

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: 2009-18490
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 2, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Janice 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 on June 2, 2009.

ISSUE

Did the Department of Human Services (DHS) properly close claimant's State Disability Assistance (SDA) 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) In October, 2008, claimant's SDA was scheduled for review. Claimant was initially approved SDA based upon an MRT decision which does not indicate the specific medical reason for approval.

(2) There is no MA issue herein.

(3) On 1/8/09, MRT denied claimant continuing SDA eligibility.

(4) On 1/8/09, the DHS issued notice.

(5) On 1/23/09, claimant filed a hearing request.

(6) The negative action took effect herein--claimant's SDA was closed on 10/31/08.

(7) On 4/28/09, the State Hearing Review Team (SHRT) denied claimant continuing SDA eligibility on the basis of insufficient information requesting new medical evaluations.

(8) As of the date of review, claimant was a 52-year-old female standing 5' 3" tall and weighing 190 pounds. Claimant has a GED education.

(9) Claimant does not have an alcohol/drug abuse problem or history.

(10) Claimant does not smoke.

(11) Claimant has a driver's license and can drive a motor vehicle.

(12) Claimant is not currently working. Claimant last worked in October of 2007.

Claimant's work history in the last 15 years consists of operating a home day care.

(13) Claimant alleges continuing disability on the basis of hypothyroidism disease, which has not yet been controlled with proper medication, depression.

(14) Claimant brought with her to the administrative hearing a letter from her physician stating that claimant currently has a life threatening hypothyroidism disease as to date there has been no ability by the health professionals to be able to control the disease with medication. The physician notes however that eventually there is an expectation that the hypothyroidism will be controlled with medication and that claimant will be able to return to work at that point.

(15) A DHS-49 completed 10/22/08 states that claimant has hypertension, hypothyroidism, depression, vitamin D deficiency. Claimant also has thyroid toxicosis including pericardial involvement. The physician notes: "Patient had life threatening thyroid toxicosis. She is now hypothyroid, been on supplementation. Remains fatigued due to extended period required

to regulate thyroid, and she has had significant weight gain from medication and limitations. She is expected to make slow improvement.” Exhibit 42.

CONCLUSIONS OF LAW

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.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months....
20 CFR 416.905.

The federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...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).

There are very specific federal regulations with regards to a review case. 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).

In this case, based on the 49 completed in October, 2008, the physician notes that claimant is no longer in a life threatening thyroid toxicosis status but continues to not have a regulated thyroid resulting in hypothyroidism with varying supplementation. Based upon this statement that she “had” life threatening thyroid toxicosis, this ALJ finds that there has been improvement. Thus, the first prong of the review assessment has been met.

The second prong requires a showing that claimant’s improvement is related to her ability to work and engage in work-like settings. This ALJ has reviewed the very minimal new medical, which the department has the burden to obtain at review and finds that there is no medical documentation which would indicate that this improvement is related to claimant’s ability to engage in work or work-like settings. The physician notes specifically on the 49 completed on October 22, 2008 (Exhibit 32) that claimant remains fatigued and is now hypothyroid but on continuing medication which is expected to eventually control the hypothyroidism, but has not to date. Thus, this Administrative Law Judge finds that the second prong of the review standard is not met. As already noted, the burden of proof is on the department.

It is noted that SHRT also recognized that the record was insufficient to show that the department has met its burden of proof, as SHRT requested a number of new medical documentations. The department is ordered to continue with collecting this medical documentation. The department indicated at the administrative hearing that claimant should already be scheduled for an appointment to complete the tests requested by SHRT, although the department was unsure as to the date at the administrative hearing. This Administrative Law

Judge orders the department to continue with the collection of those medicals and to have those added to claimant's file in time for her next review.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's closure of claimant's SDA at review on 11/1/2008 was incorrect.

Accordingly, the department's closure of claimant's SDA is hereby REVERSED.

The department is ORDERED to reinstate claimant's SDA from the date of closure, and issue supplemental benefits to claimant. The department is ORDERED to keep the case continuing, and review this SDA in six months from the month of this Decision and Order, provided the department has at that time the medical tests and records requested by SHRT in its April 28, 2009 decision. It is SO ORDERED.

/s/ _____
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 3, 2009

Date Mailed: June 4, 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 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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cc:

