

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: 2009-7476

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 25, 2009

Muskegon 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 March 25, 2009. Claimant personally appeared and testified.

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 January 23, 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 12.05C (Department's Exhibit I, pages 38 and 39).

2. Claimant's MA and SDA eligibility was again reviewed in August, 2006, with MRT once again determining that the claimant was disabled for MA and SDA eligibility purposes on an ongoing basis, due to continuing to meet listing 12.05C. (Department's Exhibit I, page 75).

3. Claimant's MA and SDA eligibility was then reviewed in August, 2008, at which time MRT requested a Mental Status Exam in narrative form by a PHD be provided in November, 2008 (Department's Exhibit I, page 130).

4. Requested exam was performed and completed on [REDACTED] Claimant tested at kindergarten level in reading, grade 1 in spelling, and grade 2 in arithmetic. It was noted that the results of this test indicate that the claimant is virtually illiterate, and that 99.9% of the population is able to score better on the tests (Department's Exhibit I, pages 133-137).

5. The exam report also indicates that the claimant completed 12th grade in special education.

6. Claimant's prognosis for becoming gainfully employed in a simple, unskilled work situation on a sustained and competitive basis was noted as guarded, as his chronic back pain combined with his limited intellectual ability and illiteracy greatly interfere with his ability to obtain and maintain full-time gainful employment. Claimant is not able to manage his benefit funds.

7. On November 3, 2008, MRT determined that the claimant was no longer disabled for MA and SDA eligibility purposes, without giving any type of detailed explanation as to what changes in claimant's condition or what other factors lead up to such decision (Department's Exhibit I, pages 146 and 147).

8. On November 10, 2008, department sent the claimant a Benefit Notice telling him that his MA and SDA benefits will stop effective November 22, 2008. Claimant requested a

hearing on November 18, 2008, and continues to receive MA and SDA benefits pending the outcome of the hearing.

9. On January 7, 2009, State Hearing Review Team (SHRT) also determined that the claimant was no longer disabled for MA and SDA eligibility purpose, as he is capable of performing other work, namely unskilled work per 20 CFR 416.968(a), Vocational Rule 204.00 (Department's Exhibit II).

10. Claimant is a 32 year-old male who is 5'6" tall and weighs between 170-182 lbs. Claimant testified that he cannot read or write, and that his mother wrote out his hearing request.

11. Claimant states he last worked sometimes in this century for temporary services in a factory, and also picked up leaves, a seasonal job. Claimant is homeless and receives mail at his mother's address. Claimant testified that he slept the night before the hearing outside on the ground by a local restaurant, and that he does not stay at the homeless shelter a lot because he does not like their rules.

12. Claimant does not have a driver's license as he lost it due to couple of drunken driving offenses in year 2000 and for driving on a suspended license. Claimant quit drinking after his offenses and goes to AA meetings regularly.

13. Claimant's stated impairments are depression, arthritis in his back, and learning disability.

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 improvements 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, 12.05, Mental Retardation, part C. This listing refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22. The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied. Part C cites a valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function. Claimant's condition previously satisfied the level of severity and met the requirements of part C. Nothing on the record supports the department's contention claimant's mental 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 May, 2010 (unless Social Security disability is approved by that time). SO ORDERED.

/s/

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

Date Signed: May 27, 2009

Date Mailed: May 27, 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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