Claimant testified that it is hard to do anything that he used to do. He gets tired, he needs breaks, and he walks with a limp. He has a hard time standing on two feet for any length of time, and instead of walking he hops on one foot. He needs assistance with grooming, bathing, cooking, and changing the dressings on his foot wound. He experiences neuropathic symptoms in his right foot, including numbness, tingling, and, throbbing pain. Dept. Exh. 1, pp. 22-24.

Claimant is still treating with [REDACTED] Dr. [REDACTED] in an earlier report noted that Claimant has decreased protective sensation in his right foot up to the level of his ankle. Claimant testified also that Dr. [REDACTED] told him he had gangrene and no cure is available. *Id.*, p. 15.

Having carefully considered this evidence and all of the evidence in this case in its entirety, it is found and determined that Claimant's condition is the equivalent of an impairment in two extremities as presented in Listing 9.08, subpart A. Claimant is severely limited in his mobility, and he limps and hops. He gets tired, he has to take breaks, and he has been instructed to stay off his feet in order for his wound to heal. He is still in aftercare treatment for his wound and has not returned to full weight-bearing activity. He is not expected to be able to return to any work whatsoever for eighteen months. It is found and determined that Claimant's condition is the equivalent of a significant and persistent disorganization of motor function in two extremities, and, it has resulted in a sustained disturbance of gait and station. Listing 9.08A.

It is therefore found and determined that Claimant's physical impairment meets, or is equivalent to, the requirements of Listing of Impairment 9.08, Diabetes mellitus.

Claimant therefore has established 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 based solely on 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 he 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 disability of 2002.

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 May 1, 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 September, 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 29, 2013

Date Mailed: July 30, 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.

2013-27857/JL

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]
[REDACTED]
[REDACTED]