

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: 2010-1760  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
November 24, 2009  
Emmet 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 upon claimant's request for a hearing. After due notice, a telephone hearing was held on November 24, 2009.

ISSUE

Did the Department of Human Services (DHS) properly deny claimant's Medical Assistance 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) Claimant was previously approved MA on 12/29/08 by MRT. Testimony on the record was that claimant was previously opened SSI, but closed due to excess income.
- (2) Claimant's MA case was scheduled for review in August, 2009.
- (3) On 8/10/09, MRT denied continuing eligibility.
- (4) On 8/14/09, the DHS issued notice.

(5) On 8/24/09, the department reinstated the action pending the outcome of the hearing. Claimant continues to receive benefits.

(6) On 10/16/09, the State Hearing Review Team (SHRT) denied claimant. SHRT incorrectly indicated claimant was 39--claimant is 46 years old.

(7) As of the date of review, claimant was a 46-year-old female standing 5' 3" tall and weighing 268 pounds. Claimant's BMI Index is 47.5. Claimant is classified as morbidly obese.

(8) Claimant has a GED, obtained in 1982.

(9) Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.

(10) Claimant has a driver's license and can drive a motor vehicle.

(11) Claimant is not currently working. Claimant last worked in February, 2005.

(12) Claimant alleges continuing disability on the basis of diabetes, thyroid problems, brain aneurysm.

(13) The MRT and SHRT decisions do not adequately reflect the burden of proof on the department to show that claimant's condition has improved, and that that improvement is related to claimant's ability to work.

(14) The medical records are replete with repeated indications that claimant is in a domestic abuse situation.

#### 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.

There are very specific requirements under the federal and state law with regards to review. These regulations state in 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).

In this case, the undersigned Administrative Law Judge has reviewed the record and does not find that the department has met its burden with regards to making a determination that claimant's condition has improved. The independent evaluation requested by MRT and conducted on behalf of the department indicates at the end that it is recommended that prior psychological evaluations "would be of interest to assess higher cognitive function." Thus, this report is not indicative of any improvement.

Moreover, SHRT indicated that the applicant was 39 years old and applied a medical vocational grid rule for individuals in the age range of 18 to 44. Claimant is, in fact, 46 years old

and does not fall under the classification SHRT used in making a determination at review. Thus, for these reasons, and for the reasons stated above, the record does not reflect improvement and that the improvement is related to claimant's ability to engage in work. Claimant is entitled to continuing eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were incorrect.

Accordingly, the department's determination in this matter is hereby REVERSED.

The department is ORDERED to keep claimant's current MA case open and continuing. The department shall review this case in eight months from the month of this Decision and Order.

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

Date Signed: December 18, 2009

Date Mailed: December 21, 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 mailing date of the rehearing decision.

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cc:

