

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 20105022

Issue No: 2009/4031

Hearing Date: December 8, 2009
St Joseph County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. 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.

ISSUE

Did the Department of Human Services (DHS) properly propose to close claimant's Medical Assistance (MA) and State Disability Assistance (SDA) 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 herein, claimant was a beneficiary of the MA and SDA programs administered by the DHS. In January 2009, claimant's cases were scheduled for review.
2. In January 2009, claimant's cases were scheduled for review.
3. On March 13, 2009, claimant was denied continuing eligibility.
4. On April 17, 2009, the DHS issued notice.
5. On April 21, 2009, claimant filed a timely hearing request. The department reinstated the action pending the outcome of the hearing.
6. Claimant has an SSI denial. Claimant alleges his conditions have worsened and has reapplied. On April 12, 2011, the undersigned Administrative Law Judge received an updated SOLQ indicating that

claimant's payments with Social Security were suspended on February 1, 2010 as he was no longer considered disabled. A substantive review is still required herein under the law.

7. The State Hearing Review Team (SHRT) denied claimant at review and pursuant to new medicals which were reviewed.
8. As of the date of application, claimant was a 37-year-old male standing 5'4" tall and weighing 155 pounds. Claimant has a GED. Claimant's work history is unskilled. Claimant's work history is skilled and semi-skilled.
9. Claimant testified at the administrative hearing that he has a nicotine addiction but quit smoking two weeks prior to the hearing. Claimant testified that he has not alcohol/drug problems or history.
10. Claimant testified that his driver's license is restricted.
11. Claimant was licensed for hazard waste removal. Claimant filed a workers comp settlement which he received and claimed he has not worked since 2003. Claimant's work history is unskilled
12. Claimant alleges continuing disability on the basis of hypertension and a back injury.
13. Pursuant to the medical evidence that existed as of January 2009, claimant's condition had not improved. Claimant submitted over 750 exhibits documenting eligibility for continuing statutory 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).

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.

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.

As indicated in the Findings of Fact, this case was a review. Federal regulations require very specific considerations at 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).

As noted above, the initial two step process required a showing that there has been improvement. The next step requires a showing that the improvement is related to claimant's ability to work.

After the first two steps are completed, what follows is the five step sequential analysis.

After careful review of the substantial and credible evidence on the whole record, this Administrative Law Judge finds that the evidence does not show that claimant's condition has improved as of the review date of January 2009. Thus, claimant is entitled to continuing MA and SDA.

It is noted that subsequent to claimant's review, Social Security determined that claimant was no longer disabled. Thus, this Administrative Law Judge orders the department to immediately review this case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's proposed closure of claimant's MA and SDA was incorrect.

Accordingly, the department's proposed denial for continuing eligibility for claimant is hereby REVERSED.

Thus, claimant was entitled to continuing eligibility since his review date of January 2009. The department reinstated the action pending the outcome of the hearing. Subsequent to the hearing, Social Security determined that claimant was no longer met the disability criteria. Thus, this Administrative Law Judge Orders the department to immediately schedule this case for a review.

/s/ _____

Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 15, 2011

Date Mailed: April 15, 2011

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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