

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: 2008-21059

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 15, 2008

Oakland 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 October 15, 2008. Claimant, his mother and his aunt personally appeared and testified.

ISSUE

Did the department properly propose to close claimant's Medicaid (MA) case at review in March 2008?

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 single, 35-year-old high school graduate with an extensive alcohol abuse use history who currently resides with his mother in [REDACTED].

(2) Claimant does not have a valid driver's license secondary to multiple DUI convictions (Department Exhibit #1, pg 3).

(3) Claimant reports complete alcohol abstinence since June 17, 2007 (Department Exhibit #1, pg 171).

(4) On May 12, 2006, the department found claimant disabled for MA/retro-MA/SDA, and set a medical review of his condition for June 2007 (Department Exhibit #1, pg 93).

(5) The local office inadvertently neglected to conduct this review as required.

(6) When the review was finally conducted in March 2008, the department proposed case closure based upon a finding of improvement, specifically stating claimant is now capable of performing unskilled work (Department Exhibit #1, pgs 195 and 196).

(7) In fact, claimant worked as a bicycle mechanic for approximately six months until he was laid-off in September 2008.

(8) At claimant's disability hearing on October 15, 2008, he stated he has been in outpatient treatment/counseling at [REDACTED] for about three years and his current psychotropic medication schedule [REDACTED] keep him emotionally stable.

(9) An independent psychological evaluation done the month before claimant's case was proposed for closure assesses his Global Assessment Function (GAF) at 65 (normal) and upgrades his ongoing mental impairment to general dysthymic disorder, improved from a 2006 Major Affective Disorder diagnosis which resulted in initial benefit approval (Department Exhibit #1, pgs 50-52 and 169-171).

(10) Claimant's February 25, 2008 psychological evaluation also notes clear speech, a well organized thought process, good memory, good judgment and fair self-esteem (Department Exhibit #1, pg 170).

(11) Claimant's height was documented at 5'6" at that time with a weight of 203 pounds; as of claimant's hearing date he reported he lost some weight to 190 pounds.

(12) Claimant resides with his mother; in addition to repairing bikes since age 14, he reported he enjoys bicycle riding (Department Exhibit #1, pg 170).

(13) Claimant was diagnosed with asthma as a child, but his April 2007 pulmonary function test shows only mild obstruction which normalizes with use of bronchodilators (Department Exhibit #1, pgs 117 and 118).

(14) Claimant states he quit smoking cigarettes in May 2007 and claimant's doctor's report indicates he has been prescribed an albuterol inhaler as needed for shortness of breath symptoms (Department Exhibit #1, pg 2).

(15) Additionally, claimant's April 2, 2008 Medical Examination Report (DHS-49) indicates he has no severe physical impairments or limitations on physical activity (Department Exhibit #2, pgs 1 and 2).

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 federal regulations at 20 CFR 416.994 require the department to show, by objective, documentary medical and/or psychological evidence that a previously diagnosed physical and/or mental condition has improved before MA can be terminated at review. 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, nothing on the record supports claimant's contention he is still eligible for disability-based assistance. In fact, all of the objective test results verify claimant's emotional status has greatly improved since 2006 thorough his continued outpatient counseling and compliance with his medication schedule. In fact, when asked at the hearing if claimant would

go back to the bike repair shop he got laid-off from in September 2008 if the employer called him back, claimant admitted he would be fully capable of performing that type of work now. Likewise, claimant's physical treatment and examination records do not provide any evidence of a severe physical impairment which would prevent his employability.

Furthermore, it must be noted the law does not require an individual to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an individual's symptoms can be managed to the point where substantial gainful employment can be achieved, a finding of not disabled must be rendered. While claimant may have some mild breathing difficulties, his 2007 pulmonary function test verifies his symptoms are completely controllable with the inhaler currently being prescribed. Additionally, claimant's positive commitment to smoking cessation can reasonably be expected to improve his shortness of breath symptoms even more. As such, the department has met its burden to show that claimant's previously diagnosed mental condition has improved since he was initially determined disabled in 2006.

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 case in March 2008, 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: November 4, 2009

Date Mailed: November 4, 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

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