

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: 2009-3784

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 13, 2009

St Clair 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, an in-person hearing was held on January 13, 2009. Claimant personally appeared and testified.

ISSUE

Did the department properly propose to 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, 53-year-old high school graduate (via GED) with well controlled, non-insulin dependent diabetes; he stands approximately 5'8" tall and weighs 185 pounds, per self report (Department Exhibit #1, pgs 72 and 74).

(2) On September 10, 2007, claimant filed an MA/SDA application based on a total left knee joint replacement necessitated by advanced degenerative arthritis with Grade IV chondromalacia and a complete ACL tear (Department Exhibit #1, pgs 28, 44 and 57).

(3) Claimant's surgery occurred in January 2008 during a five day hospitalization (1/6//08-1/10/08)(Department Exhibit #1, pg 74).

(4) Claimant's follow-up x-rays (2/22/08) show good replacement position and alignment; physical therapy was continued with a goal of returning claimant to full function (Department Exhibit #1, pg 65).

(5) Within six months, claimant weaned himself off all assistive walking devices but he still has a slight limp and chronic bilateral knee pain unresponsive to his current pain medication ([REDACTED]).

(6) In September 2007 the department approved MA/SDA for claimant based on his severe knee problem with an improvement review scheduled in September 2008 (Department Exhibit #1, pg 35).

(7) At review, the department denied benefit continuation; consequently, claimant filed a hearing request to dispute the issue (Department Exhibit #1, pg 78).

(8) Claimant's hearing was held on January 13, 2009.

(9) An independent medical examination conducted on February 10, 2009 indicates claimant now has been diagnosed with bilateral lower extremity peripheral neuropathy secondary to his diabetes; the [REDACTED] he takes does not relieve claimant's chronic pain, however, it reduces his pain level to "tolerable" as long as he maintains a generally sedentary lifestyle.

(10) Additionally, claimant's cervical spine range of motion remains significantly compromised secondary to advanced spinal stenosis evidenced by x-rays and confirmed by an independent medical examination conducted on November 10, 2008, which was submitted during a record extension subsequent to claimant's disability hearing (See also Finding of Fact #7 and #8 above).

(11) Specifically, the medical examination report states in relevant part:

He will require operative intervention to his cervical spine as he has essentially developed cervical spine stenosis. Left untreated, his prognosis would be poor.

(12) Additionally, claimant's treating neurosurgeon stated:

The above named patient has been evaluated for cervical disc disease.

It is my opinion that he needs an Anterior Cervical Corpectomy and we will be setting this up for him in the next week or so (Client Exhibit B).

(13) Actually, claimant had not undergone the necessary surgery as of his hearing date (1/13/09).

(14) In addition to claimant's cervical stenosis, lower extremity peripheral neuropathy and chronic post-surgical knee pain, his February 2009 left hip x-rays reveal mild to moderate mid/lower lumbar stenosis; the treating neurosurgeon does not want to investigate this condition more thoroughly until claimant's critical cervical spine surgery and a reasonable recovery period can take place, according to claimant's testimony at hearing.

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 and that the benefit recipient is capable of performing substantial gainful work activity 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 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).

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).

...Many impairment-related factors must be considered in assessing your functional capacity for basic work activities. Age is one key factor. Medical literature shows that there is a gradual decrease in organ function with age; that major losses and deficits become irreversible over time and that maximum exercise performance diminishes with age.... 20 CFR 416.994(b)(1)(iv)(B).

...Ability to engage in substantial gainful activity. In most instances, we must show that you are able to engage in substantial gainful activity before your benefits are stopped. When doing this, we will consider all your current impairments not just that impairment(s) present at the time of the most recent favorable determination.... 20 CFR 416.994(b)(1)(v).

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 on the record supports the department's contention claimant's overall physical condition has improved to the point where he is now capable of substantial gainful employment. In fact, claimant's updated medical records verify a host of different physical conditions have arisen, which, in combination, are still severe enough to prevent

employability at least until his cervical spine surgery and recovery have occurred. As such, the department's proposed 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 proposing to close claimant's MA/SDA cases based upon a finding of improvement at review.

Accordingly, the 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 January 2011 (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: December 30, 2009

Date Mailed: December 30, 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.

2009-3784/mbm

MBM/db

cc: D. Ward
St Clair County DHS
L. Locker
M. Best
B. Dixon
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Administrative Hearings