

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No: 201042348
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
January 3, 2011
Wayne County DHS (82)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on January 3, 2011 by teleconference in Detroit, Michigan.

ISSUE

Was the denial of claimant's application for MA-P and retroactive MA-P for lack of disability correct?

FINDINGS OF FACT

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

- (1) Claimant applied for MA-P and retroactive MA-P on May 25, 2010.
- (2) Claimant is 38 years old.
- (3) Claimant has an 11th grade education.
- (4) Claimant is not currently working.
- (5) Claimant has a work history consisting of medium, skilled work.
- (6) Claimant has a history of traumatic brain injury.
- (7) Claimant has an IQ of 61, caused by the brain injury.

- (8) Claimant is unable to complete most activities of daily living without assistance from his father.
- (9) Claimant is unable to concentrate on tasks and needs to be reminded constantly in order to stay on task.
- (10) On June 14, 2010, the Medical Review Team denied MA-P and retroactive MA-P, stating that claimant did not meet durational requirements.
- (11) On June 30, 2010, claimant filed for hearing.
- (12) On July 16, 2010, the State Hearing Review Team denied MA-P and retroactive MA-P.
- (13) On January 3, 2011, a hearing was held before the Administrative Law Judge.
- (14) The record was held open for additional testing and the results were sent back to SHRT.
- (15) On September 15, 2011, SHRT denied again, stating that claimant's IQ of 61 and inability to concentrate for any length of time did not particularly impact his abilities to perform unskilled work.

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 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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2010 is \$1,640. For non-blind individuals, the monthly SGA amount for 2010 is \$1,000.

In the current case, claimant has testified that they are not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "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. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented more than sufficient evidence of a traumatic brain injury that has more than a minimal effect on the claimant's ability to do basic work activities. Claimant has functional limitations resulting from this condition. Claimant has marked limitations with concentration, persistence and pace, memory, and basic understanding of simple concepts. Objective medical testing shows that claimant's symptoms could reasonably interfere with physical tasks necessary at some jobs; therefore claimant passes step 2 of the 5 step sequential evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records contain medical evidence of an impairment that meets or equals a listed impairment.

After considering the listings contained in Section 12.00 (Mental), the great weight of the evidence of record finds that claimant's arm dysfunction meets or equal the listings for organic mental disorders.

Appendix 1 of Subpart P of 20 CFR 404, Section 12.00 has this to say about organic mental disorders:

12.02 Organic mental disorders: 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:

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.

A careful examination of claimant's medical records, confirmed by an independent examination, show claimant meets or equals the criteria.

An independent psychiatric examination was conducted on [REDACTED]. At this examination, a valid IQ test was performed, and showed that claimant had an IQ of 61. The examiner felt that this score, considered to be in the extremely low range, was a result of claimant's traumatic brain injury. While there exists no prior IQ testing with scores before claimant's accident, given that the claimant testified credibly that he lost the ability to read, understand simple concepts, perform basic math, and was rated at extremely low intellectual functioning, the undersigned holds that claimant equals this part of the listing, or at the very least, meets the intent of being severely impaired in neuropsychological testing.

With regards to the B criteria, the undersigned notes that claimant is markedly impaired in activities of daily living; while claimant can do his own laundry, he is unable to cook for himself due to memory loss, unable to leave the house or keep appointments on his own, needs continual reminders from his father with regards performing household duties, and is unable to navigate or otherwise find his way around independently.

Claimant is also markedly impaired with regards to concentration, persistence and pace. The independent examiner noted that claimant required "reminders to pay attention" during the test, and that directions were repeated numerous times. Claimant's father testified that claimant needs constant reminders to finish tasks.

While SHRT claimed that the fact that claimant is able to take out the trash and clean his room is somehow indicative of ability to perform activities of daily living, SHRT ignored the fact that the definition of ability to perform activities of daily living is a definition that looks at the whole of claimant's activities, not one or two isolated factors. Furthermore, SHRT concentrated on the mental retardation listings, and did not appear to consider the organic mental disorder listing, referred to by the listing for traumatic brain injury. In short, SHRT's analysis of this case is wholly unsupported by the medical record.

As claimant meets both the A and B parts of the listing, the undersigned finds that claimant meets listing 12.02.

As claimant therefore meets the criteria for disorders of this type, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 12.00, and therefore, passes step 3 of our 5 step process. By meeting or equaling the listing in question, claimant must be considered disabled. 20 CFR 416.925.

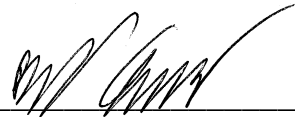
With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is disabled for the purposes of the MA program. Therefore, the decisions to deny claimant's application for MA-P and retroactive MA-P were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

1. The Department is ORDERED to initiate processing of the application of May 25, 2010 and award required benefits, provided claimant meets all non-medical standards as well.
2. The Department is further ORDERED to initiate a review of claimant's disability case in October, 2012.



Robert Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 09/27/11

Date Mailed: 09/28/11

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.

RJC/dj

CC:

