

STATE OF MICHIGAN

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

IN THE MATTER OF:



Reg. No: 20116666  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date: February 3, 2011  
Livingston 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 February 3, 2011.

**ISSUE**

Did the Department of Human Services (DHS) properly close claimant's Medical Assistance (MA) 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 a MA recipient with the Michigan Department of Human Services (DHS). Claimant was previously approved MA pursuant to an MRT decision in February, 2010 with a review scheduled for August, 2010. That review is at issue herein.
2. There is no SDA issue herein.
3. On August 18, 2010, MRT denied claimant continuing eligibility.
4. On October 12, 2010, the DHS issued notice.
5. On October 21, 2010, claimant filed a hearing request. The department should have reinstated the MA case pending the outcome of the hearing but failed to do so.

6. Claimant had an SSI application with the Social Security Administration (SSA). Claimant testified at the administrative hearing that he was denied approximately one week ago.
7. On December 8, 2010, the State Hearing Review Team (SHRT) denied claimant continuing eligibility.
8. As of the date of application, claimant was a 26-year-old male standing 5'7 tall and weighing 165 pounds. Claimant has an Associates Degree from [REDACTED] in Graphic Design.
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 currently working. Claimant works approximately 23 hours per week at [REDACTED] in the photo lab. Claimant has worked this job since 2000 but has had some short intermittent periods where he was unable to work due to his medical condition.
12. Claimant alleges disability on the basis of psychiatric disorder. Claimant's condition has stabilized.
13. The subsequent SHRT decision is adopted and incorporated to the following extent:

In 8/09 claimant was not fully oriented. Exhibit 118. Hearing voices and possibly seeing things prior to hospitalization. Diagnoses of psychotic disorder and rule out bipolar mood disorder manic with psychosis. Exhibit 119.

In 7/2010 reported doing well. Denied feelings of depression or symptoms of mania. No racing or unusual thoughts. Wife reported more stable since switching back to name brand medication. Exhibit 109. Speech spontaneous and mood good. Exhibit 110. Affect full and appropriate to mood. Thought processes logical. Exhibit 111.

Analysis: Claimant approved 1/010 following hospitalization. In 7/2010 and 9/2010 reported good response to medication. Mental status improved and unremarkable. Has had medical improvement.

14. Claimant testified at the administrative hearing that he would work 40 hours per week if [REDACTED] were to schedule him full time.
15. Claimant testified at the administrative hearing that his symptoms are being controlled by his medication.
16. Claimant testified at the administrative hearing that he does not need any assistance with his activities of daily living, including household work, meal preparation, bathroom and grooming needs, etc.
17. Claimant's testimony on the record indicates that without the Medicaid claimant would be unable to afford his medication and his condition would regress.

### **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.

In this case, consideration must first be made of claimant's case under the federal review standards. Federal regulations regarding review cases are very specific with regards to assessing continuing eligibility. 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).

Under the above-cited authority, there must first be an assessment as to whether or not the condition has improved.

In this case, claimant's Medicaid was originally approved based upon a psychotic disorder and a hospitalization. This was approximately in February, 2010. At review, six months later, in pursuant to evidence in both July and September, 2010, claimant's symptoms were improved and controlled by claimant's medication. See Exhibits 109, 110, 111, 38, 39-40. Under the above-cited requirements, the medical evidence reflects improvement.

The second prong of the review process requires an assessment as to whether or not the improvement is related to an individual's ability to engage in work and work-like settings. Claimant's testimony on the record is that he is able to maintain continuous employment at [REDACTED]. Moreover, claimant testified that he is not only working on a regular basis 23 hours per week, but would work full time-40 hours if [REDACTED] were to schedule him. In the alternative, claimant is capable of working a full time job. Thus, this Administrative Law Judge finds that claimant's improvement is related to claimant's ability to engage in work-like settings.

After the first two prongs of the review requirements have been met, federal regulations require an application of the sequential analysis. 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.

The federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point

in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or

clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques

include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

Applying the sequential analysis herein, claimant is not eligible at the first step as claimant is currently working. 20 CFR 416.920(b). Under the law, an individual is not eligible for statutory disability where the evidence indicates that they are engaged in doing significant physical activities on a part-time basis but it is a situation where they are capable of doing more. That is, work may be classified as substantial gainful activity even if it is done on a part-time basis or if the individual does less, gets paid less, or has less responsibility than doing full time work. 20 CFR 416.972(a).

Based upon this regulation, this Administrative Law Judge finds that claimant is not eligible for statutory disability on the basis of Step 1 of the analysis.

It is noted that claimant is unfortunately in a kind of "catch 22" situation in that once his Medicaid closes he will no longer be able to afford his medication and may very well regress. Unfortunately, this Administrative Law Judge has no authority under the law to continue claimant where he is capable of working where his medication is controlling his mood, and where the medical evidence does not meet the definition of statutory disability as it is defined under the law. The department's closure is upheld.



**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 correct.

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

/s/

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

Date Signed: February 14, 2011

Date Mailed: February 14, 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.

JGS/db

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