

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-17516
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 24, 2010
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 March 24, 2010. Claimant personally appeared and testified. Also appearing and testifying on claimant's behalf was his aunt [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P), retro MA and State Disability Assistance (SDA)?

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 September 30, 2009, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On November 18, 2009, the Medical Review Team denied claimant's application stating that claimant could perform other work per Medical/Vocational Grid Rule 202.21.
- (3) On November 24, 2009, the department caseworker sent claimant notice that his application was denied.
- (4) On January 25, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On February 17, 2010, the State Hearing Review Team (SHRT) again denied claimant's application stating he had a non-severe impairment/condition, "speech problems", per 20 CFR 416.920(c). SHRT further states that the claimant was capable of performing light unskilled work per Vocational Rule 202.20.
- (6) Claimant submitted additional medical information following the hearing that was forwarded to SHRT for review. On July 8, 2010 SHRT again denied the claimant saying that the newly submitted evidence does not significantly or materially alter the previous recommended decision.
- (7) Claimant is a 26 year old man whose birth date is [REDACTED]. Claimant is 5'6" tall and weighs 140 pounds. Claimant completed high school and one semester at a community college in criminal justice classes, but had to quit college due to an assault in July, 2009. Claimant can read, write and do basic math.
- (8) Claimant states that he last worked in June, 2009 for his uncle doing electrical work for 1 ½ years, until he was assaulted. Claimant also had a part time job at a factory as a hand press operator.
- (9) Claimant currently lives with his mother and receives food stamps. Claimant does not have a driver's license as it was suspended due to a speeding ticket he could not pay.
- (10) Claimant alleges as disabling impairments head and neck injury from July, 2009 assault, numbness in his hands, memory loss, balance problems, speech issues and paranoia around people due to the assault.
- (11) Claimant has applied for Social Security disability and been denied and is appealing the denial.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (RFT).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges

Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At Step 1, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At Step 2, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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).

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

Medical evidence 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 the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

At Step 3, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at Step 4 whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

At Step 1, claimant is not engaged in substantial gainful activity and testified that he has not worked since June, 2009. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering the claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce the claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the claimant's symptoms to determine the extent to which they limit the claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

The objective medical evidence on the record shows that the claimant was admitted to the hospital on July 10, 2009 after he presented to the emergency department after being assaulted. Claimant was hit in the face and fell to the ground hitting his head on the curb, and was also reportedly kicked while on the ground. CT scan of the claimant's head showed bifrontal contusions, a high left subdural hematoma, fracture of the skull base, and a probable small amount of the bleeding into the space surrounding the brain. There was no CT evidence of an acute fracture in the thoracic or lumbar spines. There was no CT evidence of traumatic injury on the CT scan of the chest, abdomen, and pelvis. Claimant passed his post concussion screen on hospital day #3. On hospital day #4, claimant's pain was controlled with oral pain medications, and was to be discharged home. Claimant was instructed to avoid physical activity for 4 weeks, and to maintain a low stimulus environment with low levels of light. He was instructed by the orthopedic spine service to continue wearing his Miami J collar full time for 6-8 weeks or until ordered to do otherwise, and given Lortab and Vicodin prescriptions for pain. Discharge diagnosis was that of bifrontal brain contusions, small left parietal subdural hematoma, skull base fracture, nondisplaced upper jaw fracture, and nondisplaced C2 fracture. Condition on discharge was stable.

[REDACTED] exam report of [REDACTED] states that the claimant is being seen for a follow-up and is somewhat ambiguous with his history. Claimant stated that overall he is feeling good, but on the other hand he states he is still having neck pain and upper extremity electrical sensations. He also stated he has numbness and tingling in both of his hands and this sensation is uncomfortable for him. Claimant had not been seeing speech therapy because of lack of insurance coverage. Claimant complains of some weakness in his arms, but denies any difficulty walking,

voiding problems, bowel problems, and difficulty with balance. He is forgetful at times and has some difficulty with concentration.

On physical examination claimant had full range of motion of his neck, normal bicep and tricep reflexes, and full strength throughout both upper and lower extremities without focal weakness. Claimant's stance and gait are normal. Claimant did have an MRI of his cervical spine on October 22, 2009 and there was abnormality noted within the spinal cord at C2. Impression was that of moderate traumatic brain injury, status post assault on July 10, 2009 causing mild cognitive concerns. Speech therapy would be appropriate for the claimant but he has no insurance to pay for it. Claimant appears neurologically intact with no reflex changes, no neurologic weakness noted and no long track signs. Work restrictions recommended are no prolonged cervical flexion and no work that entails having the patient in awkward neck positions.

Psychological exam of February 1, 2010 quotes the claimant as saying he is applying for Social Security disability benefits because his memory is completely shot and his neck still bothers him. Claimant had never been hospitalized for psychiatric reasons, never treated with psychotropic medications, or was involved in mental health counseling. There is no history of seizures or other head injuries, but claimant reported his balance is off and he has a weakness in his arms. Claimant was not taking any medications as he could not afford them. Claimant was living with his mother and described an active social life that includes friends and family. He denied any difficulties completing his activities of daily living, but stated he is often limited in completing household tasks and cooking due to pain and limited function of his neck. Claimant's hygiene was intact, there was no problems with fine motor control, but he ambulated with a cane. Gross attention and concentration faculties were intact during the interview, but memory disturbance was observed. Claimant denied any suicidal ideations, displayed a full range of affect, and did not describe any vegetative symptoms of depression. There was no evidence of acute mood swings and claimant denied ever experiencing episodes of acute anxiety or panic attack. He was oriented to person, place and time.

Claimant's immediate memory was limited, but recent and past memory largely intact. Examiner states that the claimant's report and the available data suggest significant cognitive dysfunction which is typically associated with brain injury, and that the claimant is very impaired at this time. Claimant's prognosis is guarded as he has only experienced his brain injury seven months ago.

Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. According to the psychological report claimant's cognitive issues can be expected to last for 12 months. Claimant has therefore met his burden of proof at Step 2 and analysis continues.

At Step 3 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. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, the Administrative Law Judge must evaluate claimant's ability to perform past relevant work. Claimant's past relevant work was doing electrical work for 1 ½ years, job that would require the ability to remember instructions. As the psychological report states that the claimant's memory is impaired and he has significant cognitive dysfunction, it is unlikely claimant can handle such work at the present time. Finding that the claimant is unable to perform work which he has engaged in in the past can therefore be reached and the claimant is not denied from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform other jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the [REDACTED], published by the [REDACTED]... 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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Claimant has submitted sufficient objective medical evidence that he lacks the residual functional capacity to perform tasks from his prior employment. Claimant does have issues with his neck and credible hearing testimony indicates that prolonged standing bothers him, he has balance problems and numbness in his hands which the neck injury could easily cause. Even if the claimant was able to perform work without regard to his physical issues, he would not be able to remember directions, as the psychological report clearly indicates he has significant cognitive impairments due to the brain injury. Claimant was starting to stutter and repeat his words during the hearing which did not last more than 30 minutes, as he was getting tired. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record and hearing testimony does establish that claimant has no residual functional capacity to perform other work at this time. Claimant is therefore not disqualified from receiving disability at Step 5 The claimant is disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, page 1. Because the claimant does meet the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work for a period exceeding 90 days, the claimant does meet the disability criteria for State Disability Assistance benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied claimant's MA, retro MA and SDA application.

Accordingly, the department's decision is REVERSED. Department shall:

1. Process claimant's disputed September 30, 2009 MA, retro MA and SDA application and grant him any such benefits he is otherwise eligible for (i.e. meets financial and non-financial eligibility requirements).

2. Notify the claimant of this determination.

3. Review claimant's case in December, 2011, at which time updated medical records are to be obtained. Claimant is advised that he must participate in all recommended treatment.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 3, 2010

Date Mailed: December 3, 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.

IR/tg

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