

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: 2010-32268  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
May 20, 2010  
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 claimant's request for a hearing. After due notice, a telephone hearing was held on May 20, 2010. Claimant was represented at the administrative hearing by [REDACTED]

ISSUE

Did the DHS meet its burden of proof when assessing claimant's MA case 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) At all relevant times, prior to the negative action herein, claimant was an MA-P recipient with the Michigan DHS.

(2) On March 5, 2008, MRT approved claimant's MA-P on the basis of Listing 12.03 scheduling a medical review for March of 2010. Exhibit #81.

(3) In December 2009, the department scheduled the claimant's case for review.

Subsequent to the review, the department closed claimant's SDA for excess income. There is no SDA review issue herein.

(4) On March 3, 2010, the MRT denied claimant on the basis of a new application.

(5) On March 22, 2010, the DHS issued notice.

(6) On April 8, 2010, claimant filed a timely hearing request. The department failed to reinstate claimant's case. The department stipulated at the administrative hearing that it should have reinstated the case due to a timely hearing request.

(7) On May 3, 2010, SHRT denied claimant on the basis of a new application.

(8) Neither MRT nor SHRT applied the correct standard of proof at review.

#### 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).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical

expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"Disability" is:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

Federal regulations are quite specific as to the considerations required at review. These regulations state in pertinent part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical

improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

**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).

While generally a new applicant has the burden of proof as noted above, the law is quite specific with regards to the burden of proof at review. The burden of proof is on the department to show improvement and to show that the improvement is related to the individual's ability to engage in work or work-like settings.

In this case, there were a number of problems in processing this case and information by the local office. The department contends that Bridges did some unusual processing of the paperwork. In any case, evidence herein indicates that the department did not apply the review standard as required under federal law and state policy. The MRT decision as well as the SHRT decision treated claimant's review case as a new application. The department is required to show improvement. This was not done. Thus, this Administrative Law Judge orders the department to reassess claimant's case under the correct standard. It is noted that the original MRT approval was found on Exhibit 81 showing claimant was initially approved on the basis of Listings 12.03.

It is also ordered that the department reprocess claimant's MA case for review. Claimant is entitled to ongoing MA during this process.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law reverses the DHS closure of claimant's MA. The DHS is ORDERED and

- (1) Reinstate claimant's MA to the date of closure and continuing.
- (2) DHS is ORDERED to resend claimant's evidentiary packet to MRT in order to give MRT an opportunity to apply the correct standard--the review standard as required under federal

and state law. Should MRT not rule in claimant's favor, claimant will have an opportunity to request a hearing under the usual rights for a hearing which will be identified in notice issued to claimant regarding the outcome of the MRT decision. It is

SO ORDERED.

/s/  
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Janice Spodarek  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: June 3, 2010

Date Mailed: June 7, 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.

JGS 

cc:

