

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2009-27101
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 10, 2009
Wayne County DHS (82)

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 held in Redford, Michigan on Thursday, September 10, 2009. The Claimant appeared, along with Abigail Jones, and testified. The Claimant was represented by [REDACTED] of [REDACTED] [REDACTED] appeared on behalf of the Department.

During the hearing, the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was received, reviewed, and entered as Exhibits 5, 6. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit 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 submitted an application for public assistance seeking MA-P benefits on April 2, 2009.
2. On April 14, 2009, the Medical Review Team ("MRT") deferred the disability determination requesting additional medical evidence. (Exhibit 1, p. 1)

3. On April 22, 2009, the MRT found the Claimant not disabled for purposes of the MA-P benefit program. (Exhibit 1, pp. 1, 2)
4. On April 27 2009, the Department sent an Eligibility Notice to the Claimant informing him that he was found not disabled. (Exhibit 2)
5. On May 20, 2009, the Department received the Claimant's timely written request for hearing. (Exhibit 3)
6. On July 7, 2009, the State Hearing Review Team ("SHRT") determined that the Claimant was not disabled. (Exhibit 4)
7. The Claimant's alleged physical disabling impairment(s) are due to a right hand pain/dysfunction, traumatic brain injury, and headaches.
8. The Claimant's alleged mental impairments are due to cognitive disorder, anxiety, depression, and post-traumatic stress disorder.
9. At the time of hearing, the Claimant was 25 years old with a [REDACTED] birth date; was 5'10" in height; and weighed 185 pounds.
10. The Claimant is a high school graduate with some college with an employment history as an insurance appraiser, dietary aide, and general laborer.
11. 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"), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("BRM").

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-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 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 416.927

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 applicant 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 is made. 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. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability benefits 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 non-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 disability due to right hand pain/dysfunction, traumatic brain injury, headaches, cognitive disorder, anxiety, depression, and post-traumatic stress disorder.

On [REDACTED] the Claimant was assaulted and suffered multiple gunshot wounds. CT scan of the head revealed a depressed skull fracture in the left temporal area. The Claimant underwent a craniotomy with debridement of the left mastoid and petrous bone fracture. X-rays of the bilateral hands revealed third proximal findings fracture on the right hand. On [REDACTED], the Claimant was transferred to in-patient rehabilitation. The Claimant was discharged on [REDACTED] with the diagnoses of traumatic brain injury secondary to assault with the left temporoparietal depressed skull fracture status post craniotomy and right hand third proximal phalanx fracture. The Claimant was advised not to work until vocational rehabilitation was completed.

On [REDACTED] the Claimant attended a follow-up appointment for his left posterior temporal elevation of a depressed skull fracture and closure of neck

laceration. The Claimant was healing well however there were issues noted in cognitive slowing.

On [REDACTED], the Claimant attended a follow-up appointment where it was recommended that the Claimant begin out-patient speech therapy and occupational therapy.

On [REDACTED], the Claimant attended a follow-up appointment. The Claimant's incision was well healed however he had limitations of the PIP joint as far a flexion.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnosis was skull fracture with brief coma and resulting cognitive dysfunction. The Claimant's impairment was expected to exceed 90 days with limitations in memory. The Claimant was found unable to meet his needs in the home.

On [REDACTED] the Claimant attended a follow-up appointment status post ORIF of his right middle finger fracture. The Claimant's range of motion was limited.

On [REDACTED], the Claimant attended a follow-up appointment status post ORIF of his right middle proximal phalanx fracture. The Claimant also had left fifth metacarpal fracture. A formal course of therapy was recommended.

On [REDACTED], the Claimant was referred to occupational therapy for evaluation and treatment for his right middle finger secondary to a comminuted fracture of the proximal phalanx. Functional deficits were found with the Claimant's ability in gripping, fine motor, pinching, and lifting.

On [REDACTED] the Claimant attended a Formal Mental Status Evaluation. The Claimant was found to have problems with cognition, slowness in mental processing, deficiencies in memory, attention, and concentration. The Claimant is able to perform basic activities of daily living and handle simple transactions. The Claimant's abilities to understand, carryout, and remember instructions beyond the very simple is moderately to severely impacted. The Claimant's ability to relate with co-workers and supervisors and adjust to change in a work setting was found to be seriously impacted. The Claimant is in need of rehabilitative treatment. The Psychologist opined that the Claimant is not employable in any meaningful way at this time and it was doubtful that any serious employer would hire him. Ultimately, the Claimant was diagnosed with cognitive disorder, post-traumatic stress disorder, personality changes, and major, depression, chronic. The Global Assessment Functioning ("GAF") was 50 noting serious problems in multiple areas. The prognosis was guarded.

A Residual Mental Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was markedly limited in 11 of the 20 factors and moderately limited in 3 factors.

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 medical evidence establishing that he does have some physical and mental limitations on his 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 to right hand pain/dysfunction, traumatic brain injury, headaches, cognitive disorder, anxiety, depression, and post-traumatic stress disorder.

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

Listing 12.02 defines organic mental disorders as psychological or behavioral abnormalities associated with a 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 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 lability (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:

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

The Claimant alleges mental disabling impairment(s) due to post-traumatic stress disorder, depression, anxiety, and cognitive disorder. The objective evidence confirms the diagnoses of all four impairments. The findings demonstrate a loss of cognitive function with memory impairment, change in personality, disturbance in mood, and marked difficulties in maintaining concentration, persistence, or pace, and marked restrictions in his ability to accept instructions and respond appropriately to criticism from supervisors as well as get along with co-workers or peers without distracting them or exhibiting behavioral extremes. Ultimately, based on the medical evidence, the Claimant's impairment(s) meets, or is the medical equivalent thereof, a listed impairment within Listing 12.00, specifically 12.02A. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

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

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the April 2, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized representative of the determination.

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3. The Department shall supplement for any lost lost benefits that the Claimant 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 accordance with department policy in September 2011.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 8/19/2010

Date Mailed: 8/19/2010

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.

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