

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201054163

Issue No: 2009,4031

[REDACTED]

[REDACTED]

Hearing Date: October 20, 2010

St Clair 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, telephone hearing was held on October 20, 2010.

ISSUE

Did the Department of Human Services (DHS) apply the proper review standard on 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) On November, 2008, claimant was approved MA-P and SDA by Michigan Review Team (MRT).
- (2) Claimant's case is scheduled for review at an unknown date. The department's hearing summary indicates that it forwarded the case to MRT for review.
- (3) On August 23, 2010, MRT denied claimant without applying the review standard See Section IV. 10.
- (4) On August 26, 2010 the DHS issued notice to claimant that her Medical Assistance (MA) and State Disability Assistance (SDA) cases will close effective September 7, 2010.

- (5) On September 7, 2010, claimant filed a timely hearing request. The DHS reinstated the action pending the outcome of the hearing.
- (6) On September 22, 2010 the State Hearing Review Team (SHRT) denied claimant on the basis of a new application. SHRT did not apply the review standard.

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.

Federal regulations are quite specific as to considerations which must be taken into account 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).

It is noted above, the burden of proof at review shifts to the department. The department must show a two prong assessment as to whether the individual's "condition's" have improved, and whether that improvement is related to the ability of the individual to engage in work or work-life settings.

A review of the file hearing indicates that MRT and SHRT did not apply the correct review standard. Rather, MRT and SHRT treated the assessment of claimant's cases and new application. Claimant does not have the burden of proof. As such, the department is required to reassess claimant's case under the correct review standard.

For these reasons, and for the reasons stated above, the department's actions are REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department failed to apply the correct review standard at review.

Accordingly, the department's proposed closure of claimant's case is hereby REVERSED.

The department is ORDERED to resend claimant's case to MRT, specifically indicating that claimant's case is a review case. If MRT denies claimant, the department's notice will indicate to claimant that she will have a right to a hearing from 90 days from the date of the new notice.

