

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

IN THE MATTER OF:



Reg. No.: 2013-6728
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 6, 2013
County: Wayne (19)

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 February 6, 2013, at Inkster, Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of Claimant were the Claimant, witness Sara Scheaffer, and Claimant's Authorized Representative, [REDACTED]. Participants on behalf of the Department of Human Services (Department) were [REDACTED], 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 May 5, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to February 1, 2012.
2. On July 27, 2012, the Department denied the application.
3. On October 18, 2013, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is twenty-nine years old [REDACTED], has a high-school diploma.

5. Claimant last worked in 2009 as a carpenter. Claimant performed no other relevant work. Claimant's relevant work history consists exclusively of skilled, heavy-exertion activities.
6. Claimant has a history of Type 1 diabetes and spinal fusion. His diabetes onset date is 1996, and his back injury occurred June 13, 2011.
7. Claimant was hospitalized June 13, 2011 (discharge date unknown), July 3-6, 2011, March 8-14, 2012, and March 29-April 2, 2012 as a result of spinal fracture, fusion surgery, infection, and hardware failures. The March 8-14, 2012 hospitalization was also for nausea and vomiting. Claimant was also hospitalized from September 3-7, 2012 as a result of a diabetic reaction. The discharge diagnosis was stable post spinal fusion.
8. Claimant currently suffers from diabetes and unsuccessful spinal fusion.
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 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 and/or mental impairment(s) meet a Federal SSI Listing of Impairment(s) or its equivalent.

State the Listing of Impairment(s):

9.08 Diabetes mellitus. 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 (see 11.00C). 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 9.08.

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. 20.

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 for Type 1 diabetes is 1996. In 1996, at the age of twelve, Claimant was diagnosed with Type 1 diabetes and was prescribed insulin. His glucose was under control through 2009. He has had no insurance since October, 2009 and, and has not had regular insulin since then. He is experiencing the beginning stages of neuropathy in his hands and feet, he passes out, he has constant cold sweats, and he has extreme thirst and hunger as well as loss of appetite. He experiences numbness in his toes, and his feet and toes have been discolored and are black and purple from lack of circulation for the past three years. He has blurred vision, he wears prescription glasses and believes that his eyesight is deteriorating. His last eye examination was in 2009. 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 9.08, Diabetes mellitus, and its subpart, 9.08A. 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).

The following is an analysis of the facts of this case for the purpose of determining whether Claimant's condition meets the federal diabetes disability definition. If Claimant's condition meets the federal definition of diabetes, then he has established disability based solely on a medical impairment. If his condition does not meet the

federal standard, the factfinder must proceed forward through steps four and five of the SSI five-step evaluation procedure.

The first requirement of Listing 9.08 is that the Claimant must have a diagnosis of diabetes mellitus. This diagnosis is evidenced by Claimant's credible and un rebutted testimony that he was diagnosed with diabetes when he was twelve years old in 1996. The diagnosis is amply corroborated in Claimant's 2011 and 2012 medical records, which are in evidence. The medical records are replete with references to diabetes, uncontrolled diabetes, diabetic reaction, glucose tests, and insulin prescriptions. Dept. Exh. 1, pp. 18, 24-26, 28, 30, 32, 34-5, 37-38, 40-41, 43; Clmt. Exh. A, pp. 1-4, 7, 11, 14, 22, 34, 36, 38, 40, 42-43, 45, 47, 49, 51, 53, 55-57, 62-63, 66-69, 72.

In addition, the Claimant's testimony is consistent with the medical records. As stated above, in 1996, at the age of twelve, Claimant was diagnosed with Type 1 diabetes and was prescribed insulin. His glucose was under control until 2009. He has not had insurance since October, 2009, and he has not had regular insulin since then. He is experiencing the beginning stages of neuropathy in his hands and feet, he passes out, he has constant cold sweats, and he has extreme thirst and hunger as well as loss of appetite. He experiences numbness in his toes, and his feet and toes have been discolored and are black and purple from lack of circulation for the past three years. He has blurred vision, he wears prescription glasses and believes that his eyesight is deteriorating. His last eye examination was in 2009.

Claimant also testified at the hearing that although he does not have a problem with balance, he stops walking because of pain, and, "I grab onto something and stomp like a mule." He cannot stand long enough to make a meal and has to take breaks and sit down. He cannot stand for more than one-half hour at a time, and he can walk only 200 ft. at a time.

Claimant testified he can do some housework such as washing dishes, and uses a dustbuster or broom (not a dustpan), for 5-10 minutes, but that afterwards he is "done for the day." He then lies down on the couch or in bed.

Claimant testified he can do some laundry if he has help, but he cannot squat, and it takes a long time for him to touch his toes.

Claimant testified his neurosurgeon advised him there is "no way" he can return to work as a carpenter. Claimant was advised to bend only within limits, and to "take it easy" because of his spinal surgery and the complications that have arisen. The doctor advised Claimant that he is experiencing a "haloing effect," meaning that bone is being stripped from his spine, and it is very painful. The doctor recommends removal of the surgical hardware but Claimant has no insurance to pay for the procedure.

Claimant also testified that he experiences numbness in both hands, causing him to drop objects such as plates of food and glasses of water. He stated, "My hands don't

work.” He has trouble grasping a knife handle to chop food such as chicken. He also has trouble opening jars with his hands, and needs assistance with this.

Claimant testified that his fingers cramp when he is using a writing utensil, and because of the cramping he cannot use a computer.

Claimant’s testimony was consistent with the testimony of his girlfriend Sarah Scheaffer. She testified he has very bad diabetes and cries about it every day. She stated he gets cramps in his legs. His hands and feet tingle day and night, and prevent him from sleeping. She stated he needs help with all of the activities of daily living and they do everything together.

Scheaffer also testified that Claimant needs assistance getting dressed because he cannot twist and bend. He cannot pull up his pants, insert a belt through the back belt loops of the pants, tuck in his shirt, put on socks, or tie his shoes. She assists him in all these tasks. She also testified that he passes out twice a week, and that this occurs while he is sitting on the couch and cannot be considered as naps.

Having considered all of this credible and un rebutted evidence, and all of the evidence in this case as a whole, it is found and determined that the evidence does establish that Claimant has diabetes. This is the first fact that must be established in line with the requirements of Listing 9.08.

Next, it must be determined whether Claimant has neuropathy as described in Listing subpart 9.08A. The neuropathy must be present in two extremities, and it must result in significant and persistent disorganization of either the gross and dexterous movements of the upper extremities, or the gait and station of the lower extremities, such that a sustained disturbance has occurred. Listing 9.08A. Gait and station are also defined in another federal listing as interference with locomotion. Listing of Impairment 11.00C.

First, with regard to Claimant’s upper extremities, Claimant cannot lift and carry objects without fear of dropping them. He cannot use a knife and he cannot open jars. His fingers get cramped when he uses a writing instrument, and the cramping also prevents him from using the computer.

Having considered this evidence, and all of the evidence in this case as a whole, it is found and determined that Claimant has a significant and persistent disorganization of motor function of his upper extremities. It is found and determined that this disorganization does result in a sustained disturbance of the gross and dexterous movements of Claimant’s upper extremities. This meets the requirements of subpart 9.08A.

Also in this case, the Claimant has pain and numbness in both legs. He cannot stand for more than one-half hour at a time, and cannot walk more than 200 feet at a time. He also experiences back pain, and shooting pain radiating from the lower back down to his toes. He cannot perform housework without assistance, and cannot get dressed by

himself. His doctor has advised him that he cannot perform carpentry work because of the physical demands of the work. His feet have been black and purple for three years.

This testimony is found to be credible and unrebutted, and it is determined to be fact in this case. This evidence demonstrates that Claimant's locomotion, i.e., his gait and station, is also grossly disturbed as described in subpart 9.08A. Accordingly, it is found and determined that Claimant has a gross disturbance of his gait and station, in that the degree of interference with his locomotion, as caused by diabetes, is significant and persistent.

These two requirements, the diabetes diagnosis and the gross disturbance of movement in at least two extremities, are the two federal requirements for a finding of eligibility based solely on the diabetes. It is found and determined that both requirements are met in this case.

Having analyzed the requirements of Listing 9.08 and 9.08A in order to determine whether Claimant meets the federal definition of diabetes, it is found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 9.08 and subpart 9.08A, diabetes mellitus with gross disturbance of gross and dexterous movements, and also of gait and station. Claimant therefore has established eligibility for Medicaid based on his physical impairment. Listing of Impairment 9.08, 9.08A.

It is therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 9.08, Diabetes mellitus. Claimant therefore has established his eligibility for Medicaid based on a physical impairment. Listing of Impairment 9.08.

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 also 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 elect 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 1996.

The Department's decision is

AFFIRMED REVERSED

THE DEPARTMENT SHALL INITIATE WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER, THE FOLLOWING:

1. Initiate processing of Claimant's May 5, 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 May, 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: April 18, 2013

Date Mailed: April 22, 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:

