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.: 2008-30081
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
April 22, 2009
Wayne County DHS (19)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was conducted from Inkster, Michigan on April 22, 2009. The Claimant appeared and testified. The Claimant was represented by [redacted] of [redacted], Inc. [redacted] appeared on behalf of the Department. At the Claimant's request, the record was extended to allow for the submission of additional medical records.

On May 29, 2009, the additional records were received, reviewed, and entered in to the record as Exhibit B1 through B4. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs?

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefits on April 25, 2008.
2. On June 2, 2008, the Medical Review Team ("MRT") determined the Claimant was not disabled for purposes of the MA-P and SDA benefits. (Exhibit 1, pp. 1, 2)
3. On June 4, 2008, the Department sent an Eligibility Notice to the Claimant informing him that he was found not disabled. (Exhibit 1, p. 57)
4. On July 17, 2008 and October 14, 2008 the Department received the Claimant's written Requests for Hearing.
5. On November 7, 2008, the State Hearing Review Team ("SHRT") determined the Claimant not disabled finding the impairment(s) lacked duration and that drug and substance abuse was material. (Exhibit 2)
6. The Claimant's alleged physical disabling impairment(s) are due to chronic back and leg pain, renal failure, Hepatitis C, poly-substance abuse, dizziness and seizures.
7. The Claimant's alleged mental impairments are due to recurrent, severe, major depressive disorder.
8. At the time of hearing, the Claimant was 33 years old with a [redacted] birth date; was 5'11" in height; and weighed 180 pounds.
9. The Claimant is a high school graduate with some vocational training with a work history as a carpenter, assembler, and landscaper.

10. The Claimant's impairment(s) have lasted, or are expected to last, continuously for a period of 12-months or longer.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formally known as the Family Independence Agency, pursuant to MCL 400.10 *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").

Disability is defined as 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 CFR 416.905(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2)

the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic

work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.;* 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4)

A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity there is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services,* 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services,* 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges physical disability, in part, on the basis of chronic back pain, renal failure, Hepatitis C, poly-substance abuse, dizziness, seizures, and depression. Approximately 3-4 years ago, the Claimant was involved in a motor vehicle accident resulting in a closed head injury and coma.

On [redacted], the Claimant had a seizure, fell, and was unconscious (purportedly due to a heroin overdose) for approximately 8 – 9 hours. The Claimant was brought to the emergency room and subsequently admitted. The Claimant was intubated and placed in intensive care where he suffered significant rhabdomyolysis which resulted in kidney failure. The Claimant was found with significant lower extremity edema. On [redacted], the Claimant was discharged with a walker in stable condition, noting to expect continued pain and difficulty in walking for approximately 4-5 weeks. The discharge diagnoses were intravenous heroin abuse,

rhabdomyolysis secondary to fall, end-stage renal disease secondary to rhabdomyolysis, and hepatitis C.

On [redacted], a Medical Examination Report was completed on behalf of the Claimant. The physical examination documented the Claimant's need for assistance in his activities of daily living, back and leg pain, as well as a need for a walker. Further, gait dysfunction and previous head trauma/seizures/closed head injury was noted. The Claimant was limited in all areas to include mental limitations regarding comprehension, memory, and sustained concentration.

On [redacted], another Medical Examination Report was completed on behalf of the Claimant. A decreased cervical range of motion and extension was noted. The current diagnoses were listed as chronic headaches, cervical dysfunction, short term memory loss due to head injury and coma. The Claimant was found able to occasionally lift 10 pounds and able to stand and/or walk at least 2 hours in an 8-hour workday. The Claimant was able to perform repetitive actions with his hands/arms and feet/legs. The Claimant's memory was documented as limited.

On [redacted], and EMG and nerve conduction velocity of the lower left extremity was performed based upon no left foot movement since the last seizure in [redacted]. The results found evidence of S1 root abnormality as significant abnormality of lower back muscle. The inability to see any motor condition in the left lower extremity may be related to complete severance/degeneration of sciatic nerve.

On this same date, the Claimant was examined. The neurological examination documented weakness in the proximal left lower extremity with no movement at all at the ankle other than minimal plantiflexion. The Claimant was found with DTRs in the lower extremity

with severe hyperesthesia involving the foot and left leg. An upper motor neuron lesion was not ruled out. Right leg was completely normal. An MRI of the brain and lumbosacral spine was recommended.

On [redacted], an MRI of the Claimant's brain was performed which documented probable areas of old hemorrhagic contusions within the frontal lobes bilaterally.

On [redacted], an MRI of the lower back was performed which found degenerative joint disease changes most prominent at L4-L5 and L5-S1 and a annular tear at L4-L5.

On [redacted], the Claimant attended a follow-up evaluation. The Claimant's EMG from [redacted] documented evidence of severe neuropathy involving the lower left extremity. The neurologist opined that the severe neuropathy may be related to complete degeneration of sciatic nerve, status post trauma. A change in his seizure medication was recommended to improve his seizure control.

On [redacted], an EEG, EKG, and MRI were performed on the Claimant. No epileptiform activity was seen however the EEG was abnormal with a mild degree of cerebral irritability noted. The brain MRI showed evidence of an old hemorrhagic contusion within both frontal lobes. The MRI of his lumbosacral spine revealed evidence of small annular tear at L4-L5 along with classic symptoms of L5 radiculopathy clinically, however the EMG showed evidence of involvement of the whole sciatic nerve "which could be related to a more proximal lesion close to his roots" The Claimant was referred to a spine specialist.

On [redacted], the Claimant presented to a neurologist for a follow-up appointment due to possible medication reaction with Trileptal. The Claimant was prescribed Trileptal after experiencing dropout episodes and passing out. The Claimant was found to have post-traumatic seizures with post-traumatic neck and back pain with gait ataxia. The Neurologist recommended

that the Claimant continue using crutches for ambulation and continue to use Suboxone for pain control to prevent addition from other narcotics. The Trileptal was increased. Myobloc injections for back spasms were recommended as a better alternative to taking multiple medications.

On [redacted], the Claimant presented to [redacted] with complaints of low back pain which radiated down his left leg. The physical examination found decreased strength of 4/5 in hip flexion, knee extension, and knee flexion. In addition, the Claimant had no active dorsiflexion, trace plantar flexion, and trace inversion greater than eversion as well as absent Achilles reflexes on the left. The Claimant's foot drop was noted as well as his inability to do heel or toe walking. Ultimately, the Claimant was found with L5-S1 radiculopathy with a history of traumatic brain injury (post motor vehicle accident) and seizure disorder. Surgical intervention for radiculopathy was recommended because the Claimant had neurological signs and no pain improvement despite treatment.

On [redacted], the Claimant attended a neurological follow-up appointment for his low back pain. There was no improvement with epidural pain blocks. The Claimant's pain medication was increased in attempt to control his pain.

On [redacted], the Claimant attended a neurological follow-up appointment where Myobloc injections (Boutlinum toxin B) were discussed and his prescriptions for severe back pain were refilled.

On [redacted], the Claimant was examined for neck and back pain. Previously, as a result of a 2004 motor vehicle accident, the Claimant broke his right forearm with open reduction and internal fixation. The Claimant was in a coma. The physical examination found the Claimant's back and neck physiologically curvature with tenderness and a decreased range of

motion. Straight-leg raising test was decreased on the left side with a foot drop at the left ankle, left side. In addition, the Claimant was found with muscle atrophy of the lower left leg with decreased sensation at the left peroneal nerve distribution. The Claimant's limp was also noted. The Claimant was prescribed Suboxone.

On [redacted], a Neurologist completed a Medical Examination Report on behalf of the Claimant and listed the Claimant with post-traumatic head injury, lumbar radiculopathy and neuropathy, and post-traumatic neck and back pain. Left lower extremity weakness, left ankle drop, and gait ataxia. Abnormal EEGs and MRIs of the brain show bilateral old hemorrhagic contusion in the frontal lobes. The Claimant was found able to frequently lift 25 pounds and able to perform repetitive actions with both hand/arms, and right foot/leg.

On [redacted], a Psychiatric/Psychological Examination Report was completed by the Claimant's treating psychologist on behalf of the Claimant. The Claimant's was diagnosed with major depression, severe, recurrent with problem with a Global Assessment Functioning of 35. The Claimant's prior year GAF was 30. In addition, a Mental Residual Functional Capacity Assessment was also completed which found the Claimant marked limited in 11 of the 20 areas. Further, the Claimant was noted as being permanently affected regarding his ability to function in the workplace in light of his severe depression, problems with memory, and difficulty relating to others.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de*

minimis effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical and mental disabling impairments due, in part, to chronic back and leg pain.

Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2b(1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable

walking pace over a sufficient distance to be able to carry out activities of daily living. 1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

Categories of Musculoskeletal include:

1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

* * *

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe

burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

In order to meet a musculoskeletal listing, the impairment must present a major dysfunction resulting in the inability to ambulate effectively. The Claimant's back and left leg pain is supported by medical documentation, as well as his inability to ambulate effectively without assistance. Epidural injections were unsuccessful with a decreased range of motion noted along with an increase in prescribed pain medication. A complete severance/degeneration of his sciatic nerve was documented with the [redacted] EMG as was severe hyperesthesia involving the foot and left leg with neuropathy and muscle atrophy. The [redacted], MRI found degenerative joint disease and an annular tear at L4-L5. These same records document that the Claimant is able to stand and/or walk at least 2 hours in an 8-hour workday and is able to perform repetitive actions with his feet/legs. Ultimately, it is found that the Claimant's impairments may meet a listed impairment within 1.00 however, the record is insufficient to meet the intent and severity requirement thus the Claimant cannot be found disabled under this listing.

The Claimant alleges physical disabling impairment due to Hepatitis C. Listing 5.00 discusses adult digestive system impairments. Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. 5.00A Medical documentation necessary to meet the listing must record the severity and duration of the impairment. 5.00B The severity and duration of the impairment is considered within the context of the prescribed treatment. 5.00C1 Side effects of

prescribed treatment is also evaluated. 5.00C2, 3 Chronic viral hepatitis infections are evaluated under 5.05 or any listing in an affected body system. 5.00D4a(ii)

In the record presented, and in consideration of 5.00, specifically 5.05, the Claimant's medical documentation is insufficient to meet the intent and severity requirement of this listing. Accordingly, the Claimant cannot be found disabled (or not disabled) under this listing.

The Claimant asserts physical disabling impairments due to renal failure. Listing 6.00 discusses genitourinary impairments that result from chronic renal disease. Renal dysfunction due to any chronic renal disease due to any chronic renal disease, such as chronic glomerulonephritis, hypertensive renal vascular disease, diabetic nephropathy, chronic obstructive uropathy, and hereditary nephropathies is evaluated under Lising 6.02. Medical records of treatment, response to treatment, hospitalizations, and laboratory evidence of renal disease that documents the progressive nature of the disease are necessary to meet this listing. 6.00C(1) The type, response, side effects, and duration of therapy is considered as well as any effects of post-therapeutic residuals. 6.00D An impairment of renal function due to any chronic renal disease that has lasted or is expected to last continuously for a period of at least 12 months with chronic hemodialysis or peritoneal dialysis or kidney transplantation meets Listing 6.02. In addition, impairment of renal function is also met when the record documents persistent elevation of serum creatinine with renal osteodystrophy mainefested by severe bone pain or persistent motor or sensory neuropathy or persistent fluid overload syndrome with diastolic hypertension greater than or equal to diastolic blood pressure of 110 mm Hg or persistent signs of vascular congestions despite prescribed treatment. Persistent anorexia with weight loss determined by the body mass index of less than 18 calculated at least two evaluations at least 30

days apart within a consecutive 6-month period may also establish an impairment of renal function.

In this case, the Claimant was treated for renal failure in [redacted] after a seizure purportedly due to a heroin overdose. No further medical treatment was received/documented. Accordingly, the record does not support a finding of disabled under this listing.

The Claimant also suffers from seizures. Listing 11.00 discusses adult neurological disorders. The criteria for epilepsy are applied only if the impairment persists despite the fact the individual is compliant with the antiepileptic treatment. 11.00A The severity of frequently occurring seizures is evaluated in consideration of the serum drug levels. *Id.* Blood drug levels should be evaluated in conjunction with all other evidence to determine the extent of compliance. *Id.* Listing 11.02 defines the requirements of convulsive epilepsy. To meet this listing, documentation providing a detailed description of a typical seizure pattern, including all associated phenomena, occurring more frequently than once a month, in spite of at least three months of prescribed treatment with daytime episodes (loss of consciousness and convulsive seizures) or nocturnal episodes manifesting residuals which interfere significantly with activities during the day. To meet Listing 11.03, an individual's nonconvulsive epilepsy must be documented by detailed description of a typical seizure pattern including all associated phenomena, occurring more frequently than once weekly despite at least 3 months of prescribed treatment with alteration of awareness or loss of consciousness. Additionally, documentation of transient postictal manifestations of unconventional behavior or significant interference with activity during the day is required.

The record presented establishes that the Claimant suffers from seizures as a result of a previous closed head injury. In [redacted], the Claimant's medication was increased with no

further medical treatment documented, thus no indication the Claimant's seizures are not controlled under his current medication regime. Ultimately, the objective medical documentation is insufficient to meet the intent and severity requirement of a listed impairment within Listing 11.00. Accordingly, the Claimant cannot be found disabled under this listing.

The Claimant asserts mental disabling impairments due to severe, recurrent depression. Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The severity requirement is measured according to the functional limitations imposed by the medically determinable mental impairment. 12.00C Functional limitations are assessed in consideration of an individual's activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. *Id.*

Listing 12.02 discusses organic mental disorders which relate to 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 are met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented 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 know 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, etc.) and impairment in impulse control; or

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., 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;

OR

C. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

In this case, the medical records document the Claimant's traumatic brain injury as a result of the Claimant's motor vehicle accident. Abnormal EEGs and MRIs of the brain show bilateral old hemorrhagic contusion in the frontal lobes. These records also document the Claimant's diagnosis and treatment for severe, recurrent, major depressive disorder which have negatively impacted the Claimant's memory. The Claimant's GAF ranges between 30 and 35 and the Claimant was found markedly limited in 11 of 20 categories. The objective medical records establish the Claimant has a past history of poly-substance abuse. In consideration of the Claimant's other severe impairments as detailed above, it is found that the substance abuse is not a contributing factor material to the determination of disability and the Claimant's functional limitations would remain independent of the abuse. 20 CFR 416.935 Ultimately, based upon the submitted record, it is found that the Claimant's mental impairment(s) may meet a Listed impairment within 12.00, namely 12.02 and/or 12.09 (substance addiction disorders), however the records are insufficient to meet the intent and severity requirement, in light of the durational requirement, therefore the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv) An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of

sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a) In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling,

stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2) The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history includes employment as a carpenter, assembler, and landscaper whose primary responsibility was to provide general labor. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled, medium/heavy work.

The Claimant testified that he experiences difficulty lifting/carrying; can stand for 5-10 minutes but experiences balance issues; can walk short distances; and is unable to fully squat and/or bend. The medical documentation notes similar restrictions to include mental limitations relating to his memory, concentration, and comprehension. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920 In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work providing general labor, thus the fifth step in the sequential evaluation is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant, a high school graduate, was 33 years old thus considered a younger individual for MA-P purposes. Disability

is found disabled if an individual is unable to adjust to other work. Id. At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In the record presented, the total impact caused by the combination of medical problems suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical and mental impairments have a major effect on his ability to perform basic work activities. The Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) due to the nature of the combined limitations. After review of the entire record and in consideration of the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II), it is found that the Claimant is disabled for purposes of the MA-P program at Step 5

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program purusant to MCL 400.10 et seq. and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered

disabled for SDA purposes 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.

In this case, the Claimant is found disabled for purposes of the Medical Assistance ("MA-P") program, therefore the Claimant's is found disabled for purposes of continued SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the April 25, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized representative of the determination.

3. The Department shall supplement the Claimant any lost benefits he was entitled to receive if otherwise eligible and qualified in accordance with department policy.

4. The Department shall review the Claimant's continued eligibility in July of 2010 in accordance with department policy.

__/s/_____
Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: __06/03/09_____

Date Mailed: __06/03/09_____

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 the Circuit 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 recip date of the rehearing decision.

CMM/jlg

cc: [redacted]