

5. Claimant last worked in 2010 as a cabinetmaker. Claimant performed no other relevant work. Claimant's relevant work history consists exclusively of skilled, heavily-exertional work activities.
6. Claimant has a history of severe end-stage osteoarthritis in both knees, right knee surgery, degenerative disc disease, spinal fusion, osteoarthritis in the right foot, migraine headaches, hand numbness and weakness, memory loss, muscle weakness and spasms, and reflex sympathetic disorder. His onset date is 2000, when he underwent right knee surgery for a meniscal tear.
7. Claimant was hospitalized in 2000 for right knee surgery and in 2012 for lumbar fusion surgery as a result of a right knee meniscal tear (2000) and severe L5-S1 degenerative disc disease (2012).
8. Claimant currently suffers from severe end-stage osteoarthritis in both knees, right knee surgery, degenerative disc disease, spinal fusion, osteoarthritis in the right foot, migraine headaches, hand numbness and weakness, memory loss, muscle weakness and spasms, and reflex sympathetic disorder.
9. Claimant is severely limited in basic skills such as standing, walking, sitting, 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 Impairment:

1.03 Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, with inability to ambulate effectively, as

defined in 1.00B2b, and return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 1.03; see *also*, 20 CFR 404.1520(d).

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 2010. 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. 6.

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 2000. In 2000, Claimant underwent reconstructive knee surgery at Lapeer Regional Hospital. Since then both knees have been diagnosed with deformities, severe crepitus throughout the range of motion, medial joint line collapse and flexion contracture. All of these are indicative of severe end-stage osteoarthritis in both knees. Claimant's testimony was consistent with the diagnosis, in that he stated his knees were now "bone on bone," and he has been advised that he needs bilateral knee replacement surgery. *Id.*, pp. 190-191, 235-236, New Medical, pp. 15-16.

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 1.03, Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 1.03; see *also*, 20 CFR 404.1520(d).

The evidence in this case shows that on September 8, 2000, Claimant underwent right knee arthroscopy surgery. The arthroscopy exploration resulted in the necessity for two surgical procedures, a partial medial meniscectomy (removal of two fragments of cartilage) and a release of medial synovial plica (unfolding a fold in the knee joint membrane). The Operative Report also notes chondromalacia. Dept. Exh. 1, pp. 235-6.

Having considered this evidence and all of the evidence in this case as a whole, it is found and determined that this surgery constitutes reconstructive surgery, surgical arthrodesis or their equivalent, as it involved invasive procedures on Claimant's knee, performed in the Operating Suite by an orthopedic surgeon. It is also equivalent in that the surgical repairs conducted did result in Claimant being able to bear weight on the right knee after surgery was performed. *Id.*

As stated above in regard to Step 2 of the Medicaid analysis, Claimant's right knee deteriorated over the past thirteen years to the extent that he now needs knee replacement. Claimant reported to his orthopedic specialist that he has had knee pain for years, and, that it is constant pain which is made worse by prolonged standing and by using stairs. *Id.*, New Medical, p. 15.

Claimant's testimony was consistent with the medical reports. He testified he has constant aching and pain in his knees, as well as a grinding sensation in both knees. He is currently unable to walk up and down stairs. He testified he can walk 20-25 ft. without a cane, and 200 ft. or more with a cane and including breaks.

Having considered all of the evidence in this case in its entirety, it is found and determined that the Listing 1.03 requirement that surgery be unsuccessful, is established.

In conclusion, it is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 1.03, Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint. Claimant in this case has therefore established eligibility for Medicaid based on his impairment. Listing of Impairment 1.03.

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 steps of the five-step Medicaid eligibility sequence.

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 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 program as of the onset date of 2000.

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 MA 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 July, 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: June 18, 2013

Date Mailed: June 18, 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]
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