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

IN THE MATTER OF:

[redacted]

Reg. No.: 2012-12949
Issue No.: 2009; 4031
Case No.: [redacted]
Hearing Date: February 8, 2012
County: Grand Traverse

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. After due notice, a telephone hearing was held on February 8, 2012. Claimant personally appeared and testified.

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 March 27, 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 September 28, 2011, Claimant filed an application for MA and Retro-MA benefits alleging disability.

(2) On October 21, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA, indicating that Claimant's physical impairments will not prevent employment for at least 12 consecutive months. The MRT did grant Claimant SDA.

(3) On October 31, 2011, the department sent out notice to Claimant that his application for Medicaid had been denied.

(4) On November 14, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(5) On January 18, 2012, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits stating Claimant retains the capacity to perform light work, using Medical Vocational Rule 202.17 as a guide. (Department Exhibit B, p 1).

(6) Claimant has a history of double vision, vertigo, migraines, short-term memory loss and a closed head injury.

(7) On September 22, 2011, Claimant was admitted to the hospital after being assaulted. Procedures performed: (1) repair of facial lacerations consisting of 2 cm laceration to the right eyebrow, 1 cm laceration to the nasal bridge and 2 cm laceration repair of the oropharynx, buccal mucosa an left lower lip; (2) laceration repair of the right upper lip on 9/22/11; (3) on 9/23/11, Claimant underwent five operations: (a) Le Forte 3 cranial facial reduction and fixation with bone grafting; (b) pleural sinus open reduction internal fixation with obliteration of the sinus with pericranial graft and reconstruction of the calvarial bone grafting; (c) complex zygomatic/malar complex fracture requiring open reduction internal fixation with multiple plating systems and multiple approaches; (d) Le Forte 1 open reduction internal fixation with multiple approaches and multiple fixation points, and (e) nasal orbital ethmoid complex fracture bilaterally requiring open reduction internal fixation with medial canthal wiring and rigid fixation to the frontal skull. Claimant also appeared to have what appeared to be bradycardia with questionable etiology. There was concern that it was related to increased intracranial pressure, but the CAT scan was repeated and normal. Claimant's chest x-ray showed no acute process. The CAT scan of Claimant's neck showed no acute fracture or dislocation. He was receiving continuous antibiotics for the amount of injury and types of injury he had in relation specifically to the cerebrospinal fluid drainage. The cerebrospinal fluid drainage slowly resolved and on 9/28/11, after passing therapies and being switched to oral medications, Claimant was released with a discharge diagnosis of: (1) closed head injury with negative CAT scan of his brain; (2) multiple facial bone fractures including bilateral maxillary sinuses, bilateral nasal bones, fracture of the anterior and posterior wall of the frontal sinus, fractures of the lateral wall of the left orbit and right orbital floor, bilateral zygomatic arch fractures as well as fractures of the left side of the maxilla. This is characterized as Le Fort +3 in nature; (3) multiple facial lacerations including right eyebrow 2 cm, nasal bridge 1 cm and left lower lip approximately 2 cm; (4) symptomatic bradycardia of unknown cardiac

etiology; (5) acute alcohol intoxic ation; (6) significant bradyarrhythmia probably physiologic but possibly intracr anial pressure induced; (7) history of asthma; (8) history of tobacco use; and (9) minimal retrobulbar hemorrhage right eye of no ocular consequences. Claimant was instructed to follow a non-chew diet, lim it his activities and no driving while on narcotics. (Department Exhibit A, pp 59-62, 43-49).

(8) On September 29, 2011, Claimant was seen in the emergency department for epistaxis from the left naris. He had vomited blood and stated the blood was trickling down the bac k of his throat, which he was s wallowing which was causing the nausea and vo miting. On exam, Claimant had profuse bleeding from the left naris with blood and c lots from the anterior nose and also pouring dow n the back of his thr oat. Claimant vomited while in the emergency room and ther e was bloody emesis in the bag on the bedside. The pos terior pharynx show ed clots in the back of the throat with active bleeding in the post erior pharynx. Claim ant was given an IV and 8 mg of morphine push and repeat ed again x1. He was giv en 4 mg Zofran IV push for nausea. Pac king was not an option due to the recent surgeries to Claimant 's mid face and the extensiv e facial trauma and fractures. The physician used Thro mbin tropical spray and used an Angiocath to place the fluids past the clots and active bleeding within the naris and injected topical thrombin. This stopped the bleeding. After prolonged observation and no additional bleeding from the left naris, Claimant was discharged home. (Department Exhibit A, pp 50-53).

(9) On November 7, 2011, Claimant sa w the plastic sur geon for follow-up. The operative sites were exami ned and there was no evidence of erythema, induration, excess ive warmt h, exudate, infestive process, dehiscence or inappr opriate sc ar formation. The wound showed the appearance of a mature scar. He has been healing well. The surgeon discussed scar precautions, suc h as the s ilicone s heet, scar creams and ointment, as well as silico ne g els with Claimant. Cla imant was also instructed that avoidance of the s un and liberal usage of sunscr een was highly enc ouraged for the next several years in order to minimize the potential of discoloration. Future surgery was also discussed with Claimant in the same or in other areas of his body. There will be a preoperative consultat ion for disc ussion of the specific surgical pr ocedure at the appropriate time. Claimant was also instructed regarding postoperative surgical restrictions. (Department Exhibit A, pp 143-145).

(10) On November 21, 2011, Claimant saw his primary physician. Claimant was hav ing bad headaches in the righ t frontal/temporal region. His headache is always present, gets bad enough to take Norco in the evening about every other day. Ar ea over scalp in same area a s headache was tender to the touch. He has diplopia and wears an ey e patch at times, but it makes him dizzy. He has an appoint ment to see an

optometrist next week. He has had poor memory since incident and his temper is a little bit shorter, due to his frustration. He has an appointment with a dentist in the next couple of weeks. He has lost 40 pounds since the assault. His equilibrium is off and he has occasional slight ringing in his life ear. He has facial numbness where the surgery was done. His left upper jaw and the roof of his mouth feels numb, and he has a molar out of place in that area. When standing to do dishes or laundry, he can only stand for about 15 minutes at a time, because he gets very tired and has to sit down again for 30 minutes. He can walk almost ½ a mile before needing to rest. No change in headache with activity. He has chronic morning congestion and uses a couple of puffs of combivent inhaler in the morning. He has not been on preventative medications in the past. He still has significant bruising around the eyes. He was referred to the [redacted] for evaluation and treatment, due to his chronic headaches and memory problems. (Department Exhibit A, pp 104-106).

(11) On November 28, 2011, Claimant was examined by an oral surgeon and a consult for possible maxillary implants was scheduled. (Department Exhibit A, pp 110-111).

(12) On December 29, 2011, Claimant's doctor wrote that Claimant has been off work since 9/21/11 and this is expected to last for the next year for medical reasons. (Department Exhibit A, p 98).

(13) On January 21, 2012, Claimant underwent a medical evaluation by the Disability Determination Service. Claimant's chief complaint was a closed head injury. He had the placement of bone grafts into his skull as well as titanium plates. He reports that at this time he is primarily having two symptoms, diplopia, for which he will need two additional surgeries, and headaches, which are being treated with Amitriptyline prophylaxis. Claimant had a slight left facial droop. There were several beats of nystagmus with right lateral gaze. There were some slight bony abnormalities noted across the frontal bones. (Department Exhibit C, pp 4-6).

(14) On January 23, 2012, Claimant saw his primary physician for follow-up. Claimant had just received his dentures and was almost done with the dental work. He will be scheduled for more surgery around the eye sockets in the next couple of months. He met with the memory and attention center, he still has a lot of trouble with memory. No change in headaches. The Amitriptyline is not really helping, even after increasing the dosage to 4 pills a night. Headaches are consistently behind the right eye. There is still significant bruising around his eyes. Claimant was prescribed acetaminophen-hydrocodone 325mg-10mg oral tablet, two tablets twice daily as needed for headaches. Combivent inhalation

aerosol with adapter, two puffs every four hours as needed for wheezing. Qvar 40 mcg/inh inhalation aerosol with adapter, two puffs once daily, and Valproic Acid 250 mg oral capsule, one tablet daily. (Department Exhibit A, p 102).

(15) On February 2, 2012, Claimant underwent a psychological evaluation on behalf of the Disability Determination Service. Prognosis for Claimant was fair. He did have a significant work history, but his injuries from the assault surpassed being minor. Diagnosis: Axis I: Dysthymia Panic Disorder without agoraphobia, Poly-substance abuse in remission; Axis III: History of closed head injury in September 2011 resulting in 6 metal plates installed and four bone grafts; asthma; Axis V: GAF=45. (Department Exhibit C, pp 8-13).

(16) Claimant is a [redacted] year old man whose birthday is [redacted]. Claimant is [redacted] tall and weighs [redacted] lbs. Claimant had completed the eleventh grade and had a high school equivalent education.

(17) Claimant had applied for Social Security disability benefits at the time of the hearing.

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).

Under the Medicaid (MA) program:

> "Disability" is:
>
> . . . 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.

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed

to determine the extent of his or her functional limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence. 20 CFR 416.929(a). Pain or other symptoms may cause a limitation of function beyond that which can be determined on the basis of the anatomical, physiological or psychological abnormalities considered alone. 20 CFR 416.945(e).

In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you. We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work. 20 CFR 416.929(a).

Since symptoms sometimes suggest a greater severity of impairment than can be shown by objective medical evidence alone, we will carefully consider any other information you may submit about your symptoms. 20 CFR 416.929(c)(3). Because symptoms such as pain, are subjective and difficult to quantify, any symptom-related functional limitations and restrictions which you, your treating or examining physician or psychologist, or other persons report, which can reasonably be accepted as consistent with the objective medical evidence and other evidence, will be taken into account in reaching a conclusion as to whether you are disabled. 20 CFR 416.929(c)(3).

We will consider all of the evidence presented, including information about your prior work record, your statements about your symptoms, evidence submitted by your treating, examining or consulting physician or psychologist, and observations by our employees and other persons. 20 CFR 416.929(c)(3). Your symptoms, including pain, will be determined to diminish your capacity for basic work activities to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

In Claimant's case, the ongoing double-vision, vertigo, migraines and other non-exertional symptoms he describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to his testimony in this regard.

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 <u>not</u> 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).

Claimant has not been employed since September 2011; consequently, the analysis must move to Step 2.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that Claimant has significant physical limitations upon his ability to perform basic work activities.

Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if Claimant's impairment(s) prevents Claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective physical findings, that Claimant cannot return to his past relevant work because the rigors of working construction are completely outside the scope of his physical abilities given the medical evidence presented.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

> (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
>
> (2) age, education, and work experience, 20 CFR 416.963-.965; and
>
> (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Claimant reaches Step 5 in the sequential review process, Claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services,* 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

After careful review of Claimant's extensive medical record and the Administrative Law Judge's personal interaction with Claimant at the hearing, this Administrative Law Judge finds that Claimant's exertional and non-exertional impairments render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The department has failed to provide vocational evidence which establishes that Claimant has the residual functional capacity for substantial gainful activity and that, given Claimant's age, education, and work experience, there are a significant numbers of jobs in the national economy which Claimant could perform despite his limitations. Accordingly, this Administrative Law Judge concludes that Claimant is disabled for purposes of the MA program. Consequently, the department's denial of his September 28, 2011 MA and Retro-MA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Claimant is not currently disabled for MA and Retro-MA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

1. The department shall process Claimant's September 28, 2011, MA and Retro-MA application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.

2. The department shall review Claimant's medical condition for improvement in April 2014, unless his Social Security Administration disability status is approved by that time.

3. The department shall obtain updated medical evidence from Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

/s/

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

Date Signed: 4/20/12

Date Mailed: 4/20/12

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

cc: [redacted]