

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Claimant

Reg No: 2007-14162

Issue No: 2007

Case No:

[REDACTED]

Load No:

Hearing Date:

February 25, 2008

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by Administrative Law Judge Jacqueline Hall-Keith on February 25, 2008 pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department. Judge Jacqueline Hall-Keith left State employment before the hearing decision was written. The undersigned Administrative Law Judge has written this hearing decision after review of a evidence in the record including the recording of the actual hearing. At the hearing, the Claimant was present and testified. Also present on behalf of Claimant was [REDACTED] [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant filed for MA on August 25, 2006. Claimant requested MA and SDA retroactive to May 2006.
2. Claimant was in a motor vehicle accident in 1991 and suffered a traumatic brain injury.
3. In May of 2006, Claimant fell down 12 stairs and suffered a subdural hematoma.
4. Claimant's impairments have been medically diagnosed as Traumatic Brain Injury (TBI), Cognitive Disorder secondary to cumulative effects of 5/06 TBI fall down stairs and 1991 TBI from MVA, Personality Changes with irritability and disinhibition over aggressiveness, Major Depression and severe Generalized Anxiety Disorder.
5. Claimant's physical symptoms are headaches, back pain, feeling shaky, and high blood pressure.
6. Claimant's mental symptoms are forgetfulness, memory loss, depression, loss of balance, slower information processing, word finding difficulty, and anxiousness.
7. Claimant testified that she only cooks in the microwave. She is able to do some household chores such as wiping surfaces and dusting. Claimant does not vacuum or do laundry. Claimant is able to clean the bathroom with help.
8. Claimant is 5'6" tall and weighs 120 pounds.
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant is 57 years of age.

11. Claimant has an Associate's degree.

12. Claimant last attempted part-time employment as a home health aide for 2-3 months in September of 2007.

13. Claimant had over 20 years employment experience working for the State of Michigan in various departments. Claimant was a manager or supervisor for the last 10 years of her employment.

14. The Department found that Claimant was not disabled and denied Claimant's application on 10/6/06.

15. Medical records examined are as follows:

[REDACTED], in part, Exhibit C

Abnormal signal in right petrous apex.

Medical Examination Report, [REDACTED] in part

Limitations imposed:

1. Stand/walk less than 2 hrs in 8-hr work day.
2. Lift less than 10 lbs. occasionally
3. No ability to do fine manipulating
4. Uses cane

[REDACTED] in part,
(Exhibit A, pp. 1-3)

“The patient was a poor historian. Her memory was not very good and she was rather slow . . . Her thinking process definitely appears to be slow and somewhat impaired. Her memory was also impaired . . . Neurological evaluation is strongly recommended.”

[REDACTED] Psychological Evaluation with
Neuropsychological Emphasis, 3/20/08 (Exhibit A, pp. 4-21)

“Test results point towards a cognitive fund now in the range of Borderline Mental Deficiency which seems down from at least an average level given her prior work and educational history. There are consistently moderate to severe impairments among


neurocognitive areas of short-term and long-term visual and verbal memory, manual motor dexterity, new information processing, psychomotor speed, perceptual motor coordination, verbal and nonverbal reasoning abilities. She appears to have major depressive affect disorder along with generalized anxiety disorder . . . “Id. at 15.

“She does appear independent for basic living activities of daily living such as dressing and bathing but not for cooking since she said she forgets things on the stove and they burn . . . Work would appear precluded and no serious employer would hire her given these polymorbid, moderate to severe levels of dysfunction.”

“On the DHS form 49E she appears to rank in the Markedly Limited Range in numerous areas including:

- ability to understand and remember detailed instructions,
- ability to carry out detailed instructions,
- ability to maintain attention and concentration for extended periods,
- ability to perform activities within a schedule and maintain regular attendance,
- ability to sustain ordinary routine without supervision
- ability to work in proximity with others without being distracted,
- ability to complete a normal work day,
- ability to accept instructions and respond appropriately to criticism from supervisors,
- ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes,
- ability to respond appropriately to changes in the work setting
- ability to set realistic goals or make plans independently or others.

GAF = 45

 in part, (Exhibit 1)

Patient admitted to ICU after falling down 12 stairs. CT scan revealed a subdural hematoma and facial fractures.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.1 *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months . . . 20 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, under the first step, client is not currently working. Nor did Claimant work enough hours or make enough wages from her last attempt at employment to qualify as substantial gainful activity. 20 CFR 416.974b. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. Examples include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing and speaking;
- (3) Understanding, carrying out, and remembering simple instructions.
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b)

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect

the claimant's ability to work," "regardless of the claimant's age, education, or prior work experience." *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant's ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

In this case, the Claimant has presented medical evidence of TBI and Cognitive Disorder that have had a significant effect on her memory and mental abilities. The medical evidence has established that Claimant has a medical impairment that has more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for more than twelve months. ██████ noted that Claimant was taking blood pressure medication, otherwise, there was no medical evidence submitted regarding Claimant's high blood pressure. Claimant submitted a Medical Examination Report from ██████, a specialist in physical medicine and rehabilitation, but no other medical records regarding back pain treatment.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant's medical record supports a finding that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). In this matter, the medical records establish a diagnosis of TBI and Cognitive Disorder secondary to cumulative effects of TBI's. Appendix 1 of Subpart P of 20 CFR, Part 404. Listing 12.00, *Mental Disorders*.

