

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: 2008-22944

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 5, 2009

Ottawa 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 5, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly propose to close claimant's Medicaid (MA) and State Disability Assistance (SDA) cases based upon a finding of improvement at review in May 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 right-handed, 45-year-old female who completed 11th grade; she stands approximately 5'0" tall and weighs approximately 150 pounds, per self report at hearing.
- (2) The department approved disability-based MA/SDA for claimant from 2005 until her most recent medical review in 2008, per the department's witness at hearing.

(3) The local Medical Review Team's (MRT's) initial approval and subsequent benefit continuation was based on a finding claimant met Listing 1.04, 12.04 and 12.09 (Department Exhibit #1, pg 176).

(4) On June 6, 2008, the local office notified claimant her MA and SDA cases were being proposed for closure based upon MRT's finding of medical improvement purportedly sufficient for claimant to return to the competitive work force (Department Exhibit #1, pg 1).

(5) Claimant filed a timely hearing request; consequently, her benefits were continued pending issuance of this Hearing Decision.

(6) Claimant has an unskilled work history, last employed as a materials handler/fork lift driver in 2005 (Department Exhibit #1, pgs 128 and 211).

(7) Claimant suffered a work-related lower back injury in 2005 and continues to experience chronic back pain unresponsive to conservative treatment (physical therapy/facet injections) and heavy narcotic medication.

(8) Claimant was treated in [REDACTED] Emergency Room (ER) for chronic back pain in June 2007, October 2007 and April 2008 (Department Exhibit #1, pgs 178-187 and 208).

(9) Claimant's April 2008 ER report states in relevant part:

Chronic mental illness and she is not allowed to have her meds.
Her sister distributes them to her (Department Exhibit #1, pg 208).

(10) Claimant relies heavily on family members for assistance with basic daily living activities and self cares (Department Exhibit #1, pgs 212-215).

(11) Claimant's psychiatric evaluations from [REDACTED] confirm the following diagnoses: (1) Schizoaffective Disorder (Bipolar type); (2) Borderline Personality Disorder and; (3) Post Traumatic Stress Disorder (PTSD) (Acute with delayed

onset); additionally, claimant's Global Assessment Function (GAF) consistently remained around 40 during the relevant period at issue in this case (Department Exhibit #1, pgs 147, 144, 191 and 196).

(12) Claimant's medical records verify a twelve day psychiatric hospitalization (4/19/07-4/30/07) for Bipolar Disorder (Severe with psychotic features), reconfirming chronic mental illness, chronic pain and social isolation (Department Exhibit #1, pgs 147-149).

(13) Additionally, claimant's treating doctor confirmed ongoing lumbar spine degenerative disc disease and facet arthropathy as of his May 2008 report (Department Exhibit #1, pgs 218 and 219).

(14) Claimant takes all these prescription pain medications daily: (1) [REDACTED] (2) [REDACTED] (3) [REDACTED]; and (4) [REDACTED] (Department Exhibit #1, pg 219).

(15) Additionally, claimant's other prescription medications are: (1) [REDACTED]; (2) [REDACTED] (3) [REDACTED]; (4) [REDACTED] and (5) [REDACTED] (Department Exhibit #1, pg 219).

(16) Claimant's professional [REDACTED] counselor and her ongoing advocate from the [REDACTED] appeared at hearing; they both opined claimant was not mentally capable of performing substantial gainful work activity due to her pervasive cognitive and emotional symptoms which include poor memory, disturbed sleep, feelings of hopelessness/helplessness/worthlessness, social isolation, pervasive loss of interest in almost all activities (anhedonia) and chronic pain syndrome.

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 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).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

...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).

[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's mental or physical condition has improved to the point where she is now capable of substantial gainful employment. As such, the department's proposed MA/SDA case closure was premature 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/SDA cases 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 review scheduled in January 2011 (unless a Social Security disability allowance is issued by then). **SO ORDERED.**

/s/

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

Date Signed: January 27, 2010

Date Mailed: January 28, 2010

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.

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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:

