

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

IN THE MATTER OF:

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

Reg. No.: 2013-13866
Issue No.: 2009
Case No.: ██████████
Hearing Date: March 20, 2013
County: Huron

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 March 20, 2013, at ██████████, Michigan. Participants on behalf of Claimant were the Claimant and his Authorized Representative, ██████████. Participants on behalf of the Department of Human Services (Department) were ██████████ and ██████████, Eligibility Specialists.

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 August 9, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to May 1, 2012.
2. On September 28, 2012, the Department denied the application.
3. On November 30, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is forty-seven years old (██████████), has a ninth-grade education. He was in Special Education since the second grade.
5. Claimant last worked in 2009 as an over-the-road truckdriver. Claimant also performed relevant work as a tanker driver, farmer, cook and factory worker.

Claimant's relevant work history consists exclusively of unskilled, medium to heavy work activities.

6. Claimant has a history of degenerative disc disease, chronic back pain and surgery, and neck pain. His onset date is 2005.
7. Claimant was hospitalized March 20-23, 2009 as a result of herniated disc surgery.
8. Claimant currently suffers from degenerative disc disease, chronic back pain and surgery, and neck pain.
9. Claimant is severely limited in the basic 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 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:

1. Claimant's physical and/or mental impairment(s) meet a Federal SSI Listing of Impairment(s) or its equivalent.

State the Listing of Impairments:

- 1.04 Disorders of the spine
- 1.04A Evidence of nerve root compression

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. 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. 58.

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 2005. In 2005, Claimant experienced low back pain due to back stress from his job as a truckdriver. The pain increased, and he experienced left leg pain and numbness beginning in November, 2008. In 2009 he had surgery to fuse a herniated disc, and the pain was gone for one year but returned, at times even worse than before. He now suffers from chronic back pain, degenerative disc disease and neck pain. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1, p. 58, 65-66; Clmt. Exh. A, pp. 5.

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 1.04, Disorders of the Spine, and its subpart, Listing I.04A. This Listing is set forth in full herein.

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss, and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine)...20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 1.04; see also, 20 CFR 404.1520(d).

All of the testimony and records in this case have been examined by the factfinder in their entirety. First, based on Claimant's 2009 surgery for a herniated disc, this surgical history establishes that Claimant has a listed disorder of the spine. In 2009 Claimant underwent surgery for an L5-S1 herniated disc which compromised his spinal cord. Dept. Exh. 1, pp. 65-66. Thus the first requirement of Listing of 1.04, that there be a spinal disorder, is established.

Second, Listing subpart 1.04A requires that there must be (1) evidence of nerve root compression characterized by neuro-anatomic pain distribution, (2) limitation of spinal range of motion, (3) motor loss with sensory or reflex loss, and (4) a positive straight-leg raising test. At the hearing Claimant testified to neuro-anatomic pain distribution. He testified that he experienced sciatica, consisting of radiculopathy down the left leg to the bottom of his left foot. He experiences a sharp pain shooting down his leg, and the sole of his foot feels like ice. He stated that the pain is so distracting that he has no attention for anything else. Having considered all of the evidence in this case, it is found and determined that Claimant has established that he has neuro-anatomic distribution of pain.

The second issue is whether Claimant has limitation in the range of motion of his spine. At the hearing he testified he cannot twist anymore because of back pain. He stated that loading groceries "bothers" him. In response to Department questionnaires he indicated that he cannot maintain a comfortable position in bed and wakes up during the night frequently. He cannot lift heavy objects and perform mopping, moving furniture or scrubbing walls. His family cleans his house when they visit. Dept. Exh. 1, p. 48-51.

In addition, the records of [REDACTED] D., Internal medicine, present a picture of someone who is in chronic pain and sees a physician monthly for pain medication. Also, Claimant testified that he can stand for only fifteen minutes, and he can walk for fifteen minutes but will experience pain while he is walking. Claimant's Exh. A, pp. 1-48.

Based on the testimony, the responses to Questionnaires, the medical records, and all of the evidence in this case as a whole, it is found and determined that Claimant has established he has limited spinal range of motion, the second requirement of Listing subpart 1.04A.

The third question that must be answered affirmatively is whether Claimant has motor loss with either sensory or reflex loss. Listing 1.04A. Motor loss means muscle weakness. Claimant testified he can currently lift only ten lbs. However, as a truckdriver he was frequently required to lift 100 lbs. Dept. Exh. 1, p. 7. The Claimant's decreased strength measured by his weightlifting ability shows a clear pattern of motor loss of Claimant.

Further, with regard to sensory and reflex loss, Claimant testified that the bottom of his left foot is like ice. This means that there is decreased sensation in Claimant's left foot, and fills the requirement of sensory loss in this case. Claimant testified that he also has

reflex loss, in that he cannot bend any more, and as a result he cannot mow or rake the lawn, shovel snow, or, load a truck.

Having considered all of this evidence and all of the evidence in this case as a whole, it is found and determined that Claimant has proved he has motor loss with sensory and reflex loss as described in Listing 1.04A.

The final requirement is that Claimant have a positive straight leg raising test. *Id.* The record is devoid of any results of straight-leg raising tests by a physician. However, the purpose of the test is to discover disk herniation and sciatica, and Claimant has already established that both of these impairments are present. This fourth requirement therefore is deemed to be redundant in this case.

Having completed an analysis of the requirements of Listing of Impairment 1.04 and subpart 1.04A, and having examined all of the evidence in this case in its entirety, it is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 1.04 and 1.04A, Disorders of the spine. Claimant therefore has established eligibility for Medicaid based on his 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.*

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

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 as of the onset date of 2005.

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 August 9, 2012, application, to determine if all nonmedical eligibility criteria for MA benefits have been met. Claimant's onset date is established as 2005.
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 2, 2013

Date Mailed: July 3, 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:

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