

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201128930
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
August 31, 2011
Macomb County DHS (36)

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 August 31, 2011 at the Department of Human Services office in Macomb County, Michigan, District 36.

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 December 15, 2010.
- (2) Claimant is 51 years old.
- (3) Claimant has a 4th grade education with special education classes.
- (4) Claimant is not currently making SGA.
- (5) Claimant has a work history consisting of light, unskilled work.
- (6) Claimant has a history of organic brain disorder, caused by a traumatic brain injury at a young age.
- (7) Claimant experiences major depressive disorder with psychotic features, chronic dementia, severe memory impairments, maladaptation symptoms, problems with social functioning, and cognitive issues as a result of his brain injury.
- (8) Claimant speaks no English and has been unable to learn because of his brain injury.
- (9) Claimant is unable to navigate, is unable to perform most ADL's without assistance, and gets distracted and frustrated easily.

- (10) Treating source medical records confirm claimant's statements with regards to his abilities.
- (11) Independent examiners have given claimant a GAF of 45.
- (12) On March 11, 2011, the Medical Review Team denied MA-P, stating that claimant was capable of performing past relevant work.
- (13) On March 28, 2011, claimant filed for hearing.
- (14) On April 27, 2011, the State Hearing Review Team denied MA-P.
- (15) On August 31, 2011, a hearing was held before the Administrative Law Judge.

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).

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 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 2011 is \$1,640. For non-blind individuals, the monthly SGA amount for 2011 is \$1,000.

In the current case, claimant has testified that they are not making SGA, 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 organic brain disorder that has more than a minimal effect on the claimant's ability to do basic work activities. Claimant has functional limitations resulting from his inability to concentrate and memory impairments. Claimant is easily frustrated, needs assistance

for most ADL's, and is unable to sustain concentration. This condition has been confirmed by treating source and independent examinations. 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 disorder.

Appendix 1 of Subpart P of 20 CFR 404, Section 14.00 has this to say about arthritis:

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;

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

Claimant's testified credibly to memory impairment which impairs his ability to learn new information. Claimant testified that he gets lost easily, needs help with ADL's and has trouble learning new information. Claimant is unable to speak English; despite several years in the country, claimant is unable to learn the information needed to become fluent in English, except for a few, perfunctory phrases. Independent and treating source examinations confirm claimant's issues, and also note that claimant has trouble with concentration and persistence; claimant is easily distracted and frustrated.

With regard to the B part of the listings, the undersigned notes that claimant also has marked difficulties in maintaining concentration, persistence and pace. *Concentration, persistence or pace* refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. These limitations must be of such an extent that claimant is held to be markedly impaired with regard to concentration persistence and pace. 20 CFR 404 App 1, Sub P, 12.00 (C)(3).

Claimant is easily distracted; independent examinations noted that claimant became increasingly frustrated with the questions and needed frequent reminders to stay on

task. Claimant testified credibly that he gets lost easily, needs help with most ADL's, needs help to remember medications and appointments, and has trouble navigating basic places, such the inside of a store. Claimant is unable to focus on any one topic for sustained periods of time. Therefore, the undersigned holds that he is markedly limited in concentration, persistence, and pace.

Finally, *social functioning* refers to the capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR 404 App 1, Sub P, 12.00 (C)(2). Claimant's mental RFC notes, with regard to social interactions, that claimant was moderately limited in his ability to interact appropriately with the general public, and moderately limited in his ability to accept instructions and respond appropriately to criticism from supervisors and the ability to get along with co-workers and peers without distracting them or exhibiting behavioral extremes.

While this assessment shows claimant's is moderately impaired on maintaining social functioning in a work-related environment, the listings do not limit social functioning to this area. Social functioning is specifically defined as a general ability to maintain social functioning with individuals. Thus, while the mental RFC is useful in examining one area of claimant's life, it is hardly useful in examining all of the general social interactions.

However, the evidence of record is more than enough to fill in the gaps. Claimant has a history of hallucinations, and is currently taking anti-hallucinators, leading to socialization problems. Claimant has all ADL's performed for him by his families, and does not leave the house due to his learning problems. Claimant does not socialize. Claimant is unable to speak English. A physician stated that claimant experiences maladaptation symptoms. More importantly, claimant has been given a GAF of 45 by his treating source. A GAF between 41-and 50 is generally defined as having a serious impairment in social, occupational, or school functioning. Claimant's GAF is at this level. These GAF scores would be consistent, considering the record as a whole, with an individual with a serious impairment in social functioning.

Therefore, when combining claimant's Mental RFC assessment, and claimant's psychiatric record, including claimant's GAF scores, the Administrative Law Judge is able to hold that claimant is markedly impaired in social functioning.

As claimant is markedly impaired in concentration, persistence and pace, and social functioning, the Administrative Law Judge holds that the claimant meets the B criteria in the listings for mental impairments.

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.

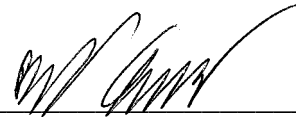
With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

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.

1. The Department is ORDERED to initiate processing of the application of December 15, 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: 10/04/11

Date Mailed: 10/04/11

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:

