

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

IN THE MATTER OF:

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

Reg. No.: 2013-7109
Issue No.: 2009
Case No.: ██████████
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 Inskter, Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of Claimant were the Claimant and his Authorized Representative, ██████████ ██████████ ██████████. Participants on behalf of the Department of Human Services (Department) were ██████████, 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 March 9, 2012, Claimant filed an application for MA benefits. The application requested MA retroactive to February 1, 2012.
2. On July 16, 2012, the Department denied the application.
3. On October 11, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is thirty-two years old (██████████), has an eleventh-grade education. He was in Special Education from grades 3-11.

5. Claimant last worked in 2008 as an assembly-line worker in a factory for 3-4 weeks. Claimant also performed relevant work as a grill cook and stockroom worker. Claimant's relevant work history consists exclusively of unskilled, medium and heavy exertional work activities.
6. Claimant has a history of reconstructive leg surgery, Type 2 diabetes mellitus, and hypertension. His onset dates are 1992, when he underwent surgery, and 2008, when he was diagnosed with diabetes.
7. Claimant was hospitalized in February and March, 2012 as a result of cellulitis and abscess. The discharge diagnoses were in stable condition.
8. Claimant currently suffers from reconstructive leg surgery sequelae, Type 2 diabetes mellitus, and hypertension.
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:

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 2008. 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).

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 1992. In 1992 Claimant had a left hip fracture which necessitated open reduction surgery and internal fixation at Children's Hospital, Detroit.

At a medical evaluation of Claimant requested by the Department, Claimant told an internal medicine physician that he has some difficulty with balance and has occasional falls. His left hip still hurts during cold weather, he is not able to sleep on his left side, and he experiences pain when he walks more than one or two blocks. He stated he has mild difficulty climbing steps and is likely to fall going downstairs. He stated that he fell two days before the examination on January 21, 2013.

In the internist's physical examination of Claimant, he noted that Claimant's left foot and leg are slightly deviated laterally (sideways), he is unable to squat, his range of motion is moderately diminished in the left hip, and there is an old surgical scar on the left hip. The internist further noted limitation of Claimant's ability to bend, a left-sided limp, limited left hip abduction, adduction, forward flexion, backward extension, and internal and external rotation. He also noted limitation of flexion in the left knee. 20 CFR 404.1520(c), 404.1521; Clmt. Exh. C, pp. 2-8.

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 found 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).

Although there are no medical records from 1992 in evidence in this case, the Department's medical evaluation by an internal medicine physician provides a sufficient medical history and physical examination of the Claimant to establish that Claimant had reconstructive surgery at the age of twelve. The evaluating physician made findings of limited range of motion, and took a history including the nature of the 1992 surgery and the resulting physical shortcomings with which Claimant has lived since the surgery. As stated above, Claimant has balance issues and falls down occasionally, he has difficulty with stairs, his range of motion is limited on the left side, he has a left-side limp, and there is a surgical scar on the left hip. Also, Claimant's ability to walk is limited to one to two blocks. Clmt. Exh. C, pp. 2-8.

In addition to this information from the evaluating physician and the observations he made, Claimant also reported his 1992 surgery at Oakwood Annapolis Hospital when he was hospitalized March 20-23, 2012. Claimant also reported his left hip impairment on March 8, 2012 in response to two Department questionnaires. Dept. Exh. 1, pp. 25, 29, 35.

Having reviewed this evidence of record and all of the evidence in this case as a whole, it is found and determined that Claimant did have reconstructive surgery in 1992 due to a hip fracture of unknown origin. It is next necessary to determine whether Claimant's impairment causes an inability to ambulate effectively, and, whether a return to effective ambulation occurred or is expected to occur within twelve months of onset. Listing of Impairment 1.03.

In addition to all of the evidence detailed above, the Claimant's testimony at trial will also be considered in relation to whether he can, or will be able, to ambulate effectively. Claimant testified that he quit two jobs because he could not stand long enough to meet the requirements of the job. These jobs were as an assembly-line worker and a stockroom worker.

Claimant testified that in 1992 a screw was placed in his left hip to connect his femur to his pelvis. He does not remember the cause of the fracture, but remembers he had to use crutches.

Claimant testified that since then his left groin has been in constant pain. He also has sharp pain in both feet, and numbness on the sole of the left foot. This causes him to step on things and cut himself. This may also be a consequence of his Type 2 diabetes, which was diagnosed in 2008.

Claimant is not currently receiving medical treatment due to lack of money and insurance coverage.

Claimant testified that he leans on objects to stand up, and he falls down twice a week. He cannot sleep at night because he is depressed about his health and lack of medical treatment.

Claimant testified he can stand for 15-20 minutes, and then he experiences pain and cramps in his left leg. After walking one block, his leg gives out and his knee locks up. When his left leg buckles, he falls down.

Claimant testified he can sit for thirty minutes, and then his left leg begins to hurt. He experiences a throbbing, pulsing pain. Claimant's entire left leg is numb when he wakes up and also when there is cold weather. He experiences pain in his lower back, primarily at the spot where the screw is.

Claimant testified that his pain level is steady, and without medication he rates it at seven on a ten-point scale. The pain is mostly in the lower back. He testified he cannot lift more than ten pounds.

Claimant testified that he cannot squat or bend. His left leg is turned outward, and as a result his left foot faces outward to the left. This position affects his gait and causes him to trip.

Claimant testified he has to sit down to chop vegetables for his mother to cook. He lives with his mother and she does all the household chores. Claimant cannot shop at the grocery store, and it is too cold for him to shovel snow in the winter. He thought he might be able to wash dishes for less than ten minutes.

Having considered all of Claimant's testimony, the medical records, Claimant's responses to Department questionnaires, and all of the evidence in this case as a whole, it is found and determined that Claimant is unable to ambulate effectively, he has not ambulated effectively for over twenty years, and it is not expected that effective ambulation will occur.

Having reached this conclusion, and the accompanying conclusion above that Claimant had reconstructive surgery, an overall conclusion can be reached. Having considered all of the evidence as a whole, 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. Claimant therefore has established eligibility for Medicaid based on his physical 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 step 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 as of the onset date of 1992.

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 March 9, 2012, application and application for retroactive benefits, to determine if all nonmedical eligibility criteria for MA benefits have been met. Claimant's onset date is 1992.
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 or 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: June 25, 2013

Date Mailed: June 26, 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]
[REDACTED]
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