

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

IN THE MATTER OF:



Reg. No.: 201124204
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: June 9, 2011
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 telephone hearing was held on June 9, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

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

1. On 3/17/10, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 9/1/10, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 9/10/10, DHS denied Claimant's application for MA and SDA benefits and sent a Notice of Case Action to Claimant informing Claimant of the denial.
5. On 9/17/10, Claimant requested a hearing disputing the denial of MA benefits.

6. On 10/27/10, Claimant requested a hearing disputing the denial of SDA benefits.
7. On 4/1/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 70-71).
8. Following the administrative hearing dated 6/9/11, DHS and Claimant presented new medical documents (Exhibits B1-B91).
9. On 8/16/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits B90-B91), in part, by determining that Claimant had the ability to perform light, simple and repetitive work and finding that Vocational Rule 202.20 applied.
10. As of the date of the administrative hearing, Claimant was a 47-year-old male (DOB [REDACTED]) with a height of 5'7" and weight of 180 pounds.
11. Claimant has no relevant history of smoking, alcohol or drug use.
12. Claimant's highest education year completed was 12th grade.
13. Claimant claimed to be a disabled individual based on various neurological problems.
14. Claimant also claimed to be a disabled individual based on post-traumatic stress disorder and depression.

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). DHS (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

The undersigned will refer to the DHS regulations in effect as of 9/2010, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential

health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories.

A child is considered to be living with only one parent in a joint custody arrangement. BEM 135 at 4. This person is the primary caretaker. *Id.* This is the person who provides the home where the child sleeps more than half of the days in a month, averaged over a twelve month period. *Id.* The twelve month period begins at the time the determination is being made. *Id.* This is the parent who is responsible for the child's day-to-day care and supervision. *Id.* In a joint custody arrangement, one parent must be the primary caretaker. *Id.* The other parent is considered absent from the home. *Id.*

In the present case, it was not disputed that Claimant shares joint custody with the mother of his children, and has less than half of the joint custody. As a part-time caretaker who has custody of his children less than half of the time, Claimant is not eligible for MA benefits as a caretaker relative. Thus, Claimant's only potential category for Medicaid would be as a disabled individual.

Disability is established if one of the following circumstances applies:

- the applicant dies (MA eligibility for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances). BEM 260 at 1-2.

It was not disputed that none of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability 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, are insufficient to establish disability. 20 CFR 416.927.

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly earning amount varies depending on whether a person is statutorily blind or not. The current monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the twelve month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet

the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

In determining whether Claimant's impairment is a severe impairment, the undersigned can consider all relevant evidence. The undersigned shall begin the analysis by first reviewing Claimant's medical records.

It should be noted that documents submitted prior to the date of the administrative hearing are marked as Exhibits 1-74. Documents presented following the administrative hearing were marked as 1-72 with an additional unnumbered 19 pages. The undersigned numbered the unnumbered pages starting with Exhibit 73. To distinguish the additional pages from previously submitted documents, and will refer to the newly submitted pages with a preface of "B".

On 11/5/10, Claimant was neurologically examined based on his complaints of migraines, anxiety, back pain, neck pain and depression (see Exhibits 11-22). The examiner was not Claimant's treating source physician. The examiner noted that

Claimant's symptoms began after a motorcycle accident from 12/25/09. The examiner concluded Claimant had full muscle strength, full range of motion in all tested body movements and no apparent issues concerning neurological issues. The examiner made no conclusions concerning Claimant's complaints of headaches or back pain. The examiner limited Claimant to carrying weight limits of 20 pounds or less. Claimant was given no sitting, standing or walking limits within an 8 hour workday. The examiner also placed no limits on Claimant's leg use or hand use. No limits were placed on Claimant's ability to walk stairs, crawl, climb ladders, kneel, stoop or other simple physical tasks.

A 5/18/10 dated letter (Exhibit 23) from an examining physician concluded that Claimant "may require" 20 hours per week of "heavy duty household assistance". Window cleaning, yard work and lawn mowing were cited as specific examples of assistance needed by Claimant.

