

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: 2008-3560
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 14, 2008
St Clair 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 February 14, 2008. Claimant personally appeared and testified.

ISSUE

Did the department properly deny Medicaid (MA) continuation at claimant's mandatory review in August, 2007?

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 widowed, 61-year-old insulin dependent diabetic with a GED; she stands approximately 5'8" tall, weighs approximately 160 pounds and is right hand dominant.
- (2) Claimant's primary occupation was semi-skilled hairdressing; also, she worked in a plastics factory for approximately eight months in 2006 but stopped that due to recurrent

diverticulitis and progressively worsening spinal pain; claimant has been unemployed since then (Department Exhibit #1, pg 35).

(3) In November, 2006, claimant was hospitalized with recurrent diverticulitis and a pericolonic abscess, poorly controlled until sigmoid colon resection was performed in January, 2007 (Department Exhibit #1, pgs 26 and 48).

(4) The department approved MA for claimant based on that condition, with a mandatory medical review scheduled for August, 2007.

(5) At review, the department proposed benefit termination based on improvement; however, that action was deleted pending issuance of this Hearing Decision.

(6) Claimant's June 13, 2007 EKG shows sinus rhythm with prominent P-wave noted, medically opined to be secondary to chronic lung disease brought on by claimant's 35+ year smoking habit (Department Exhibit #1, pgs 50-55).

(7) X-rays and a bone density scan done in May, 2007 confirm generalized osteoporosis, extensive lumbar spine arthritis and moderate osteoarthritis in both claimant's hips (Department Exhibit #1, pgs 65-68).

(8) EMG testing done in June, 2007 also confirms bilateral carpal tunnel syndrome (Department Exhibit #1, pgs 69 and 70).

(9) In July, 2007, the doctor who ordered the above-referenced tests restricted claimant to less than a sedentary exertional level based on the test results (Department Exhibit #1, pg 71).

(10) In November, 2007, claimant's doctor started her on prophylactic anti-seizure medications after she reported an episode of lost consciousness with accompanying lost bladder control (Client Exhibit A, pg 7).

(11) However, claimant's February 21, 2008 EEG revealed no focal, lateralized or epileptiform abnormalities, thus ruling out recent epileptic activity or a recent stroke (Client Exhibit A, pg 6).

(12) Throughout 2007 and 2008, claimant's cervical disc disease with intractable radiculopathy and mild myelopathy continued to increase her pain levels to the point where she needed corrective surgery, which was done on February 25, 2008 (Client Exhibit A, pg 5).

(13) Claimant's anterior cervical discectomy encompassed C4-C5, C5-C6 and C6-C7, with a bi-level corpectomy at C5/C6 and placement of a PEEK strut graft with a vision plate from C4 to C7 (Client Exhibit A, pg 5)(See also Finding of Fact #7 and #8 above).

(14) Additionally, an independent consultative psychological evaluation dated April 21, 2008 diagnoses claimant with severe, recurrent Major Depressive Disorder.

(15) Claimant's treating doctor has prescribed [REDACTED] for symptom relief, but claimant does not feel it is very effective in controlling her depression.

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 or psychological evidence that a previously diagnosed physical or mental

condition has improved before MA can be terminated at review. The governing regulations stated:

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, absolutely nothing on the record supports the department's contention claimant's mental and physical condition has improved to the point where she is now capable of substantial gainful employment. While her diverticulitis may have improved, her osteoporosis/degenerative disc disease/COPD/depression have not. Therefore, the department's proposed MA case closure was erroneous, and it simply 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 proposing to close claimant's MA case based upon a finding of improvement at review.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for benefit continuation as long as all other eligibility criteria are met, with claimant's next mandatory medical review scheduled in April, 2010 (unless she is approved eligible for Social Security disability benefits by that time). **SO ORDERED.**

/s/

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

Date Signed: April 1, 2009

Date Mailed: April 2, 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.

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cc:

