

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-10938

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 13, 2008

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 October 13, 2008. Claimant appeared and testified. Following the hearing, the record was kept open for the receipt of additional medical evidence. Additional documents were received and reviewed.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant is no longer "disabled" for purposes of the Medical Assistance (MA-P) program?

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 has been an ongoing recipient of MA-P based upon an August 9th of 2002 application.

(2) On November 1, 2007, the department notified claimant of its intent to terminate claimant's MA-P benefits effective November 20, 2007 based upon a belief that claimant no longer met the requisite disability criteria.

(3) On November 6, 2007, claimant filed a timely hearing request to protest the department's determination.

(4) Thereafter, the department deleted its proposed negative action pending the outcome of the instant hearing.

(5) Claimant, age 58, has a high school education.

(6) Claimant's only relevant work was last performed in 2002 as an administrator of a church daycare program.

(7) Claimant was hospitalized in [REDACTED] for spinal meningitis where she developed bacterial endocarditis. Claimant developed pulmonary effusion, adult respiratory distress syndrome, and toxic encephalopathy. Claimant was in a coma for a prolonged period of time. She underwent mitral valve replacement.

(8) In 2007, claimant had a permanent pacemaker placed.

(9) Claimant suffers from hypothyroidism; bradycardia; recurrent supraventricular tachycardia; moderate aortic insufficiency; osteoporosis; osteoarthritis of the bilateral hands and back; persistent fatigue; and complaints of short term memory loss and dizziness.

(10) When comparing current medical documentation with documentation from the most recent February 11, 2004 approval by the Medical Review Team (MRT), it is found that medical improvement of claimant's condition has not occurred as there has been no decrease in

the severity of claimant's impairments as shown by changes in symptoms, signs, and/or laboratory findings.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is

substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, claimant is not currently working. Accordingly, claimant may not be disqualified for MA at this step in the sequential evaluation process.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii). The undersigned Administrative Law Judge finds that claimant's impairments are not "listed impairments" nor equal to listed impairments. Accordingly, the sequential evaluation process must continue.

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994(b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the claimant was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with claimant's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the claimant's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

In this case, claimant's most recent medical approval for MA-P occurred on February 11, 2004. On October 23, 2008, claimant's treating cardiologist opined that claimant is a Class II. [Patients with cardiac disease resulting in slight limitation of physical activity. They are comfortable at rest. Ordinary physical activity results in fatigue, palpitation, dyspnea or anginal pain.] The cardiologist gave claimant a therapeutic classification of Class C. [Patients with cardiac disease whose ordinary physical activity should be moderately restricted and whose more strenuous efforts should be discontinued.] On November 7, 2008, claimant's primary care physician [REDACTED] diagnosed claimant with recurrent supraventricular tachycardia, mitral valve replacement, and osteoarthritis of the back and hands. The physician opined that claimant's condition was deteriorating due to recurrent SVTs. The physician indicated that claimant has "cardiac issues" i.e. SVT which causes her to have moderate limitations. In this case, after comparing past medical documentation with current medical documentation, the undersigned Administrative Law Judge finds that the record will not support that claimant has enjoyed medical improvement of her condition.

In the fifth step of the sequential evaluation, the trier of fact must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) apply. If none of them apply, claimant's disability must be found to continue. 20 CFR 416.994(b)(5)(v).

The first group of exceptions to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred), found in 20 CFR 416.994(b)(3), are as follows:

- (1) Substantial evidence shows that the claimant is the beneficiary of advances in medical or vocational therapy or technology (related to claimant's ability to work).
- (2) Substantial evidence shows that the claimant has undergone vocational therapy (related to claimant's ability to work).

- (3) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques, claimant's impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable medical decision.
- (4) Substantial evidence demonstrates that any prior disability decision was in error.

In examining the record, the undersigned Administrative Law Judge finds that there is nothing to suggest that any of the exceptions listed above apply to claimant's case.

The second group of exceptions is medical improvement, found at 20 CFR 416.994(b)(4), are as follows:

- (1) A prior determination was fraudulently obtained.
- (2) Claimant did not cooperate.
- (3) Claimant cannot be located.
- (4) Claimant failed to follow prescribed treatment which would be expected to restore claimant's ability to engage in substantial gainful activity.

After careful review of the record, this Administrative Law Judge finds that none of the above-mentioned exceptions apply to claimant's case. Accordingly, per 20 CFR 416.994, the undersigned concludes that claimant's disability for purposes of MA must be found to have continued.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant continues to be "disabled" for purposes of the Medical Assistance program.

Accordingly, the department's determination in this matter is hereby REVERSED.

The department is ORDERED to maintain claimant's eligibility for Medical Assistance if she is otherwise eligible for program benefits. The department should review claimant's continued eligibility for Medical Assistance in April of 2010.

/s/

Linda Steadley Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 6/2/09

Date Mailed: 6/5/09

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 mailing date of the rehearing decision.

LSS/cv

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