

STATE OF MICHIGAN

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 200917421
Issue No: 2009/4031
Case No: [REDACTED]
Hearing Date: June 17, 2009
Oscoda County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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/

ISSUE

Did the Department of Human Services (DHS) properly proposed 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. The dates, years, review dates, and MRT dates are inconsistent throughout claimant's file and on the hearing summary. At the administrative hearing, evidence indicated that claimant's MA-P and SDA cases were reinstated due to a hearing request on February 18, 2009. The issue herein is a review with regards to claimant's MA-P and SDA.
2. The undersigned Administrative Law Judge was informed that claimant subsequently moved to [REDACTED]
3. On January 7, 2009, the MRT denied.
4. On January 21, 2009, the DHS issued notice.
5. On February 12, 2009, claimant filed a hearing request.
6. As of the date of the administrative hearing, claimant had an SSI application pending with the Social Security Administration (SSA). Claimant

was previously on SSI with the SSA for a number of years. Claimant's case was closed due to incarceration in June 2006. Claimant's SSI onset date was identified as September 1, 1992.

7. On April 12, 2009, the State Hearing Review Team (SHRT) denied claimant for insufficient information. Pursuant to the claimant's request to hold the record open for the submission of new and additional medical documentation, on April 14, 2010, SHRT once again denied claimant for insufficient information. On April 30, 2010, the undersigned Administrative Law Judge issued an Interim Order authorizing additional testing should claimant agree to the testing. No further testing was submitted. .
8. As of the date of application, claimant was a 50-year-old standing 5'6" tall and weighing 236 pounds. The BMI index classifies claimant at 35.9 as obese. Claimant has a high school diploma and unskilled work history.
9. Claimant testified that he does not have an alcohol problem or history. Claimant testified that he does not currently have an alcohol abuse problem but did have an abuse history. Claimant has a nicotine addiction.
10. Claimant has a driver's license and can drive an automobile.
11. Claimant is/is not currently working. Claimant has no relevant work history for the last 15 years. Claimant resides in an adult foster care home.
12. Claimant alleges disability on the basis of multiple impairment including hypertension, gastritis, sleep apnea, bipolar disorder, back surgery, high blood pressure, hypothyroidism, diabetes, alcohol abuse.
13. Claimant submitted over 325 exhibits of medical evidence documenting continuing eligibility for statutory disability and SDA.

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).

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

As noted in the Findings of Fact, this case was replete with many errors. The department stipulated that the case was opened in error at time, closed in error at times. The case while there were many discussions regarding the history and problems at the administrative hearing, the end result was that this case is to be classified as a review for MA-P and SDA benefits.

With regards to reviews, federal regulations are very specific as to the criteria to assess continuing eligibility. These regulations state in part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your

impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

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 not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

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).

As noted above, the first two steps of the total seven steps at review require a two-prong assessment as to whether there has been improvement and whether that improvement is related to the individual's ability to engage in SGA.

After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds that there is no evidence that claimant's multiple conditions have improved. In fact, the medical evidence indicates that claimant's conditions have worsened. Thus, it is noted that the multiple impairments regulation plays a significant role in this assessment in the alternative—20 CFR 416.922. For these reasons, and for the analysis set forth above, claimant is entitled to continuing statutory disability.

It is noted that there is no reason to apply the remaining sequential analysis as improvement is not shown.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's proposed actions were incorrect.

Accordingly, the department's proposed determination in this matter is, hereby, REVERSED. The department is ORDERED to keep claimant's MA and SDA cases open. The department shall schedule claimant's for a review in one year from this Decision and Order.

/s/ _____
Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 11, 2011

Date Mailed: March 14, 2011

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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

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