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: 2008-10052
Issue No: 2009/4031
Case No: [redacted]
Load No: [redacted]
Hearing Date:
May 20, 2008
Muskegon 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, an in-person hearing was held on May 20, 2008. Claimant could not appear; however, he was represented by patient advocate [redacted].

ISSUE

Did the department properly propose to close claimant's Medicaid (MA) and State Disability Assistance (SDA) cases 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 single, 46-year-old, learning disabled (Special Education/Borderline Intellectual Functioning) adult with congenital ptosis who was determined on the basis of a

diagnostic assessment to be legally blind in 1999; this condition is uncorrectable (Client Exhibit A, pgs 11-19).

(2) Claimant was last employed in a structured work setting at [redacted], but he lost that job due to inability to adequately perform assigned tasks (Client Exhibit A, pg 8; Department Exhibit #1, pg 247).

(3) Claimant has never had a driver's license because of his vision loss; his mother is his primary source of transportation.

(4) The department approved claimant's MA/SDA application in 2006, but denied benefit continuation after his mandatory review in October, 2007 (Department Exhibit #1, pg 1).

(5) Claimant has an extensive psychiatric treatment record dating to 1990 for multiple suicide attempts (Client Exhibit A, pgs 5 and 6).

(6) In June, 2007, claimant's [redacted] psychiatrist discontinued treatment, noting:

> At this point, I have some serious doubts regarding his diagnosis of Bipolar I Disorder. I think it is more of a chemical dependency issue…(Client Exhibit A, pgs 4 and 6).

(7) Claimant's long history of polysubstance abuse was acknowledged by his authorized representative on the record at hearing.

(8) On November 27, 2007, claimant underwent an updated medical examination (Client Exhibit A, pg 55).

(9) In addition to claimant's vision problems, this physician noted Bipolar Disorder, Explosive Personality Disorder, Affective Personality Disorder (NOS), Paranoia, Schizophrenia and childhood Attention Deficit Disorder as claimant's historically documented impairments (Client Exhibit A, pg 55).

(10) Claimant's psychotropic medications at case review were [redacted] and [redacted]; the November 27, 2007 medical examination indicates they were not controlling claimant's violent outbursts (Department Exhibit #1, pg 8; Client Exhibit A, pg 55).

(11) Likewise, claimant's suicidal attempts increased in 2007, with hospitalizations noted in April and June, 2007 (Client Exhibit A, pg 6; Department Exhibit #1, pg 7).

(12) In addition to repeated suicide attempts and escalating volatile outbursts, claimant's constellation of chronic, documented symptoms includes social isolation, generalized anxiety, depression, low self esteem, appetite disturbances, sleep disturbances and feelings of helplessness/hopelessness/worthlessness.

(13) An independent psychological assessment conducted upon Interim Order after claimant's hearing indicates and summarizes his condition as follows:

> Prognosis:
> The potential for the patient becoming gainfully employed in a simple, unskilled work situation on a sustained and competitive basis is guarded. The patient states that his moods are extremely unstable and that being involved in a work situation that may produce stress may exacerbate his symptoms and cause a relapse. The patient may be able to function in a part-time work situation that is relatively stress free, but the potential for him to work in a full-time competitive work situation is guarded.
>
> Is this patient able to manage his benefit funds?
> No, due to impulsivity and a history of alcohol and drug abuse.

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 or psychological evidence that a previously diagnosed physical 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).

...When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a

> work setting, may reduce your ability to do past work and other work. 20 CFR 416.945(c).
>
> ...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).

Specifically, when mental impairments are being alleged, the governing regulations require consideration of the following:

> ...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).
>
> Medical findings consist of symptoms, signs, and laboratory findings:
>
> (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
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> (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
>
> (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.
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> Psychiatric signs are medically demonstrable phenomena that indicate specific psychological abnormalities, e.g., abnormalities of

behavior, mood, thought, memory, orientation, development, or perception, as described by an appropriate medical source. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

Symptoms and signs generally cluster together to constitute recognizable mental disorders described in the listings. The symptoms and signs may be intermittent or continuous depending on the nature of the disorder. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

We measure severity according to the functional limitations imposed by your medically determinable mental impairment(s). We assess functional limitations using the four criteria in paragraph B of the listings: activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. 20 CFR, Part 404, Subpart P, App. 1, 12.00(B).

...Where "marked" is used as a standard for measuring the degree of limitation it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively, and on a sustained basis. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

We do not define “marked” by a specific number of activities of daily living in which functioning is impaired, but by the nature and overall degree of interference with function. For example, if you do a wide range of activities of daily living, we may still find that you have a marked limitation in your daily activities if you have serious difficulty performing them without direct supervision, or in a suitable manner, or on a consistent, useful, routine basis, or without undue interruptions or distractions. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

We do not define “marked” by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...The context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness, effectiveness, and sustainability. It is necessary to define the extent to which the individual is capable of initiating and participating in activities independent of supervision or direction. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(1).

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3)

> project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).
>
> [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 the department's contention claimant has improved to the point where he is now capable of substantial gainful employment. Claimant's mental health history and his current need for continued psychiatric treatment is extensively documented in the records submitted to date. Furthermore, while claimant's chronic relapse into polysubstance abuse is also extensively documented, this Administrative Law Judge finds it is not material because she is convinced the severity and longevity of claimant's mental, emotional and cognitive impairments would prevent him from obtaining and/or keeping gainful employment irrespective of his polysubstance abuse relapses and even without consideration of his extremely poor vision. In fact, claimant's documented constellation of psychological symptoms meets Listing 12.04(A) and (B). As such, the department's denial of MA/SDA benefit continuation 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/SDA cases, based upon a finding of improvement at review.

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

(1) The department shall delete the proposed negative action until claimant's next mandatory review.

(2) The department shall review claimant's condition for improvement in April, 2010, unless he is approved eligible for Social Security disability benefits by that time.

(3) The department shall obtain all current treatment notes, progress reports, etc. at the time of review.

(4) The department shall appoint a Protective Payee to manage claimant's monthly cash grant (SDA) due to his high risk of illicit substance abuse relapse.

(5) **CLAIMANT SHOULD BE AWARE THAT HIS FAILURE TO FOLLOW HIS PSYCHOLOGICAL TREATMENT PLAN MAY RESULT IN THE DENIAL OF CONTINUED BENEFITS AT REVIEW.**

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

Date Signed:_[redacted]_____

Date Mailed:_[redacted]_____

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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