

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-32367
Issue No: 2009
Case No: [REDACTED]
Hearing Date:
October 18, 2011
Genesee County DHS-06

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 received on April 22, 2011. After due notice, an in-person hearing was held on October 18, 2011. Claimant personally appeared and testified, represented by [REDACTED]

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On January 31, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P) and Retro-MA?

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 October 22, 2010, Claimant applied for MA-P and Retro-MA.
- (2) On December 21, 2010, the Medical Review Team (MRT) denied Claimant's MA application indicating Claimant has a non-severe impairment, pursuant to 20 CFR 416.920(c). (Department Exhibit H, pp 1-2).
- (3) On April 22, 2011, the department caseworker sent Claimant notice that his application was denied.

- (4) On April 22, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 23, 2011, and January 31, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits indicating Claimant retains the ability to perform basic work activities. (Department Exhibit L, p 1; Department Exhibit M, pp 1-2).
- (6) Claimant is a [REDACTED] man whose birthday is [REDACTED]. Claimant is 6'3" tall and weighs 160 lbs. Claimant completed high school and 3 ½ years of college. Claimant last worked in the summer of 2008.
- (7) Claimant had applied for Social Security disability at the time of the hearing.
- (8) Claimant has a history of traumatic brain injury (TBI), an immune disorder, a splenectomy, arthritis, thoracotomy, tracheostomy, and placement of inferior vena cava filter.
- (9) On November 18, 2008, was involved in a motor vehicle accident. His Glasgow Score was 11. In addition to the TBI, he sustained multiple rib fractures with flail chest, bilateral pubic ramifractures, right sacral fracture, L5 transverse process fracture, and a C2 fracture. He required a tracheostomy and experienced prolonged ventilator dependency. He underwent a splenectomy and thoracotomy with evacuation of a left hemothorax. A CAT scan of the brain revealed scatter hemorrhages, the largest being in the right frontal lobe, bilateral occipital horns and bilateral lateral ventricles. He exhibited severe cognitive deficits, which warranted rehabilitation. After review of medical records it was unclear how long the patient was in post-traumatic amnesia, however he did experience problems with agitation, which was treated successfully with beta blockers. On discharge, he was modified independent with bed mobility, supervision with transfers and ambulating community distances. He was going up and down flights of stairs with supervision. He was eventually discharged home with 24 hour supervision on December 16, 2008. (Claimant Exhibit A, p 2).
- (10) On March 26, 2009, Claimant underwent a neuropsychological evaluation which produced a panel of results consistent with the residual effects of TBI. The most noticeable finding was the presence of mild to moderately impaired speed of information processing and complex concentration. Additionally, he displayed inefficiencies in visuospatial processing which implied mild persistent right hemisphere dysfunction. This appeared to also have an impact on complex visual memory in which he displayed mild impairments relative to expectations. (Claimant Exhibit A, p 3).

- (11) On October 1, 2009 and October 8, 2009, Claimant underwent a neuropsychological evaluation. Claimant's reading speed was consistently low average. His reading comprehension was significantly lower than in the last assessment in March, 2009. An assessment of intellectual functioning revealed overall performance primarily in the average range. His index scores were very similar to the last evaluation. As in the last evaluation, there was a large discrepancy between his verbal and performance IQ (29 points), which is observed extremely infrequently in the normal population (VIQ 114, PIQ 85). This performance discrepancy one again appeared largely related to reduced processing speed, a common finding following TBI. On multiple tasks requiring sustained concentration, visual attention, and psychomotor speed his performance was low average. (Claimant's Exhibit B, pp 4-5).
- (12) On January 19, 2010, Claimant saw his doctor for generalized body pain and depression. He received an immunization due to the splenectomy and was advised to continue using Zoloft daily and Tylenol as needed. (Department Exhibit E, p 5).
- (13) On September 22, 2010, Claimant went to the emergency room after nonstop vomiting associated with fevers, chills, and abdominal cramps. A CAT scan of Claimant's abdomen noted the prior splenectomy and IVC filter placement. There was no intestinal obstruction, free air or free fluid. The appendix was not definitely identified; however there were no secondary signs of appendicitis were present. The old left 7th-11th ribs and right inferior pubic rami fracture deformities. Claimant was diagnosed with infectious gastritis secondary to viral versus bacterial etiology with vomiting and no diarrhea and admitted to the hospital. Given intravenous fluids for dehydration, Zoloft continued for depression, deep vein thrombosis prophylaxis with Arixtra and gastrointestinal prophylaxis with Nexium. Claimant was discharged on September 24, 2010. (Department Exhibit H, pp 16, 19-23).
- (14) On September 23, 2010, Claimant's chest x-ray showed old trauma to left chest with healed rib fractures and pleural thickening noted. No acute process identified. (Department Exhibit H, p 18).
- (15) On December 14, 2010, Claimant underwent a medical exam on behalf of the department. The examiner indicated Claimant's gait was normal, but he had a weak handgrip and was depressed. (Department Exhibit A, pp 12-13).
- (16) On January 10, 2012, Claimant underwent a psychological evaluation by the Michigan Disability Determination Service. Claimant's alleged impairments were reported as from his car accident in November 2008.

He stated he broke his neck and had hemorrhaging in his brain. He broke his back and pelvis. The head injury has made it to where he has memory lapses and his attention span wanes. Claimant reported that he had undergone neuropsychological testing several times at [REDACTED]. He said the testing indicated that he has deficits with attention span and memory. He stated that his spatial intelligence was much lower than his verbal. Claimant has resided with his parents since the motor vehicle accident in 2008. His deficits were not dramatic enough to be evident during the exam. Claimant was capable of understanding, attending to, remembering, and carrying out instructions related to unskilled work related behaviors. The examining psychologist indicated that psychological testing would be necessary to more accurately assess Claimant's abilities to carry out these functions with detailed instructions. Claimant's abilities to respond appropriately to co-workers and supervision and to adapt to change and stress in the workplace were not impaired. Claimant was diagnosed with Cognitive Disorder and Mood Disorder with a current GAF of 54 and a guarded prognosis. (Department Exhibit C, pp 3-7).

- (17) On January 29, 2012, Claimant underwent a physical examination by the Disability Determination Service. Claimant's chief complaints were closed head injury, arthritis, immune system and fatigue. He had mild difficulty heel and toe walking, mild difficulty squatting and mild difficulty standing on either foot due to pain. There was no tenderness over both sacroiliac joints and over the left ischium. The examining physician noted Claimant's most significant ailment appeared to be his neurological affect of issues where he complains of problems with memory and concentration. There were no focal neurological deficits on the day of examination and he was otherwise appropriate. He complained of diffuse pain which appeared to be mostly post traumatic. At this point, continued supportive care would be indicated. Physically his overall degree of impairment appears mild; prognosis long term however is fair to guarded and permanent. (Department Exhibit C, pp 8-12).
- (18) Claimant's ongoing symptoms include fatigue, depression, major learning disabilities, lack of concentration, and short-term memory problems, in addition to his continued need to live in a supportive environment; all of these symptoms are consistent with Claimant's existing mental impairments as verified by the psychiatric evaluations (See Finding of Facts 10-11, 15-16 above).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (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).

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

The person claiming a physical or mental disability has the burden to establish it 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 to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment, or combination of impairments, does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

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).

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 *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967.

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 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 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 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).

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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is

ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Based on Finding of Fact #1-#18 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Claimant has shown, by clear and convincing documentary evidence and credible testimony, his mental impairments meet or equal Listing 11.00(F) and 12.02(C)(3):

11.00(F). *Traumatic brain injury (TBI)*. The guidelines for evaluating impairments caused by cerebral trauma are contained in 11.18. Listing 11.18 states that cerebral trauma is to be evaluated under 11.02, 11.03, 11.04, and 12.02, as applicable.

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.

1. 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:
2. 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in deciding at application Claimant was not disabled for potential MA/Retro-MA eligibility purposes.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for application reinstatement and processing to determine whether Claimant met all of the other financial and non-financial eligibility factors necessary to qualify for assistance under his October 22, 2010, MA/Retro-MA application.

It is SO ORDERED.

/s/
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 3/7/12

Date Mailed: 3/7/12

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.

VLA/ds

