

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

IN THE MATTER OF:

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

Reg. No.: 2013-9923
Issue No.: 2009
Case No.: ██████████
Hearing Date: January 31, 2013
County: Wayne (41)

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 January 31, 2013, at Detroit, Michigan. The Claimant appeared and testified at the hearing. Participants on behalf of the 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 May 25, 2012, Claimant applied for MA benefits. The application requested MA retroactive to February 1, 2012.
2. On August 14, 2012, the Department denied the application.
3. On November 8, 2012, Claimant filed a request for an Administrative Hearing.
4. Claimant, who is thirty-nine years old (██████████) has an eighth-grade education. He was in Special Education classes throughout his education.

5. Claimant has never had employment.
6. Claimant has a history of depression, anxiety, hypertension, diabetes, and shoulder and low back pain. His disability onset dates are [REDACTED] for mental impairment ([REDACTED]) and [REDACTED] for physical impairment (low back pain).
7. Claimant was hospitalized February 17-21, 2012 as a result of an elbow infection and bursitis, and August 5-7, 2012, as a result of an overdose of heroin. The discharge diagnoses were stable.
8. Claimant currently suffers from anxiety, hypertension, diabetes, and shoulder and low back pain.
9. Claimant is severely limited in the basic living skills of standing, sitting, 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 mental impairment meets a Federal SSI Listing of Impairment or its equivalent.

State the Listing of Impairment:

12.05 *Mental retardation*: Mental retardation refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; *i.e.*, the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C or D are satisfied.

C. A valid verbal, performance or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function...20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 12.05.

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 never worked in 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. 10, 14.

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 1982. In 1982, Claimant was enrolled in Special Education classes at [REDACTED]. In 1984 he was evaluated as Educable Mentally Impaired. In 1987, the Individualized Educational Program (IEP) Committee Report stated, "Success in regular education cannot be attained with supplementary aids and services because [REDACTED] reading & math achievement is 8 yrs. below regular grade expectancy." 20 CFR 404.1520(c), 404.1521; Clmt. Exh. A, pp. 1, 5.

In [REDACTED] he was evaluated by a multidisciplinary evaluation team of the [REDACTED]. He was [REDACTED]. His reading, spelling and arithmetic skills were less than third-grade level, and his reading comprehension was at second-grade level. Clmt. Exh. 1, p. 10.

Claimant dropped out after eighth grade, and has never been employed. He testified that he can read small words, with help, he can write his name, and he cannot do math. Although he testified he can handle money, the psychologist who evaluated him at the Department's request reported that he could not manage benefits as he had no experience managing money. Clmt. Exh. D, p. 17.

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 12.05, Mental retardation, and its subpart C. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairment 12.05; see *also*, 20 CFR 404.1520(d).

The factfinder must now review the facts of this case in order to decide if Claimant's impairments meet the severity level of Listing 12.05. If Claimant's impairment meets the listing's severity requirement, Claimant must be found eligible for Medicaid benefits. If Claimant does not meet the severity requirements in the Listing, Claimant must be denied Medicaid benefits.

Listing 12.05 requires first that the Claimant must have mental retardation, which the Listing defines as significantly subaverage general intellectual functioning initially manifested during the developmental period: *i.e.*, the evidence demonstrates or supports onset of the impairment before age 22. Listing 12.05. In this case Claimant's school records for 1982-1990 are in evidence.

The school records establish that he was identified as a Special Education student as early as [REDACTED] when he was [REDACTED]. He was placed in Special Education classes and continued in this curriculum through [REDACTED]. He was determined to be Educable Mentally Impaired in [REDACTED] but in [REDACTED] the IEP Committee determined that he was eight years behind regular grade level expectancy. In [REDACTED] he was tested by a psychologist and found to be third-grade level in reading, spelling and arithmetic skills, and second-grade level in reading comprehension. Clmt. Exh. A, pp. 1, 5, 10.

