

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Claimant

Reg. No: 2008-29121

Issue No: 2009/4031

Case No:



Load No:

Hearing Date:

October 14, 2008

Hillsdale 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 October 14, 2008. Claimant and his treating psychologist 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 August 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) On February 20, 2007, claimant applied for disability-based MA and SDA (Department Exhibit #1, pg 236).

(2) On April 11, 2007, the department's local Medical Review Team (MRT) approved that application based on a finding claimant met Listing 1.04, 12.04 and 12.09 (Department Exhibit #1, pg 236).

(3) MRT requested a medical review of claimant's physical and mental conditions to be conducted in February 2008; however, the local office delayed initiating this review until July 2008 (Department Exhibit #1, pgs 1 and 2).

(4) On August 5, 2008, the local office notified claimant his MA and SDA cases were being proposed for closure based on MRT's finding of medical improvement purportedly sufficient for claimant to return to the competitive work force.

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

(6) Claimant is a 47-year-old smoker (three packs per week) with a limited education (completed 9th grade) who has not been gainfully employed in several years.

(7) Claimant lives with his disabled brother and helps him with medicine compliance, housecleaning and cooking when he is able (Department Exhibit #1, pg 290).

(8) Claimant stands approximately 5'7" tall and is medically obese at approximately 215 pounds (BMI=33.7)(Department Exhibit #1, pg 233).

(9) Claimant's July 2008 psychiatric evaluation reconfirms the following diagnoses: (1) Major Depressive Disorder (recurrent/severe); (2) Impulse Control Disorder; (3) Anxiety Disorder (with reported panic attacks); and (4) Post Traumatic Stress Disorder (PTSD with unresolved grief)(New Medical Evidence, pgs 5A and 6A).

(10) Claimant's October 2008 psychiatric update (two months after MA/SDA benefit termination was proposed) assigned claimant a Global Assessment Function (GAF) of 50 based

on his continued inability to function or help himself significantly (New Medical Evidence, pg 2A).

(11) This report states:

In summary, I would suggest that this man has medical and psychological or psychiatric difficulty so severe that there is no way that he could have functioned in the last year or two to accomplish significant work. At this time, he is definitely unable to work. I do not see any way that he will ever in the future be able to overcome the physical and mental difficulties enough to be significantly wage earning. Although there is some somatization showing in the past three or four years, I do not believe that is a significant factor and I maintain that he is totally disabled for any significant employment. In spite of the severe depression of longstanding and the posttraumatic stress disorder, we have been unable to use antidepressants of any sort because he reacts to all of them (New Medical Evidence, pg 2A).

(12) Claimant appears older than his stated age and he walks with a distinctive limp (New Medical Evidence, pg 5A).

(13) On May 14, 2008 a hematologist/oncologist diagnosed claimant with polycythemia secondary to Chronic Obstructive Pulmonary Disease (COPD) which requires periodic infusions every two weeks (New Medical Evidence, pg 5A).

(14) Claimant's ongoing symptoms include poor memory, feelings of hopelessness/helplessness/worthlessness, sleeplessness, chronic fatigue, pervasive loss of interest in almost all activities, loss of energy, loss of strength and chronic musculoskeletal pain secondary to multiple past orthopedic surgeries unresolved by current pain medication (Vicodin ES)(New Medical Evidence, pgs 5A and 6A).

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 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 medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e., your

residual functional capacity) based on the previously existing impairments with your prior residual functional capacity in order to determine whether the medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final. 20 CFR 416.994(b) (1)(vi).

...Medical improvement. Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled and is determined by a comparison of prior and current medical evidence which must show that there have been changes (improvement) in the symptoms, signs or laboratory findings associated with that impairment(s). 20 CFR 416.994(b)(2)(i).

...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 he is now capable of substantial gainful employment. As such, the department's proposed MA/SDA 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/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 mandatory review scheduled in December 2010 (unless Social Security Administration disability approval is received by then). **SO ORDERED.**

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

Date Signed: January 20, 2010

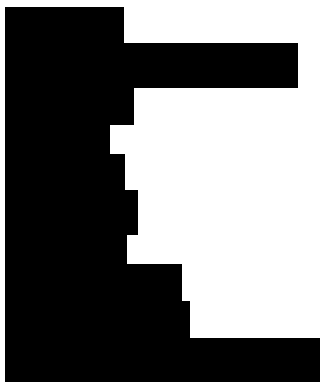
Date Mailed: January 21, 2010

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.

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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