

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: 2010-41312
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2010
Muskegon 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 July 29, 2010.

ISSUE

Whether the Department of Human Services (DHS) properly proposed to close claimant's Medical Assistance (MA-P) 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) In May, 2010 claimant's MA-P and SDA cases were scheduled for a review.
- (2) Claimant has been on MA and SDA with the Michigan DHS for a number of years, with evidence indicating MRT approvals back to 2004 or earlier.

(3) On June 4, 2010, MRT denied continuing eligibility. MRT applied the reduced standard under the federal law.

(4) On June 21, 2010, the DHS issued notice.

(5) On June 28, 2010, claimant filed a timely hearing request. The department reinstated the action pending the outcome of the hearing.

(6) Claimant was denied SSI by an unfavorable SSA decision before an ALJ on December 11, 2008. Claimant is alleging additional medical problems.

(7) On December 20, 2009, the State Hearing Review Team (SHRT) denied claimant. SHRT failed to apply the review standard. The failure of SHRT to apply the correct federal standard is not controlling as MRT did, in fact, apply the review standard.

(8) As of the date of review, claimant was a 44-year-old female standing 5'6" tall and weighing 142 pounds.

(9) Claimant does not have a current significantly recent alcohol/drug abuse problem. Claimant smokes approximately a pack a day of cigarettes. Claimant has a nicotine addiction.

(10) She has a driver's license and drives a motor vehicle.

(11) Claimant is not currently working. Claimant does not have any significant work history for approximately 14 years. Prior to this time, claimant worked as a certified nurse's assistant. Approximately at the time claimant separated from gainful employment, claimant was diagnosed with her mental impairment(s).

(12) Claimant alleges continuing disability on the basis of multiple impairments, including a history of bipolar, depressive disorder, anxiety disorder, COPD, emphysema, and some minor medical problems which this ALJ does not find meet statutory disability. Claimant was previously approved and continued for her mental impairment(s). Claimant submitted

270 pages of medical evidence showing the history of her approved statutory disability, and continuing approvals at review until the most recent denial.

(13) A current department evaluation completed on behalf of the department by [REDACTED] indicates that “claimant is diagnosed with depressive disorder and anxiety disorder--improved.” [REDACTED] indicates that claimant’s prognosis is: “The potential for patient becoming gainfully employed in a simple, unskilled work situation on a sustained and repetitive basis as guarded pending medical resolution.” Exhibit #253.

(14) Medical improvement is shown. Medical improvement related to claimant’s ability to engage in work and work-like settings is not shown.

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).

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Federal law requires very specific considerations in review cases. Federal regulations application herein 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).

As noted above, the burden of proof is on the department to show improvement and that the improvement is related to the ability of an individual to engage in work and work-like settings.

As noted in the Findings of Fact, [REDACTED] most current evaluation indicates that claimant has improved. It is also noticeable that [REDACTED] prior evaluation diagnosed claimant with bipolar disorder. That diagnosis is absent from the current evaluation of May 19, 2010. That evaluation diagnoses claimant with depressive disorder--NOS--improved. Claimant is also diagnosed with anxiety disorder NOS--improved. Other diagnoses and medical assessments are not relevant to statutory disability as defined under federal law. Thus, the first prong of the review standard is met--improvement is shown.

The second prong requires a showing that the improvement is related to the ability of an individual to engage in work and work-like settings. [REDACTED] cautions that claimant's ability to engage in even simple and unskilled work situations on a sustained and competitive basis is "guarded pending medical resolution." As the department has the burden to show the second prong as well, there is insufficient medical documentation in the file to indicate that the

improvement identified herein is shown to allow claimant to engage in work or work-like settings. Thus, claimant is entitled to continuing statutory disability.

For these reasons, and for the reasons stated above, this ALJ will find claimant eligible for 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 proposed closure of claimant's MA and SDA cases at review is hereby, REVERSED.

This ALJ ORDERS the department to keep claimant's cases open and continuing. This ALJ ORDERS the department to review this case in six months from the date of this Decision and Order. It is requested at that time that the department obtain a mental residual functional capacity assessment--DHS-49E from claimant's treating psychiatrist. It is SO ORDERED.

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

Date Signed: August 4, 2010

Date Mailed: August 5, 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.

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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.

JS/tg

cc:

