

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: 2009-10234

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 14, 2009

Barry County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 14, 2009. The record was held open for the submission of additional medical evidence and that evidence to be reviewed by the State Hearing Review Team (SHRT). The hearing record closed on May 19, 2009. Claimant personally appeared and testified along with his father [REDACTED]

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 was initially approved for MA and SDA on September 1, 2006, by department's Medical Review Team (MRT). This approval was based on MRT's finding that the claimant's impairment(s) meets/equals Listed Impairment, listing 1.06. MRT approval noted that claimant suffered multiple fractures due to a cycle accident (Department's Exhibit I, pages 73 and 74).

2. Claimant's MA and SDA eligibility was reviewed in May, 2007, with MRT determining that the claimant was no longer disabled for MA and SDA eligibility purposes (Department's Exhibit I, pages 63 and 64).

3. Claimant requested a hearing on department's proposed closure of his ongoing MA and SDA benefits and his case was reviewed by SHRT prior to the hearing. SHRT determined that the claimant has had "significant medical improvement", and that he could now perform simple, unskilled, sedentary work (Department's Exhibit I, page 62).

4. Department's decision was reversed by an Administrative Law Judge in November, 2007, and medical review was suggested for November, 2008 (Department's Exhibit I, pages 54-60).

5. At review MRT determined that the claimant is no longer disabled due to medical improvement, his condition was currently non-severe, and he had no limitations per [REDACTED] (Department's Exhibit I, pages 1 and 2).

6. Department notified the claimant that his MA and SDA benefits will terminate on December 23, 2008. Claimant requested a hearing on December 17, 2008, stating he is still disabled, he has had surgery again on his right ankle and leg on December 5, 2008, and is back on crutches.

7. On January 23, 2009, SHRT determined that claimant is capable of performing other work due to medical improvement per 20 CFR 416.920 (f).

8. Claimant submitted additional medical evidence following the hearing which was submitted to SHRT for additional review. On May 15, 2009, SHRT again determined that the claimant is capable of performing other work due to medical improvement.

9. Claimant is a 37 year-old male who is 5'7" tall and weighs 185 pounds. Claimant completed high school and can read, write and do basic math.

10. Claimant testified that he is currently working at a local church 4-6 hours per week, about 2 hours at the time doing light custodial work. Claimant previously worked at a lumber yard for 7 years from 1990 to 1997, then took a different job in masonry as a block layer and continued this type of work until his motorcycle accident in May, 2006.

11. Claimant's stated impairments are residual medical problems from multiple fractures he suffered in the accident for which he is still having surgeries, and some depression for which he cannot afford counseling.

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 claimant's case, he was found disabled by MRT initially by meeting the Listing of Impairments Part A, Listing 1.06. Claimant was in a motorcycle accident on [REDACTED] when he swerved to miss hitting a deer while going at high speed, slid his bike and crashed into a tree, breaking both hips, his pelvis, tailbone, right fibula, shattered his right ankle and right heel, and all of the toes on his right foot were broken. Claimant right great toe was almost complete severed and attempts to reattach the toe were not successful. Claimant was using a wheelchair to get around in September 2006.

Claimant's medical records presented at review indicate that he continued to have right leg, ankle and foot pain. After review of x-rays of claimant's right foot, arrangements were to be made for him to see the foot and ankle specialist to see if there is something that they can do as it relates to possible orthotic use (Department's Exhibit I, pages 27 and 28).

Medical Examination Report of April, 2009 notes as claimant's current diagnosis right foot and ankle pain and low back pain. Claimant's condition was listed as stable but he is limited to lifting/carrying up to 10 lbs., and standing/walking and sitting less than 2 hours. It is noted that the claimant has had multiple surgeries to his right foot and ankle, and that 11th surgery is to be done in July, 2009.

Letter from [REDACTED] [REDACTED] dated [REDACTED] states as claimant's diagnosis status post right forefoot reconstruction with right ankle pain. Claimant is scheduled

for a follow up on June 11, 2009, to discuss his upcoming surgery currently scheduled for July 10, 2009.

Letter from a Licensed Psychologist dated [REDACTED] indicates that the claimant is feeling increasingly anxious, and remains quite depressed, with significant sleep impairment. Claimant reported that he attempted to return to work on a very limited basis last summer but was physically unable to tolerate the pain. Claimant is diagnosed with Major Depressive Disorder, PTSD as he is having vivid nightmares related to his motorcycle accident, and a new diagnosis of Panic Disorder w/o Agoraphobia. Claimant's current GAF is viewed as 45 and prognosis for change continues to be poor.

Claimant is currently performing light custodial work but only for 4-6 hours per week. This type of work is not considered substantial gainful activity. Claimant's medical record indicates that he continues to have serious medical issues with his right ankle and foot, and that he is scheduled for another surgery for July, 2009. There would be no reason for claimant to have additional surgery, which will be his 11th since the 2006 accident, previous one being on [REDACTED] after which he was on crutches again according to his hearing testimony, unless the claimant continues to have mobility problems and pain issues. Claimant therefore continues to have major dysfunction of a joint with chronic pain resulting in inability to ambulate effectively, as described in musculoskeletal category of impairments, Listing 1.02, same category of Listing of Impairments under which the claimant was initially found to be disabled by MRT in 2006. Record therefore does not support the department's contention that the claimant's physical condition has improved to the point where he is now capable of substantial gainful employment. As such, the department's proposed MA and SDA case closure was erroneous, and it cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department erred in proposal to close claimant's MA and SDA cases, based upon a finding of improvement at review.

Accordingly, 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 June, 2010. SO ORDERED.

/s/
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 22, 2009

Date Mailed: June 23, 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 receipt date of the rehearing decision.

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