

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201118223
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 19, 2011
Wayne County DHS

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 May 19, 2011.

ISSUE

Was the denial of claimant's application for 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 on October 11, 2010.
- (2) Claimant is 43 years old.
- (3) Claimant has a high school education with one year of college.
- (4) Claimant is not currently working.
- (5) Claimant has a prior work history of light, skilled employment.
- (6) On [REDACTED], claimant had an acute vascular cerebral accident.

- (7) Claimant subsequently lost much of her cognitive abilities.
- (8) Claimant was unable to spell her own name at the hearing, cried when attempting to do basic math, and could not state the date with any definitiveness.
- (9) Claimant's appointed guardian states that claimant gets lost in familiar surroundings, is disorientated as to time and place, has impaired short term and long term memory, is unable to do any ADL's, needs help with basic grooming, and is unable to concentrate on tasks.
- (10) Claimant's demeanor and testimony at the hearing confirmed claimant's guardian's testimony.
- (11) An independent exam conducted on [REDACTED] confirms all testimony, and further states that claimant does not retain the functional mental capacity to work at any job.
- (12) On October 15, 2010, the Medical Review Team denied MA-P, stating that claimant's impairment was not expected to last 12 months.
- (13) On January 30, 2011, claimant filed for hearing.
- (14) On March 1, 2011, the State Hearing Review Team denied MA-P, and retroactive MA-P, stating that claimant's impairment was not expected to last 12 months, despite the fact that independent examinations had shown no significant improvement since claimant applied.
- (15) On May 19, 2011, a hearing was held before the Administrative Law Judge.

- (16) Claimant had shown no improvement at the hearing from the independent examination five months earlier.
- (17) No records indicate that claimant will improve to pre-accident levels by August 5, 2011.
- (18) Claimant was represented by [REDACTED].

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).

Federal regulations require that the Department use the same operative definition of the term “disabled” as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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 \$1000.

In the current case, claimant has testified that she is 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 medical evidence of severe cognitive deficiencies that would prevent claimant from engaging in work-like activities. Independent medical records express skepticism that claimant is capable of engaging in work activities. Claimant lacks orientation as to time and place; claimant’s short term and long term memory are severely impaired at best. Claimant had difficulty spelling her own name, was unable to do basic math without breaking down, and according to credible testimony requires assistance to do even basic activities of daily living.

While MRT and SHRT may have a point that claimant may improve in the future, the undersigned notes that claimant's testimony at the hearing was consistent with a medical exam five months earlier, with no improvement. There is no medical evidence in the packet that claimant's impairment is likely to improve within 12 months of onset; any such opinions of potential improvement are speculative at best by individuals who have not examined the claimant, nor even talked with the claimant face to face. Claimant would have to make a miraculous recovery within 3 months, regaining all cognitive functioning, in order to not meet the durational requirement. At present, claimant does not know the date, and has trouble with her name. Contrary to MRT and SHRT's opinions—which was not based upon the medical record, expert opinions, or an actual examination of the claimant— claimant is extremely unlikely to recover within the 12 month durational limit.

Claimant therefore passes step two of the sequential evaluation process.

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

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

2.02 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.

In order to meet or equal the listings for mental impairment, a claimant must either meet or equal the recommended listings contained in both the A and B criteria, or meet or equal the listings in the C criteria. After examination of the C criteria, the undersigned holds that there is not enough evidence to show that the claimant meets this listing. However, a careful examination of claimant's medical records, supplied from a treating source, show claimant meets both the A and B criteria.

Claimant is disorientated to time and place. According to witness testimony, claimant does not know “when” she is, often having trouble with the date or the time. Claimant gets lost in familiar surroundings. Claimant is often disorientated and confused. An independent examination conducted in [REDACTED], confirmed this testimony. At the hearing, claimant could not state the date.

Claimant also has significant impairment in both short term and long term memory. According to testimony, claimant will forget what she is doing at any given moment. Psychological testing showed that claimant had significantly impaired short-term recall. Claimant is also unable to remember long held facts and information. Claimant has forgotten how to write. Claimant is unable to do basic math, and broke down into tears upon attempt. Claimant had difficulty in spelling her own name, requiring prompting and assistance. All symptoms have been confirmed through independent psychological testing.

Furthermore, these impairments have resulted in marked restrictions in several categories. Claimant is unable to do an ADL's; claimant cannot be trusted to do basic chores anymore without potential harming her self or others. Claimant's daughter assists claimant with basic grooming, as claimant is unable to complete it her self. This too, has been confirmed through independent examinations.

Finally, claimant, as stated above, is markedly impaired with regard to basic memory, concentration, persistence, and pace. Independent testing shows that claimant needed assistance to even get to the appointment; claimant demonstrated little cognitive strengths in “the ability to pay attention as well as problems with concentration”. The examiner stated that claimant would have “difficulty engaging in

work-type activities successfully at present". Witness testimony indicated that claimant would start tasks, and then forget what she was doing. Claimant was unable to persist during the hearing with basic math problems, breaking down in frustration after a mere few seconds.

For these reasons, the Administrative Law Judge holds that claimant meets the A and B criteria of the listing in question.

As claimant meets both the A and B criteria, 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.

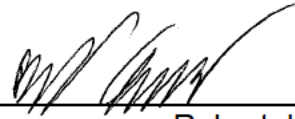
DECISION AND ORDER

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 were incorrect.

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

The Department is ORDERED to process claimant's MA-P application and award required benefits, provided claimant meets all non-medical standards as well. The

Department is further ORDERED to initiate a review of claimant's disability case in June, 2012.



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

Date Signed: 06/22/11

Date Mailed: 06/24/11

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:

