

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: 2008-9954

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 10, 2008

Calhoun 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 April 10, 2008. Claimant and her significant other 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?

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 divorced, right-handed, 48-year-old nonsmoker/nondrinker with an 11th grade education who has been residing with her significant other for over ten years.

(2) Claimant stands approximately 5'4" tall and is morbidly obese at approximately 220 pounds (BMI=37.8)(Department Exhibit #1, pg 13).

(3) Claimant's last employment was unskilled, light factory work through temporary services in 2004; no other gainful employment is noted.

(4) Claimant's medical history is positive for gastric bypass surgery, gall bladder removal, lower back surgery and mild hypertension (Department Exhibit #1, pg 206).

(5) Claimant is not engaged in any mental health treatment or counseling, and no severe mental/emotional/cognitive impairments are documented by the medial records submitted to date.

(6) However, a pair of incisional hernias from claimant's previous gall bladder removal were repaired with mesh in 2001 (Department Exhibit #1, pg 198).

(7) In April, 2006, claimant spent two days in the hospital (4/12/06-4/14/06) for removal of the mesh (which had become infected) and treatment of left breast cellulitis; no complications were noted (Department Exhibit #1, pgs 115-121).

(8) Additionally, claimant was re-hospitalized between August 31 and September 2, 2007 for pain control secondary to diffuse lumbar spine disc bulging at L5-S1; post-operative changes from her previous back surgery (2001) are noted (Department Exhibit #1, pgs 13 and 107-109).

(9) During this time, the department approved disability-based assistance (MA/SDA) based on the above-referenced multiple hospitalizations (Department Exhibit #1, pg 110).

(10) The department maintained ongoing MA/SDA coverage until claimant's September, 2007 review, at which point the proposed case closure based upon alleged improvement (Department Exhibit #1, pgs 2 and 3).

(11) In the interim, claimant was diagnosed with Restless Leg Syndrome (RLS), for which [REDACTED] was initiated in August, 2007 (Department Exhibit #1, pg 6).

(12) In October, 2007, claimant's family practice doctor verified claimant's ongoing, chronic moderate to severe lumbar disc disease, verified claimant's medical need for a cane, verified claimant's residual functional capacity was less than sedentary, and also, she expressed the opinion that a second lumbar spine surgery was seriously being considered (Department Exhibit #1, pgs 13 and 14).

(13) In November, 2007, claimant spent two more days in the hospital because she fell; no fractures were detected, but claimant was treated for pain control and claimant indicates her pain remains constant and chronic since that time, despite prescription [REDACTED] and [REDACTED] (Department Exhibit #1, pg 6).

(14) Claimant also has developed significant bladder incontinence not fully controlled by current medication ([REDACTED]), as adult diapers and pads are worn continuously, per claimant's hearing testimony (See also the medication list at Department Exhibit #1, pg 6).

(15) Claimant filed a timely hearing request on November 20, 2007; consequently, the proposed case closure was deleted pending this appeal outcome.

(16) Claimant alleges there has been no improvement, but rather, a decline in her physical condition since the most recent favorable decision regarding her disability status was issued.

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 and/or psychological evidence that a previously diagnosed physical and/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).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

...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 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 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 proposed 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 April, 2010 (unless Social Security disability is approved by that time). **SO ORDERED.**

/s/

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

Date Signed: May 4, 2009

Date Mailed: May 5, 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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