

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: 2009-3545
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 2009
Montcalm 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 11, 2009. Claimant and her mother personally appeared and testified.

ISSUE

Did the department properly propose to close claimant's Medicaid (MA) case and properly deny State Disability Assistance (SDA) after her mandatory MA 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, 26-year-old adopted female with a Special Education history who has resided with her parents her entire life (See Consultative Psychiatric Examination dated November 18, 2008).

(2) A psychological evaluation three years earlier (10/19/05) confirms borderline intellectual functioning (Department Exhibit #1, pg 515).

(3) In 2004, claimant was diagnosed with cardiomyopathy related to a septic shock hospitalization stemming from a necrotic bowel (Department Exhibit #1, pgs 676-680).

(4) A Medical-Social Eligibility Certification (DHS-49A) confirms claimant was approved for MA in 2004, with a medical review scheduled in June, 2005 (Department Exhibit #1, pg 527).

(5) Claimant remained eligible for MA continuously until her 2008 medical review, at which point, the department's Medical Review Team (MRT) decided her condition had improved to the point where she was physically capable of performing Substantial Gainful Activity (SGA)(Department Exhibit #1, pgs 2 and 3).

(6) Between August, 2007 and January, 2008, claimant made a return-to-work attempt in a hospital housecleaning unit, but she was fired because she could not adequately perform her job duties.

(7) On January 19, 2008, claimant underwent an exercise stress test; the results were abnormal with significantly reduced exercise capacity secondary to high ventilatory equivalents for carbon dioxide suggestive of flawed pulmonary circulation and overall deconditioning (Department Exhibit #1, pg 83).

(8) In June, 2008, claimant was referred to the [REDACTED] for an independent gynecological consultation (Department Exhibit #1, pgs 9-11).

(9) Claimant's treatment history is noted as follows:

...She is a 25-year-old nulligravida who has had a complex medical course in 2004 when she had MRSA and pneumonia of both lungs, sepsis, ischemic bowel status post colostomy and ileostomy, and chest tube for pneumothoraces, and a CVA that

resulted in left-sided weakness during her 2-month long hospitalization (Department Exhibit #1, pg 9).

(10) Claimant's October 16, 2008 pulmonary function test results reveal continued residual dyspnea with mild bilateral lung scarring and symptoms suggestive of hyperactive airways disease.

(11) Claimant's October 13, 2008 cardiovascular update states:

...She is not able to participate in a 40-hour work week given this cardiomyopathy, as she fatigues easily with this ejection fraction (40%). She also should not have a stressful environment...She also has significant dyspnea on exertion, and therefore, again, would not be able to work a 40-hour week...(See also Finding of Fact #6 above).

(12) Additionally, the gynecologist who examined claimant in June, 2008 concluded she has probable adhesive disease given her history of multiple surgeries including a right colostomy and ileostomy and ileostomy takedown; additionally, with the ischemic bowel, she may have developed adhesions intraabdominally (Department Exhibit #1, pg 11).

(13) An independent eye examination by a retinal specialist conducted in March, 2008 confirms bilateral maculopathy (macular degeneration).

(14) Claimant also suffers from chronic migraine headaches and recurrent urinary tract infections; she was treated with IV pain medications in a local emergency room in January, February and March, 2009.

(15) Claimant's updated full scale psychological evaluation (3/31/09) states:

[Claimant] does have a number of issues that she deals with, some of which are associated with affective problems and personality characteristics and some of it is associated with her basic intellectual capacity and academic limitations as well. On top of this, she has a multitude of health problems that developed following a severe illness in 2004.

(16) Claimant's permanent residuals since 2004 include chronic headaches, irritable bowel syndrome, hypertension, left-sided weakness, left-sided foot drop, hypoglycemia compromised vision, chronically elevated heart rate and major depression/anxiety.

(17) Claimant has also been diagnosed with Major Depression and Anxiety Disorder (NOS), as well as Personality Disorder (NOS) with schizoid, dependent and paranoid personality overlay; GAF=52 (See Finding of Consultative Psychological Examination dated March 31, 2008).

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 applications and reviews. 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 this case, nothing on the record supports the department's contention claimant's condition has improved to the point where she is now capable of Substantial Gainful Activity (SGA). As such, the department's proposed MA case closure and SDA denial were erroneous, and they 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 proposing to close claimant's MA case and in denying SDA assistance.

Accordingly, the department's actions are 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 December, 2010 (unless Social Security disability is approved by that time). **SO ORDERED.**

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

Date Signed: May 27, 2009

Date Mailed: May 28, 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 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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cc:

