

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.: 2009-15543  
Issue No.: 2009, 4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
May 4, 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 conducted in [REDACTED] on May 4, 2009. The Claimant appeared and testified, along with [REDACTED]. The Claimant was represented by [REDACTED]. [REDACTED]. Tanya Bazile appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") Retroactive for the month of application?

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 a public assistance application seeking MA-P retroactive for the month of application on November 18, 2008.
2. In December of 2008, the Claimant filed a claim with the Social Security Administration.

3. On December 26, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant’s impairment(s) lacked duration for MA-P purposes. (Exhibit 1, pp. 52, 53)
4. On January 6, 2009, the Department sent an eligibility notice to the Claimant informing him that his MA-P benefits were denied.
5. On February 9, 2009, the Department received the Claimant’s Request for Hearing protesting the denial of benefits. (Exhibit 1, p. 3)
6. The Social Security Administration determined the Claimant was disabled effective March 1, 2009.
7. On March 31, 2009, the SHRT found the Claimant not disabled. (Exhibit 2)
8. The Claimant’s alleged disabling impairments are due to traumatic brain injury.
9. At the time of hearing, the Claimant was 52 years old with a [REDACTED] birth date; was 5’ 7” and weighed 135 pounds.
10. The Claimant is a high school graduate with a work history as a general laborer in the automotive industry.
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”), 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-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 416.929(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) 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) 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 this case, the Claimant is not involved in substantial, gainful activity and last worked in April of 2008. The Claimant is not disqualified from receipt of 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 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 on the basis of the residual effects, both physical and psychological, from a traumatic brain injury.

On November 9, 2008, the Claimant presented to [REDACTED] after being found with multiple facial abrasions and ecchymosis. The mechanism for injury was unknown. The CAT scan and x-rays revealed the intraparenchymal contusions and multiple facial fractures. The Claimant underwent extensive surgeries which included a tracheostomy, intramaxillary fixation, open reduction internal fixation ("ORIF") of the mandible fracture, ORIF of the left orbital rim and inferior orbital rim, ORIF of the left zygomatic anillary fracture, ORIF of the inferior orbital rim on the right, ORIF of the right zygomatic axillary buttress, ORIF right nasal maxillary buttress and repair of facial laceration. The Claimant was discharged on November 18<sup>th</sup> with the discharge diagnoses of traumatic brain injury with cerebral contusions, maxillary fracture, mandibular fracture, bilateral orbital fracture, bilateral LeFort I (horizontal) II (pyramidal), and III (transverse) fractures, lip lacerations and multiple parenchymal contusions.

On December 17, 2008, a Medical Examination Report was submitted on the Claimant's behalf which documented multiple facial and mandible fractures as a result of an assault. The Claimant's condition was listed as improving with not specific limitations noted.

On January 8, 2009, the Claimant presented to [REDACTED] after developing malocclusion after having previously undergone ORIF for bilateral 4, 3 fractures and mandible fracture as a result of the November assault. The pre-operative and post-operative diagnoses of bilateral malunion of condylar fractures and open bit deformity were documented.

On January 31, 2009, the Claimant was admitted to [REDACTED] via court petition for major depression and suicide ideations. The Claimant was discharged on February 5, 2009 with a discharge diagnosis of major recurrent depression. The Claimant was put on [REDACTED] and [REDACTED]

On February 1, 2009, the Claimant presented to [REDACTED] with depression and thoughts of suicide. The Claimant was brought (via petition) to [REDACTED] for a psychiatric/psychological evaluation. The Claimant was transported and admitted to [REDACTED] [REDACTED] where he was diagnosed with major depression, recurrent with a GAF of 20-25. The Claimant's appearance was disheveled and his mood was depressed with slow/delayed speech. Visual and auditory hallucinations were documented. The Claimant was discharged on February 5<sup>th</sup>.

On February 18, 2009, the Claimant presented to [REDACTED] with suicidal ideations. The Claimant was monitored and subsequently discharged in stable condition.

On March 26, 2009, the Claimant presented to [REDACTED] with swelling to the right side of his face. The Claimant was treated for a dental abscess and discharged the following day.

On April 16, 2009, a Mental Residual Functional Capacity Assessment was submitted on the Claimant's behalf. The Claimant's was found markedly limited in 14 of the 20 listed areas

with a need for ongoing psychiatric care. The Claimant's diagnoses were major depression, recurrent, post-traumatic stress disorder with a GAF of 50

On July 9, 2009, a Medical Examination Report was submitted on the Claimant's behalf which noted the Claimant's trismus (lockjaw- surgically wired) with no real physical limitations imposed. The Claimant was found limited in his ability for sustained concentration, memory and social interaction.

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 such as carrying, lifting, and squatting. 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 disabling physical and mental impairments due to the residual effects of a traumatic brain injury. Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to support a finding of a listed impairment.

Listing 1.00 defines musculoskeletal system impairments. In this case, the Claimant's severe facial fractures do not meet a Listed impairment within 1.00 namely because the fractures were not to a weight bearing joint thus do not interfere very seriously with the Claimant's ability

to independently initiate, sustain, or complete activities, nor does the impairment(s) cause an inability to perform fine and gross movements. Accordingly, the Claimant cannot be found disabled under this Listing.

The Claimant also asserts mental disabling impairments based severe recurrent depression with suicidal ideation. 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. A history and physical examination or laboratory tests must demonstrate the presence of a specific organic factor which is found to be etiologically related to the abnormal mental state and to the 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:

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, since the Claimant's attack, the records document three separate treatments for severe recurrent depression of which two were by petition. During this time the Claimant's GAF ranged from 20 to 50 and the Claimant's treating physician document's the Claimant as being markedly limited in 14 of the 20 function limitation areas. The record further documents short-term memory impairment, perceptual disturbances, as well as a change in personality. The Claimant's impairment is expected to continue continuously for a period of 12 months or longer. In light of the objective medical records, it is found that the Claimant meets the intent and severity requirement of Listing 12.02. Accordingly, the Claimant is found disabled at Step 3 thus no further analysis is required.

#### 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.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the November 18, 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. In light of the Social Security Administration's March 1, 2009 approval, no review date is required.

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

Date Signed: 05/06/09

Date Mailed: 05/06/09

**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 receipt date of the rehearing decision.

CMM/jlg

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