It is found and determined that this evidence, and all of the evidence in this case considered in its entirety, establishes that Claimant's mental impairment began before the age of twenty-two. It is further found that this evidence, combined with the evidence of his lack of experience and skill in money management, demonstrates Claimant has subaverage general intellectual functioning with deficits in adaptive functioning as well. *Id.*

Having established that the severity requirement of Listing 12.05 has been met in this case, an analysis of whether Claimant also meets a subsection severity requirement shall next be undertaken. Subsection C requires that Claimant have an IQ between sixty and seventy. Listing of Impairment 12.05C.

In this case the Claimant has never had an IQ test. However, he has been evaluated as to his reading, spelling, arithmetic and reading comprehension skills, and found to be eight years below average. This evaluation occurred in [REDACTED] when Claimant was [REDACTED]

Furthermore, Claimant has only an eighth-grade education and never obtained a Graduate Equivalency Diploma. Based on this evidence, and all of the evidence in this case considered as a whole, it is found and determined that the Claimant has the equivalent of an IQ of 60-70 points, even though he has not had IQ testing. The fact that he was eight years behind, when he was thirteen years old, is a significant departure from the regular grade level expectancy, and Claimant's subsequent performance was similarly low (second and third-grade levels). Accordingly the evidence in this case supports a conclusion that Claimant has the equivalent of an IQ of 60-70. Listing of Impairment 12.05C.

Next, Claimant must prove that he has another physical or mental impairment which imposes an additional, significant work-related limitation. *Id.* Claimant was evaluated by an internal medicine physician and a psychologist at the Department's request in this case. The internist found that Claimant has limited range of motion in his right shoulder, as a result of a 2001 motor vehicle accident. Claimant testified to shoulder pain which he rated as a 5-6 on a pain scale of ten. He uses a heating pad for pain, and he suffers shoulder muscle spasms. He cannot lift with his right arm at all, without suffering pain. Clmt. Exh. D, pp. 2, 5, 6.

Based on this evidence of a shoulder impairment, and all of the evidence in this case considered in its entirety, it is found and determined that Claimant has demonstrated that he has another, significant, physical impairment which impairs him from work. This satisfies the second requirement of subpart C.

In addition, in this case Claimant has a second significant impairment in addition to his right shoulder. This is a mental impairment, and it also causes significant limitation of his ability to work. At the Department psychologist's evaluation of Claimant, the psychologist diagnosed Depression, recurrent, with psychosis. Claimant has not been treated for psychosis. Claimant reported auditory hallucinations to the psychologist, stating that the auditory hallucinations began at age 20-25, and he last heard them "one week ago – usually it's just sometimes." He advised the psychologist that the voices, which he cannot identify, whisper his name to him. At the hearing Claimant testified he heard his sister saying his name about a month earlier. *Id.*, pp. 14, 16, 18.

The Listing of Impairment for psychosis states that hallucinations are a feature of psychosis. Based on the Listing definition of psychosis, it appears that the psychologist's diagnosis of psychosis is correct and this impairment does present an additional limitation which limits Claimant from working. Listing of Impairment 12.03A1; 12.05C.

Having considered all of the evidence presented above and all of the evidence in this case in its entirety, it is found and determined that Claimant demonstrates the severity of impairment required by Listing subpart C of Listing 12.05. This concludes the Step 3 analysis as to whether Claimant has the mental impairment of mental retardation. It is found and determined that the Claimant has established that he has a mental impairment listed in Listing of Impairment 12.05, or its equivalent. Accordingly, it is found and determined that Claimant is eligible for MA benefits based solely on a mental impairment.

In conclusion, it is found and determined that Claimant's mental impairment meets, or is equivalent to, the requirements of Listing of Impairment 12.05, Mental retardation. Claimant therefore has established eligibility for Medicaid based on his mental impairment. Listing of Impairment 12.05.

As Claimant is found by the undersigned to be eligible for MA based solely on a mental 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 Bridges Eligibility Manual (BEM) 261 (2012). 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 disability of 1982.

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 25, 2012, application, to determine if all nonmedical eligibility criteria for MA benefits have been met. Claimant's date of onset of disability is 1982.
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.

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]