

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: 2009-35701

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 21, 2009

Montcalm County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 telephone hearing was held on Wednesday, October 21, 2009. The claimant personally appeared and testified with his wife, [REDACTED] as a witness.

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance?

FINDINGS OF FACT

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

(1) On March 25, 2009, the claimant applied for MA-P with retroactive MA-P to December 2008.

(2) On May 20, 2009, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was capable of performing other work under Medical Vocational Grid Rule 201.21 per 20 CFR 416.920(f).

(3) On May 21, 2009, the department caseworker sent the claimant a notice that his application was denied.

(4) On July 31, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On September 28, 2009, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to spinal injury and memory problems. He is 45 years old and has a 12th grade education with a history of skilled work. The claimant did not meet applicable Social Security Listings 1.04 and 12.02. The claimant is capable of performing other work that is sedentary work per 20 CFR 416.967(a) under Vocational Rule 201.21.

(6) During the hearing on October 21, 2009, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on November 23, 2009 and forwarded to SHRT for review on December 2, 2009.

(7) On December 10, 2009, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and retroactive MA-P. The SHRT report reads in part:

The claimant is 45 years old with 12 years of education and a work history as a pipefitter and drilling rig operator. The claimant alleges disability due to a spinal injury and memory loss. The claimant did not meet applicable Social Security Listings 1.01 and 12.01. The claimant is capable of performing work that is

sedentary work per 20 CFR 416.967(a) under Vocational Rule 201.21.

(8) The claimant is a 46 year-old man whose date of birth is [REDACTED]. The claimant is 6' 2" tall and weighs 200 pounds. The claimant completed the 11th grade of high school. The claimant can read and write and do basic math. The claimant was last employed on October 23, 2007 as a pipefitter at the heavy level. The claimant has also been employed at the heavy level as a steel hanger, driller, and roughneck.

(9) The claimant's alleged impairments are a [REDACTED] spinal injury where 400 pounds of pipe fell on him resulting in back and neck injuries.

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 400.10, *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:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are

demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in

paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

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 CFR 416.905

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

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in

substantial gainful activity and has not worked since October 23, 2007. Therefore, the claimant is not disqualified from receiving disability at Step 1.

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

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

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant was seen at [REDACTED]. The claimant responded very well to cervical epidural steroid injection with up to 60% pain relieve one week ago. The claimant had a history of traumatic cervical radiculopathy, cervical radiculitis with bilateral upper extremity radiculopathy. The claimant was extremely happy with the treatment modalities, but the claimant was also still getting spasms and cramps with muscle contractions plus the pressure of extensor posture in the bilateral upper extremities. The claimant had an MRI of the brain and cervical spine while the claimant was in [REDACTED]. The claimant's pain on examination was a 5 on a pain scale out of 10 where he gets worse at 9 out of 10. The claimant stated his back was 4 out of 10. The claimant still has tenderness over the cervical spine. The claimant also has a history of a fall 3-4 days ago. The claimant tolerated the procedure well with no complications observed. The claimant was discharged home in stable condition for the cervical epidural steroid injection under fluoroscopy with sedation for anxiety. (Department Exhibit C-D)

On [REDACTED] the claimant underwent an MRI of the cervical spine at [REDACTED] as a result of neck pain radiating down his left arm. The radiologist's impression was bulging annuli without superimposed disc herniation, mild-to-moderate, at C3-C4 and minimal at C4-C7. In addition, the claimant underwent a CT of the head/brain without contrast as a result of a headache and injury. The radiologist's impression was no acute intracranial hemorrhage, mass lesion, or mass effect seen. (Department Exhibit E-F)

On [REDACTED] the claimant's treating physician submitted a Medical Examination Report, DHS-49, on behalf of the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment and chief complaint of a [REDACTED] injury at work that resulted in a neck injury and concussion. The

claimant has chronic neck pain and radiculopathy, cephalgia, myelopathy, and spasms. The claimant has a current diagnosis of chronic neck pain, cervical myelopathy, depression, post concussion syndrome, cephalgia, and severe fatty liver disease. The claimant had a normal physical examination except that the claimant's treating physician noted that the claimant was unable to sit still. The claimant sits with neck craned forward with left shoulder elevated and left arm with decerebrate position. The medical findings that support the above physical limitations were any repetitive motions with the upper extremities caused pain. The claimant was mentally limited in memory, sustained concentration, and reading/writing. The findings that support the above mental limitations were current pain medication causing memory loss and inability to concentrate and comprehend. The claimant could not meet his needs in the home. (Department Exhibit 7-9)

On [REDACTED], the claimant saw his treating physician for an initial evaluation. The claimant was seen regarding headaches, neck pain, post concussion syndrome, and multiple other neurological symptoms. The claimant had been symptomatic since his [REDACTED] work injury where he suffered one work-related injury in [REDACTED] and another in [REDACTED]. The claimant was injured at work by a large 300 pound steel pipe that apparently fell and hit him on the left side of his neck where it was resting on his left shoulder and was quite lift up to be put on a truck over the claimant's head, but it fell and was dropped by the person assisting where the pipe slipped out of the claimant's hand and slammed into his left shoulder and left side of his neck where he had significant injury.

The claimant had a large C5-C6 disc herniation and disc bulge at C6-C7. The claimant underwent a C5-C6 discectomy in [REDACTED]. The claimant continues to have persistent problems where he has tried numerous analgesic medications without much improvement. He

has also had pain injections. The claimant has gone through extensive rehabilitation, but still continues to be symptomatic where he has constant pain. The claimant is not able to sleep very well because of his pain. The claimant has had pain shooting down from his neck to his left arm where he has had paresthesias of the left arm. The claimant has had several other neurological symptoms including headaches, dizziness, double vision, unsteadiness, memory loss, constipation, difficulty sleeping, snoring, insomnia, and muscle spasms.

On examination, the claimant was pleasant and cooperative although he appeared to be in some distress due to pain. The claimant was quite anxious where he showed some degree of psychomotor retardation with slow responses. The claimant was fully oriented and had mild recent memory impairment. The claimant had diffuse weakness in left upper extremity where evaluation was somewhat limited because of significant pain. The claimant did have some weakness of the biceps, triceps, deltoid, and wrist/finger extensors. The claimant had significant sensory loss and patchy distribution in the left upper extremity mostly corresponding to 5, 6, and 7 dermatomes. The claimant was unable to perform finger-to-nose test. The claimant had significant spasm in the paravertebral musculature and also spasm of the left sternocleidomastoid and trapezius muscles. The claimant had some muscle atrophy in the cervical region.

(Department Exhibit 20-21)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant had a work injury in [REDACTED] and [REDACTED]. In [REDACTED], the claimant had a 300-400 pound steel pipe fall on the left side of his neck and shoulder where the claimant has subsequently been treated, but still has considerable pain and neurological abnormalities. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed

through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration 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. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant has a driver's license, but does not drive as a result of narcotic prescriptions where he has a hard time turning and memory loss. The claimant does not cook, grocery shop, clean his own home, do any outside work, or have any hobbies. The claimant felt that his condition has worsened in the past year because he has blackouts and falls down more. The claimant felt he was mentally impaired as a result of his brain injury where he is taking medication, but not in therapy.

The claimant wakes up between 8:00 to 9:00 a.m. He kicks back and watches TV, which is getting boring. He goes to bed between 11:00 p.m. to 1:00 a.m. He gets up throughout the night because of charley horses.

The claimant felt that he could walk 50 feet. The longest he felt he could stand was 15 minutes. The longest he felt he could sit was 1 ½ hours. The heaviest weight he felt he could lift was under 10 pounds. The claimant stated that his level of pain on a scale of 1 to 10 without medication was a 10 that decreases to an 8 with medication.

The claimant has not smoked or drank since he was a kid. He has never used of is currently using illegal or illicit drugs. The claimant stated that there was no work that he thought he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant was previously employed at the heavy level as a pipefitter, steel hanger, driller, and roughneck. With the claimant's current impairments, the claimant would be unable to perform his past relevant work at the heavy level. Therefore, the claimant is not disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work.

20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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.... 20 CFR 416.967(b).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The claimant has submitted sufficient evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitation indicates his limitations are exertional and non-exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social

functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the claimant stated that he has a brain injury. The claimant is currently taking medication, but not in therapy. The claimant suffered a blow to the neck and shoulder of a 300-400 pound steel pipe that has resulted in the medical impairments that the claimant has. As a result, there is sufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from working at any job.

At Step 5, the claimant cannot [REDACTED] meet the physical requirements of sedentary-to-light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual with a limited or less education, and a skilled and unskilled work history, who is limited to sedentary-to-light work, is considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.18 and Rule 201.21. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as a brain injury. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant cannot perform a wide range of sedentary-to-light activities and that the claimant does meet the definition of disabled under the MA program. The claimant is disabled based on his March 25, 2009 application with retroactive benefits to December 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and

retroactive MA-P. The claimant cannot perform any level of sedentary-to-light work. The department has not established its case by a preponderance of the evidence.

Accordingly, the department's decision is **REVERSED**. The claimant is eligible for MA-P retroactive to December 2008 with a medical review required 2012. In addition, the claimant is ordered to see a psychiatrist or psychologist and start mental health therapy for his brain injury and after one year to participate with Michigan Rehabilitation Services (MRS) for rehabilitation for other avenues of employment.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 12, 2010

Date Mailed: May 12, 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.

CGF/vmc

cc:

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