

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: 2009-13083

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 6, 2009

Muskegon 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 May 6, 2009. Claimant and his brother personally appeared and testified.

ISSUE

Did the department properly propose to close claimant's State Disability Assistance (SDA) case and properly deny Medicaid (MA) 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 nearly 50-year-old, divorced, morbidly obese high school graduate (5'8"/257) who was gainfully employed in sales and disc jockey positions until he developed significant cardiac problems in 2003 ([REDACTED] (BMI=39.1)(Department Exhibit #1, pg 427).

(2) The department's local office approved SDA disability benefits for claimant in January 2006 and his case remained open via a previous, favorable Hearing Decision dated May 21, 2007 until his mandatory medical review (Department Exhibit #1, pgs 252-259).

(3) On January 8, 2009, the department's local office sent claimant a notice denying SDA benefit continuation based on the conclusion he was capable of substantial gainful activity (SGA) despite his existing impairments (Department Exhibit #1, pg 451).

(4) On December 17, 2003, claimant was hospitalized at Mercy [REDACTED] via transfer from a local emergency room (Department Exhibit #1, pg 169).

(5) Standard cardiac testing revealed severe coronary disease, fortunately limited only to claimant's left anterior descending artery (LAD) which necessitated revascularization and single vessel bypass via his left internal mammary artery; no further complications are noted (Department Exhibit #1, pgs 69 and 158-172).

(6) Since that time, claimant reports ongoing fatigue, intermittent chest discomfort and shortness of breath symptoms on minimal exertion; however, his December 2008 progress report indicates he does not require many heart medications (Department Exhibit #1, pg 446).

(7) Claimant was living with his brother's family as of the May 2009 hearing date.

(8) Claimant's most recent medication list confirms his only cardiac-related prescriptions are a cholesterol-lowering medication ([REDACTED]), a high blood pressure pill ([REDACTED]) and a water pill ([REDACTED]) (Client Exhibit A, pg 2).

(9) In 2008, claimant was diagnosed with noninsulin dependent diabetes; his December 2008 progress report indicates he is experiencing left foot, right thigh and bilateral hand numbness/tingly sensations likely attributable to ongoing diabetic neuropathy (Department Exhibit #1, pg 446).

(10) Claimant's 2007 thoracic x-rays verify mild curvature with moderate spondylosis; the local office did not order updated x-rays at review (Department Exhibit #1, pg 385).

(11) In addition to the above-referenced physical impairments, claimant's medical records verify a longstanding depressive disorder with progressive worsening since 2005 when he initiated mental health treatment at [REDACTED] (Client Exhibit A, pgs 3-6).

(12) Claimant's October 2007 CMH progress report lists Major Depressive Disorder (severe/recurrent with psychotic features) and Severe Anxiety Disorder as claimant's diagnosed mental impairments (Department Exhibit #1, pg 286).

(13) Claimant's October 2008 CMH progress report adds Bipolar Disorder (Type II, depressed) and Attention Deficit Disorder (ADD) to claimant's list of diagnosed mental impairments (Department Exhibit #1, pg 442).

(14) These conditions are being managed with a multitude of antidepressant and anti-anxiety agents (Client Exhibit A, pg 2), which claimant describes as only minimally effective in controlling his ongoing symptoms including decreased energy, sleep disturbances, feelings of worthlessness/helplessness/hopelessness, difficulty concentrating/thinking/remembering, difficulty maintaining social functioning (e.g., isolative behaviors) and pervasive loss of interest in almost all activities of daily living.

(15) Additionally, claimant's brother described claimant's need for a highly structured living environment where he depends on help with routine daily activities like cooking, cleaning, driving, doctors' appointments and medication compliance.

(16) Lastly, claimant testified his multiple daily prescription pain medications ([REDACTED]) cause excessive drowsiness to the point where he no longer drives because the last time he did he passed out behind the wheel and hit some mailboxes.

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 denied or 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).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

...When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work. 20 CFR 416.945(c).

...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 conclusion claimant's mental or physical condition has improved to the point where he is now capable of substantial gainful employment. As such, the department's proposed SDA case closure and MA application denial 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 the department erred in determining claimant's MA/SDA disability status at review.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for MA approval and SDA benefit continuation, as long as all other eligibility criteria are met, with claimant's next mandatory medical review scheduled in May 2012, unless a favorable Social Security Administration (SSA) disability allowance occurs by that time. **SO ORDERED.**

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

Date Signed: June 8, 2010

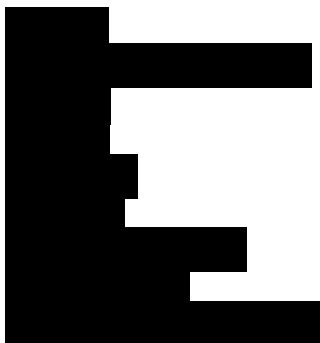
Date Mailed: June 8, 2010

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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