On 3/31/10, Claimant was examined by a physician; the examination report was attached as Exhibits 24-27. It should be noted that one or more pages of the report may be missing as the final page (Exhibit 27) ended in an incomplete sentence. The examiner noted Claimant's neck muscles were tender and range of motion was limited. The examiner also noted Claimant's lower back was mildly limited in range of motion and also was tender. The examiner's diagnosis was incomplete but there was a conclusion that more treatment was needed "for a couple of months three times a week" to treat Claimant's cervical and lumbar problems.

Claimant was again examined on 4/1/10. The corresponding report was submitted as Exhibits 28-31. The examiner noted Claimant's complaint of daily migraine headaches. Claimant's prognosis was "fair". The examiner, as far as Claimant's headaches went, concluded Claimant was able to work without restrictions.

Claimant was psychologically examined on 3/29/10 (see Exhibits 32-35). It was noted that Claimant described himself as more anxious than depressed. Claimant told the examiner that he had been sleeping poorly and ate excessively. Claimant also reported being afraid of leaving the house to drive for fear of getting into another accident. Claimant stated he drove 2-3 miles for food and to pick up his children, but did so under immense fear of getting into another accident. Like the 4/1/10 examination, the physician's diagnosis and/or impression was not provided (Exhibit 34 was a blank page).

Claimant's progress notes for his outpatient treatments were presented (see Exhibits 36-43); the notes were from 7/2010-9/2010 therapy sessions. It was noted that Claimant's gait was slow but Claimant was considered normal, unremarkable or appropriate in areas of: behavior, attire, posture, motor activities, orientation, memory, language, perception and affect. Claimant's insight and judgment were considered "fair".

Claimant was examined on 2/18/11 (see Exhibits 44-46). It was noted that Claimant's neck range of motion decreased since a previous examination. The report from the prior examination was presented as Exhibits 48-54. The examiner noted that Claimant's cognitive perspective "was quite compromised" and Claimant "seems to be having difficulty organizing his thoughts". The examiner noted a previous physician's diagnosis that Claimant was disabled secondary to his cognitive limitations. The examiner "wholeheartedly agreed".

The examiner recommended that Claimant not drive and concluded that Claimant was a "potential hazard to himself and others" presumably referring to Claimant's driving abilities. The examiner recommended some type of assistant for Claimant so "he does not get into trouble such as leaving a stove/oven on or the like". The examiner concluded that from a physical perspective, Claimant's pain may be disabling and he should not work in his previous employment as a carpenter. From a cognitive perspective, Claimant was deemed disabled as Claimant was unable to organize his thoughts and had "difficulty expressing himself and the like".

A letter (Exhibit 47) dated 1/18/11 from Claimant's treating physician noted Claimant scored 15 on a 20 point on a Quick Inventory of Depressive Symptoms Self Report.; this scale measures Claimant's depression symptoms. Claimant's score of 15 was in the high moderate range of the scale (16-20 being severe depression). It was also noted that Claimant's level of anxiety was also in the moderate scoring range based on a Generalized Anxiety Disorder 7 Scale (GAD7). The physician concluded Claimant was unable to work, at that time, due to ongoing cognitive difficulties.

Claimant was psychologically examined on 2/7/11 (see Exhibits 64-69), 2/11/11 (see Exhibits 61-63), 2/16/11 (see Exhibits 58-60) and 3/2/11 (see Exhibits 55-57) by a common physician. The examiner was described by a prior examiner as a psychiatrist specializing in brain trauma. On all three examinations, the examiner scored Claimant's GAF as 30. The Diagnostic and Statistical Manual of Mental Disorders Fourth Edition (DSM-IV) describes GAF as a scale used by clinicians to subjectively rate the social, occupational, and psychological functioning of adults. A score within the range of 21-30 is representative of someone with behavior considerably influenced by delusions or hallucinations OR serious impairment, in communication or judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) OR inability to function in almost all areas (e.g., stays in bed all day, no job, home, or friends). There was evidence to support the GAF based on Claimant's unwillingness to leave bed and Claimant's cognitive dysfunction. A GAF of 30 tends to be persuasive evidence that Claimant is disabled.

A letter (Exhibit B2) dated 9/15/10 from Claimant's treating physician noted Claimant was receiving ongoing treatment for his physical and psychological problems but his

ongoing symptoms “would significantly interfere with ability to hold employment”. The physician concluded Claimant was disabled, at that time.

Claimant’s various medical records (Exhibits B3-B42) were presented as evidence. The notes do not verify significant information other than verifying Claimant’s ongoing treatment for neck pain, back pain and psychological issues and a diagnosis of PTSD.

Records from Claimant’s hospital stay following his motorcycle accident were presented as evidence. (see Exhibits B43-B47). The physician noted a mild degenerative change at L3-L4 and minimal degenerative change at L2-L3 and L4-L5 with reduced disc height. There was a left foraminal disc extrusion noted at L3-L4. Claimant’s cervix was noted as having multilevel degenerative change, worst at the C6-C7 level. Mild central canal stenosis was noted. It was also noted that there was severe neuroforaminal narrowing.

A Psychological Examination Report (Exhibits B51-B54) dated 8/3/10 was presented. Claimant’s GAF was noted as 45. A GAF score within the range of 41-50 is representative of a person with “Serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job).” PTSD was again diagnosed.

A Medical Examination Report (Exhibits B59-B61) dated 8/3/10 was presented. Claimant was medically cleared for frequent 10 pound lifting limitations and occasional 20 pound limitations. Claimant was limited to standing or walking less than 2 hours in an 8 hour workday and sitting less than 6 hours in an 8 hour workday. The examiner noted Claimant may need a cane.

An Activities of Daily Living (Exhibits B66-B72) dated 7/25/10 was presented. The form is intended to be completed by DHS clients to convey how well clients can complete typical daily activities. Claimant noted problems sleeping due to nightmares and pain. Claimant noted he is constantly tired and sleeps all of the time. Claimant indicated he has tried to perform household work but is unable to do so and gave up trying.

A DHS referred physician examined Claimant on 6/16/11. It was noted that Claimant received a ride to the appointment and that Claimant advised the examiner that he rarely drives. It was noted that Claimant said he does nothing as far as activities. Claimant was able to remember only 2 of 5 digits forward and the same for remembering them backwards. It was noted that Claimant was able to recall two of three objects after a few minutes. Claimant was able to perform simple math calculations and name the past three presidents, including their date of birth. Claimant was given a prognosis of fair and assessed a GAF of 60. A score within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning.

The examination dated 6/16/11 was not given significant weight. The examiner was one that had not seen Claimant previously. Other reports were by examiners that saw Claimant on multiple occasions. Further, unlike other examination reports, this examination did not include any specific testing methods.

A clinical psychology consultation report (Exhibits B76-B78) dated 6/8/11 was performed by the physician that performed examinations on 2/11/11 and 3/2/11. Claimant reported some improvements including a decrease in headaches and a lack of nightmares that week. It was noted that Claimant was seeing a physician twice per week. Claimant was assessed a GAF of 45. The examiner still considered Claimant completely disabled based on his psychological condition.

A neuropsychological report was presented as Exhibits B81-B89. Dates of previous examinations were noted as 2/15/11, 5/6/11, 5/20/11 and 6/8/11. 27 different tests were administered as part of the examination. Behavioral observations were that Claimant's speech was slow and that Claimant had word finding difficulties. It was noted that Claimant was easily distracted. Claimant's neuropsychological functioning was within normal limits. Claimant's performance on tests reflected significant cerebral impairment. The examiner presented a thorough report detailing Claimant's scores for the tests and noted severely low scores in several areas. The examiner noted impairments of processing speed, attention and concentration, language functioning, sensoriperceptual functioning and motor impairment.

Based on the totality of the evidence, there is overwhelming support that Claimant had impairments that affect his basic work abilities. There is a sufficient record of physical problems with Claimant's back and neck to determine physical basic work activities would be impacted. There is a significant record of cognitive impairments that would affect Claimant's concentration, memory, pace and ability to follow instructions.

Though Claimant's impairments appear to be lessening, there is no evidence to believe that Claimant's impairments have not, or will not exceed a 12 month period. It is found that Claimant has a severe impairment. The analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Mental impairments are described under listing 12.00. Claimant's most relevant mental impairment diagnosis was for brain trauma and PTSD stemming from a vehicular accident; this disorder falls under organic mental disorders (Listing 12.02) and reads:

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 is 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.

Looking at Part A of the listed impairment, Claimant does not fit neatly into any of the seven listed possibilities. One of Claimant's reoccurring problems is his ability to sleep. It was well documented that Claimant sleeps 2-4 hours per day with occasional naps throughout the week. Similarly, it was well documented that Claimant has reoccurring distractions throughout his day stemming from his motorcycle accident. The evidence does not support finding that such preoccupation amounts to meeting any of the seven listed ways to meet Part A of the impairment. There was no evidence of hallucinations, crying spells, outbursts or other behavior which better fits Part A.

There was evidence that Claimant's memory was adversely impacted. Claimant's working memory was in the low average range (19th percentile). His visual memory was adequate but relatively low (27th percentile). Claimant's processing speed placed him at the 2 percentile. Claimant scored in the 30th percentile or worse in the areas of: verbal comprehension, attention and concentration, visual discrimination and verbal expressive skills.

Despite Claimant's well established cognitive limitations, the evidence better supports a finding that Claimant meets Part A of the above listing based on a change in personality. The examination report (Exhibit 88) noted reports of depression, anxiety and suicidal ideation. The examiner noted that there were neurovegetative symptoms of depression. Claimant projected failure during testing and appeared overwhelmed, anxious, discomfort around others and a "great deal of emotional distress". It is found that Claimant met Part A of the listed impairment for organic mental disorders.

It was well established that Claimant suffers marked impairment in daily activities. Claimant described a day consisting of medical appointments and attempts to sleep. Claimant performs no housework, sees no friends and has few interests. Claimant's testimony was consistent with the records supporting a limitation to daily activities.

Claimant's concentration, persistence or pace were each documented as markedly limited. Several examination reports referred to Claimant's inability to maintain concentration. The most significant evidence to Claimant's pace was Claimant's performance speed on the tests placed him in the 2nd percentile; the examiner described Claimant's 2nd percentile performance as "moderate impairment" with a .7 percentile demonstrating "severe impairment". Based on Claimant's below average performance in several testing categories and notably low performance in processing speed, it is found that Claimant established marked limitations in concentration, persistence or pace.

As Claimant meets Part A and Part B of the above listed impairment, it is found that Claimant established meeting the listed impairment for organic mental disorder. Accordingly, it is found that Claimant is disabled and DHS erred in denying MA benefits to Claimant.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

The undersigned already found Claimant to be disabled for purposes of MA benefits based on the finding that Claimant meets an SSA-listed impairment for organic mental disorder. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS improperly denied Claimant's application for SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's application requesting SDA and MA benefits. It is ordered that DHS:

- (1) reregister Claimant's application dated 3/17/10 for MA and SDA benefits;
- (2) initiate evaluation of Claimant's eligibility for MA and SDA benefits based on the finding that Claimant is a disabled individual;
- (3) if Claimant is found to be eligible for MA or SDA benefits, initiate a supplement for any benefits not received as a result of the improper denial; and

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(4) schedule a redetermination date of 6/2012 if DHS determines Claimant to be eligible for MA and/or SDA benefits.

The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: August 30, 2011

Date Mailed: August 30, 2011

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.

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