

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: 2008-14231

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 21, 2008

Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 May 21, 2008. Claimant personally appeared and testified.

ISSUE

Did the department properly propose to close claimant's Medicaid (MA) and/or State Disability Assistance (SDA) case based upon a finding of improvement at review?

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 is a 43-year-old mother who lives with and provides total care for (Home Health Services) her disabled adult child; she has a 10th grade education and a history of housekeeping work (Department Exhibit #1, pgs 60 and 61).

(2) Claimant was laid-off from her most recent hotel housekeeping job in November, 2007, per her hearing testimony.

(3) The department approved claimant eligible for disability-based MA/SDA based on gynecological health problems.

(4) Claimant's medical history was positive for fibroid tumors.

(5) Claimant's October, 2006 pelvic ultrasound verified a significantly enlarged uterus with multiple, mixed hypo and hyperechoic masses within it subsequently determined non-malignant by biopsy performed on January 4, 2007 (Department Exhibit #1, pgs 95 and 107).

(6) Subsequently, claimant was referred to an OB/GYN specialist who determined a complete hysterectomy was necessary; consequently, the department approved medical assistance in March, 2007, with a review of claimant's condition scheduled for January, 2008 (Department Exhibit #1, pg 55).

(7) Claimant's tumor was removed in May, 2007, with no complications noted (Client Exhibit A, pg 2).

(8) At review, the department proposed benefit termination based upon a finding of improvement but claimant filed a hearing request to protest that determination; consequently, her disability benefits continued pending the hearing's outcome (Department Exhibit #1, pgs 1 and 2).

(9) Claimant's hearing was held on May 21, 2008.

(10) Claimant submitted updated evidence to show she was diagnosed with plantar fasciitis and a left plantar fibroma on her left foot in December, 2007, approximately seven months after her hysterectomy (Client Exhibit A, pg 3).

(11) Orthotic inserts were made for claimant's shoes as she also was noted to have flat feet (Client Exhibit A, pg 3).

(12) An April 24, 2008 follow-up examination notes claimant was doing markedly well, and she stated at that time she was not symptomatic when walking (Client Exhibit A, pg 4).

(13) Claimant reported she uses over-the-counter analgesics as needed for foot pain control and her doctor suggested intermittent pain injections might be necessary for flare-ups because claimant used them successfully in the past (Client Exhibit A, pgs 3 and 4).

(14) Claimant's only prescription medication is a daily [REDACTED] subsequent to her successful hysterectomy since hormone replacement therapy is usually required.

(15) Claimant is completely independent in all activities of daily living, she needs no assistive devices for ambulation and she has a valid driver's license/roadworthy vehicle (See also Finding of Fact #1 above).

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).

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

The federal regulations at 20 CFR 416.994 require the department to show, by objective, documentary medical and/or psychological evidence that a previously physical and/or mental condition has improved before MA can be terminated at review. This same requirement is applied to SDA cases. The governing regulations state:

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s)... 20 CFR 416.994(b)(1)(i).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

Functional capacity to do basic work activities. Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s)... 20 CFR 416.994(b)(1)(iv).

In determining whether you are disabled under the law, we must measure, therefore, how and to what extent your impairment(s) has affected your ability to do work. We do this by looking at how your functional capacity for doing basic work activities has been affected.... 20 CFR 416.994(b)(1)(iv).

Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and non-exertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes and dealing with both supervisors and fellow workers.... 20 CFR 416.994(b)(1)(iv).

...A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities.... 20 CFR 416.994(b)(1)(iv)(A).

When new evidence showing a change in signs, symptoms and laboratory findings establishes that both medical improvement has occurred and your functional capacity to perform basic work activities, or residual functional capacity, has increased, we say that medical improvement which is related to your ability to do work has occurred. A residual functional capacity assessment is also used to determine whether you can engage in substantial gainful activity and, thus, whether you continue to be disabled.... 20 CFR 416.994(b)(1)(iv)(A).

...Point of comparison. For purposes of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time.... 20 CFR 416.994(b)(1)(vii).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

In this case, the medical record is clear. Claimant is fully independent in all activities of daily living, and also, she is fully capable of providing total care to her homebound, disabled daughter. Claimant's hysterectomy resolved her fibroid issue and the only prescription evidenced at hearing was a daily hormone regulator pill. Likewise, claimant's medical records demonstrate the orthotics crafted for her in 2008 have resolved her symptoms to the point where she is fully capable of performing any number of unskilled jobs currently existing in the national economy, which is the standard to be applied in disability determination cases. As such, the department's proposed MA/SDA benefit termination must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly proposed to close claimant's MA and/or SDA case based upon a finding of improvement at review.

Accordingly, the department's action is AFFIRMED.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 23, 2009

Date Mailed: July 27, 2009

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 receipt 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.

MBM/db

cc:

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