After reviewing the criteria of listing 11(F) traumatic brain injury and 12.02 *Organic Mental Disorders*, the undersigned finds the Claimant's medical records substantiate that the

Claimant's mental impairments meets or is medically equivalent to the listing requirements. 20

CFR 404 § 12.2 describes and Organic Mental Disorder as follows:

Organic Mental Disorders: Psychological or behavioral abnormalities associated with dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied . . .

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically document persistence of at least one of the following:

1. Disorientation to time and place; or
2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
3. Perceptual or thinking disturbances (e.g. hallucinations, delusions); or
4. Change in personality; or
5. Disturbance in mood; or
6. Emotional liability (e.g., explosive temper outbursts, sudden crying, et.) and impairment in impulse control
7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning;
or
3. Marked difficulties in maintaining concentration,
persistence, or pace; or
4. Repeated episodes of decompensation, each of
extended duration;

A. Organic Factor

First, Claimant was medically diagnosed with a subdural hematoma documented by a [REDACTED] which showed an abnormal signal in the right petrous apex. This occurred after Claimant fell down a flight of stairs. It is unknown whether the subdural hematoma existed as a result of the 1991 auto accident and was exacerbated or whether it is a new organic factor. It is clear, however, that following this brain hemorrhage, Claimant has shown cognitive impairment.

B. Loss of Cognitive Abilities

Second, while only required to have one area of loss of cognitive abilities, Claimant exhibits a loss in both memory impairment and loss of measure intellectual ability. In the neuropsychological testing, several tests revealed deficiencies in memory impairment. On the [REDACTED], which assesses new information processing and having a visual attention/memory component, Claimant was severely deficient. The results were similar on the Wechsler Memory Scales (Russell's Adaption), which according to the psychologist is most sensitive to organic cerebral pathology. Also, on the Trailmaking Test Parts A and B, Claimant's scores were in the Moderately to Severe Range of Deficiency for new information processing. The psychologist, [REDACTED] opined that "There are consistently moderate to severe impairments among neurocognitive areas of short-term and long-term visual

and verbal memory . . . new information processing . . . verbal and nonverbal reasoning abilities.” [REDACTED] Exhibit 1, pp. 14-15.

Claimant also exhibited a loss of measured intellectual ability. Prior to her automobile accident, Claimant was employed in a supervisory position and she had successfully completed two years of college. Her tested intellectual abilities, however, do not match her previous abilities. On the Wechsler Adult Intelligence Scale-III, Claimant’s full scale IQ was 74 (4th percentile, Borderline Deficient Range). “These scores suggest notable degradations from predicted premorbid levels given her education and vocational background.” Id. at p. 11. [REDACTED] [REDACTED] also stated that the subtest scores “represent notable degradations in areas of verbal reasoning, nonverbal reasoning, memory and perceptual coordination.” Id. He also opined that “[t]est results point towards a cognitive fund now in the range of Borderline Mental Deficiency which seems down from at least an average level given her prior work and education history.”

C. Marked Restriction

As a result of her memory and loss of measured intellectual ability impairments, Claimant exhibits Marked Restrictions in three out of four of the listed areas. First, Claimant has impairments in her activities of daily living. She is unable to use the stove as she will forget to turn off the burners. She is also unable to manage her checking account.

Furthermore, on the DHS form 49E Claimant showed Marked Limitations in numerous areas including:

- ability to understand and remember detailed instructions,
- ability to carry out detailed instructions,
- ability to maintain attention and concentration for extended periods,
- ability to perform activities within a schedule and maintain regular attendance,
- ability to sustain ordinary routine without supervision

- ability to work in proximity with others without being distracted,
- ability to complete a normal work day,
- ability to accept instructions and respond appropriately to criticism from supervisors,
- ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes,
- ability to respond appropriately to changes in the work setting, ability to set realistic goals or make plans independently or others

Exhibit 1, pp. 20-21. These limitations showed marked difficulties in social functioning and maintaining concentration, persistence and pace.

Therefore, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements. In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM). A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of August 25, 2006.

Therefore the department is ORDERED to initiate a review of the application of August 25, 2006, if not done previously, to determine claimant's non-medical eligibility. The department shall inform the claimant of the determination in writing. The case shall be reviewed in March 3, 2010.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Jacqueline Hall-Keith
Department of Human Services

Date Signed: 03/11/09

Date Mailed: 03/11/09

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

2007-14162/JV

JV/dj

cc:

