

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: 2009-6114

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 18, 2009

Wayne 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 March 18, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly 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) Claimant is a single, 28-year-old male with a general equivalency education (GED) who worked as a medical supply delivery/set-up employee until he suffered multiple gunshot wounds to his abdomen and left leg in 2004; before that, claimant was a janitor (Department Exhibit #1, pgs 9 and 10).

(2) In 2004, claimant's leg was amputated above the left knee due to his gunshot wounds; also, he has recurrent gastrointestinal abscesses secondary to scar tissue which require frequent hospitalizations/drainage (Department Exhibit #1, pg 7).

(3) In fact, as of claimant's March 18, 2009 hearing date to dispute the department's denial of MA/SDA benefit continuation, he still had a drainage tube in his abdomen from his most recent hospitalization in January, 2009.

(4) Claimant was hospitalized at [REDACTED] in October 2008, November 2008, December 2008 and January 2009 for recurrent gastrointestinal abscesses.

(5) Additionally, claimant's prosthesis causes chronic irritation and pain to the point where he can only wear it approximately four hours daily.

(6) When the prosthesis is being used, claimant requires a cane for support, balance and mobility (Department Exhibit #1, pg 8).

(7) Minimal walking causes claimant extreme discomfort and general fatigue (Department Exhibit #1, pg 6).

(8) Claimant needs assistance with basic daily living activities and self cares (Department Exhibit #1, pg 8).

(9) At the hearing held on March 18, 2009, the department provided none of claimant's old medical records from prior case reviews, none of claimant's updated hospitalization records (See Finding of Fact #4 above) and none of claimant's updated treatment/progress reports from his surgeon or treating family physician.

(10) Until claimant's October, 2008 MA/SDA review the department had approved disability benefits continuously since 2004.

(11) In January, 2009, claimant's MA case was reopened in [REDACTED], [REDACTED], even though the original case closure action was taken in [REDACTED], [REDACTED]

(12) [REDACTED] authorized retroactive MA coverage for claimant to December, 2008; consequently, he has had no lapse in medical coverage (MA) (See IMHD screen).

(13) However, [REDACTED] failed to reopen claimant's SDA cash grant when they opened his MA case, per the department's hearing witness (who was from [REDACTED])

(14) No one from [REDACTED] appeared or testified.

(15) Claimant contends he should have remained eligible for both MA and SDA, based on the severity of his gunshot residuals.

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 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).

...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 in the record supports the department's contention claimant's physical condition has improved to the point where he is now capable of substantial gainful employment. As such, the department's 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 closing claimant's MA/SDA cases at review.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for benefit reinstatement retroactive to the erroneous closure month, mandatory review scheduled in January, 2010.

Furthermore, the department shall:

- (1) Provide a copy of this Hearing Decision to claimant's current caseworker in [REDACTED] (0902).
- (2) Contact all claimant's treating physicians, surgeons and treating specialists and obtain all treatment records and progress reports from July, 2008 until the time of review in January, 2010.
- (3) Obtain all claimant's hospital discharge summaries and treatment notes from July, 2008 until the time of review, including those specified in Finding of Fact #4 above (10/08, 11/08, 12/08, 1/09).

- (4) Obtain a complete independent consultative physical examination by an internist (not the treating physician) in narrative form to include: (1) height/weight; (2) blood pressure/peripheral pulses; (3) range of motion (in degrees) of all major joints/grip strength/use of hands for fine/gross activity; (4) description of gait with and without cane/straight leg raise test; (5) heart/lung sounds and chest pain description if applicable; (6) neurological/cursory mental status exams; (7) clinical examination by the internist; and (8) observation of exaggerated symptoms or malingering (See State Hearing Review Team decision dated December 22, 2008).

SO ORDERED.

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

Date Signed: _____

Date Mailed: _____

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.

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MBM/db

cc:

