

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.: 2008-16991  
Issue No.: 2009, 4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
August 28, 2008  
Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a hearing was held on August 28, 2008. The Claimant, his father and representative appeared at the Department of Human Service (Department) in Mecosta County.

The record was left open to obtain additional medical information; an Interim Order was issued for new medical records and independent medical exams. The State Hearing Review Team (SHRT) reviewed and denied the application. This matter is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA) program?

FINDINGS OF FACT

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

- (1) The Claimant's benefits for MA-P and SDA were re-determined in November 2007.
- (2) On March 24, 2008 the Department denied the application; and on September 29, 2008 the SHRT denied the application finding the medical evidence sufficient to determine medical improvement and the ability to perform unskilled, light work.
- (3) On April 3, 2008 the Claimant filed a timely hearing request to protest the Department's determination.
- (4) Claimant's date of birth is [REDACTED], and the Claimant is thirty-two years of age.
- (5) Claimant completed grade 12 and an associate's degree; and can read and write English and perform basic math.
- (6) Claimant last worked in November 2006 self-employed in land clearing.
- (7) Claimant has alleged a medical history of brain damage due to a 2006 MVA, panic disorder, decreased memory and concentration, loss of focus with poor judgment, and fatigue.
- (8) June 2008, in part:

Benefits were approved in [REDACTED] status closed head injury. In [REDACTED] he was driving independently. In [REDACTED] the claimant was alert, orientated, speech was understandable with good thought content. Judgment, memory and insight were intact. Hearing, vision, gait and mobility were good. Daily activities were performed independently. No other severely restrictive impairments were clinically documented. The claimant's impairments improved with medical treatment and compliance. SHRT. Department Exhibit (DE) 3.
- (9) September 2008, in part:

I have been seeing him since [REDACTED]; and initially he presents well. But over time a variety of issues have surfaced that will continue to impact recovery from traumatic brain injury. He gets intense and social judgment is impaired and he misinterprets social situations. Frustration leads to threatening behavior and breaking promises made to family about using drugs which he minimizes. [REDACTED], Ed.D.

(10) November 2008, in part:

Psychologist Evaluation: Reports random panic attacks and takes Xanax. Now has a driver's license and balance and vision improved. I observed left eye operates independently from right eye. Able to name his doctors. Medications: Celexa, Corag, Xanax.

Vague when asked what reads or researches on the computer. Sometimes distractible and eyes wander and conversation becomes tangential. Adds dependent clauses to an interminable sentence unless interrupted. Loses his way to end a sentence. It is difficult to know if he is exaggerating his symptoms but seems unusual to have developed panic attacks just starting in past few months. Anxiety is old and prior to head injury. Sleep is still disturbed and awakens frequently at night.

Does not express full range of emotions and close to flat affect. Diagnosis now is more generalized anxiety disorder and existed prior to head injury. Meets the ICD-10 and the DSM-IV criteria for post concussive syndrome. [REDACTED], Ph. D., LP.

#### 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

If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement apply. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, (see paragraph (b)(4) of this section for exceptions) we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled.

(i) *Medical improvement.* Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s) (see §416.928).

In this case, the Claimant was granted disability for a November 2006 moderately severe Traumatic Brain Injury (TBI) with neurological damages. On review of disability, the medical records establish physical medical improvement. There are no physical restrictions or neurological deficits. Visual acuity with glasses was within normal limits; and the Claimant was

granted independent driving privileges within seven months after the MVA establishing adequate vision. The Claimant is still under psychological treatment.

In September 2008, [REDACTED] opined that the Claimant has marked and extreme limitations relating to occupational adjustments, performance adjustments, personal and social adjustments; and has had one to two episodes of decompensation of extended duration. The doctor describes one event of a violent outburst.

In November 2008, [REDACTED] evaluated the Claimant and opined that his mental condition meets the criteria for post concussion syndrome. Thus, the undersigned decides there has not been a complete mental medical improvement.

None of the exceptions apply because the medical records indicate the Claimant has been compliant with all medical treatment; and the grant of disability was valid for the time of November 2006. The undersigned finds there has not been sufficient medical improvement related to the Claimant's ability to work. Based on [REDACTED] opinion after three to four months of treatment, mental medical improvement has not occurred and no exception applies, your benefits will continue.

#### DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "disabled" for purposes of the Medical Assistance based on disability and State Disability Assistance program.

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the November 2007 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and representative of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in May 2010.

/s/  
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Judith Ralston Ellison  
Administrative Law Judge  
For Ishmael Ahmed, Director  
Department of Human Services

Date Signed: 05/14/09

Date Mailed: 05/15/09

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 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.

JRE/jlg

cc:

