

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-52033

Issue No: 2009; 4031

[REDACTED]

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 on [REDACTED]. Participants on behalf of the Claimant included Claimant, [REDACTED] - witness and expert testimony from [REDACTED]. Participants on behalf of the department included [REDACTED].

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. Claimant was previously approved by MRT on [REDACTED] MA and SDA with a review scheduled for one year.
2. In [REDACTED] the department scheduled claimant's MA and SDA case for a review.
3. On [REDACTED], the MRT denied continuing eligibility.
4. On [REDACTED] the DHS issued notice.
5. On [REDACTED], claimant filed a timely hearing request. The department re-instated the action pending the outcome of the hearing.
6. On [REDACTED] the State Hearing Review Team (SHRT) denied claimant.
7. Claimant has an SSI application pending with the Social Security Administration (SSA).

8. As of the date of the review, claimant was a [REDACTED] standing 5'7" tall and weighing 198 pounds. Claimant's body mass index (BMI) is 31 classifying claimant as obese under the BMI.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant does not smoke.
10. Claimant has a driver's license, but does not drive except for short distances.
11. Claimant has a high school diploma.
12. Claimant is not currently working. Claimant last worked in [REDACTED]. Claimant has a history of medium exertional, skilled employment.
13. Claimant alleges continuing disability and worsening conditions on the basis of arthritis, degenerative disk disease (DDD), hearing loss, asthma, depression, anxiety, stroke, shortness of breath, coronary artery disease and aortic valve disease.
14. Claimant has a history of COPD and underwent pulmonary tests revealing restrictive lung disease and exercise induced asthma.
15. Claimant has a history of hyperlipidemia.
16. On [REDACTED] claimant underwent coronary artery bypass having suffered a non-ST elevation myocardial infarction and underwent coronary artery bypass grafting with a left internal mammary artery to the left anterior descending, a saphenous vein graft to the first diagonal and first obtuse marginal which was a sequential graft, as well as a saphenous vein graft to the right posterior descending artery. Post-operatively, claimant suffered a cerebral vascular accident with residual left-sided weakness. Claimant has re-current gastrointestinal bleeds on Coumadin. Claimant continues to suffer fatigue and slurring of speech. Claimant continues to have hearing deficits. He also continues to have minor twinges in the chest wall, lasting 1 to 2 seconds in duration.
17. Claimant's expert witness testified that claimant cannot return to his past relevant work [REDACTED]. Due to multiple health issues, cannot do any work at this time. Due to scoliosis, claimant has worsening lung condition which compresses his and exasperates his lungs. Claimant also has GI bleeds, anemia and the compounding issues and symptoms from the heart erythema, the stroke and blood thinners exasperate his condition when it worsens, claimant needs a transfusion.
18. Claimant attempted to return to work, but was unsuccessful.

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.

At review, the law and federal regulations require very specific assessments. Those assessments are found in the federal regulations discussing the review standard:

...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 essence, the first two steps require a two-fold assessment. The first assessment requires an assessment as to whether or not an individual's condition has improved. If so, it must be shown that that improvement is related to the individual's ability to engage in work or work like settings.

The undersigned ALJ has reviewed the great bulk of the medical evidence herein, including the multiple impairments and their combination together and finds that claimant's conditions have not improved. Thus, claimant is entitled to continuing statutory disability.

As improvement is not shown, the undersigned ALJ need not do the remaining five step analysis. It is noted that this review has taken into consideration the issues found at 20 CFR 416.922(b) and .923.

DECISION AND ORDER

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

Accordingly, the department's proposed closure in this matter is **REVERSED**.

The department is ORDERED to keep claimant's MA and SDA cases open. The department is ORDERED to review this case in one year from the date of this Decision and Order.

/s/ _____

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.

JGS/jk

cc:



MAHS