

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201316418
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: March 14, 2013
County: Grand Traverse

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 March 14, 2013. Claimant personally appeared and testified. Claimant had the following witness: [REDACTED]. Participants on behalf of Department of Human Services (DHS) included [REDACTED], ES; [REDACTED], GSPM.

ISSUE

Did the Department of Human Services (DHS) properly close Claimant's Medical Assistance (MA) 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. Claimant was previously approved MA and SDA by MRT on 11/28/11, on the basis of 201.00(h). Medical records at that time appeared to include one - 634. Claimant's impairments at that time were listed on Exhibits 1-634 as brain tumor, strokes, depression, seizure disorder, 13 surgeries on the left knee, back surgery. Claimant's case was scheduled for review in 11/2012 the issue herein.
2. There is no retro MA herein.
3. On 11/8/12, the MRT denied continuing eligibility.
4. On 11/16/12, the DHS issued notice of closure.

5. On 12/6/12, Claimant's filed a hearing request. Claimant's case closed.
6. On 1/25/13, the State Hearing Review Team (SHRT) denied Claimant. Pursuant to the Claimant's request to hold the record open for the submission of new and additional medical documentation, on 6/18/13 SHRT once again denied Claimant.
7. Claimant has an SSI application pending with the Social Security Administration (SSA).
8. Claimant is a [REDACTED]-year-old [REDACTED] standing 5'10 and weighing 143 pounds.
9. Claimant does not have an alcohol/drug abuse problem or history. Claimant smokes. Claimant has a nicotine addiction.
10. Claimant has a [REDACTED] and can drive an automobile.
11. Claimant has an [REDACTED].
12. Claimant is not currently working. Claimant last worked [REDACTED] on a [REDACTED]. Claimant has military background and receives [REDACTED] [REDACTED] including medical.
13. Claimant alleges continuing disability on the basis of multiple impairments, including brain tumor, strokes, depression, seizures disorder, 13 surgeries on her left knee, back surgery and at review adds arthritis, DJD, DDD, and seizures.
14. Claimant testified at the administrative hearing that she cannot engage in her activities of daily living. Claimant is in a wheelchair "because my legs don't work anymore."
15. Claimant has a recent onset of seizures.
16. Claimant's condition(s) have not all improved.

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.

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.

Federal and state law at review require very specific considerations. These considerations include:

...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 shifts to the Department to show improvement, and to further show that improvement is related to an individual ability to engage in work and work like settings.

The record in this case pursuant to any initial MRT approval found on Exhibit 634 on 11/18/11 contained attachments indicating the following impairments: brain tumor, strokes, depression, seizure disorder, 13 surgeries on the left knee, back surgery. This ALJ has reviewed the great bulk of the medical evidence, and finds that Claimant's recent onset of strokes does not show that Claimant's condition(s) have improved. The initial MRT denial does not give much information on the specifics of the MRT decision. However, the medical evidence used by MRT at that point and time consists of Exhibits 1-634. This ALJ does not find that the burden of proof has been met by the Department in showing improvement and that the improvement is related to Claimant's ability to engage in work and work like settings. As noted in the findings of facts, Claimant is in a wheelchair and is currently applying for Home Health Care. The Department has not met its burden and improvement is not shown. Under the above cited law, Claimant is entitled to continued disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's closure in this case at review was incorrect.

Accordingly, the department's closure of Claimant's MA and SDA cases is hereby REVERSED.

The department is ORDERED to reinstate Claimant's MA and SDA cases from the month of closure and issue any supplemental benefits to Claimant to which she may be entitled. The Department is further ORDERED to make an assessment as to any non-medical criteria for which it needs to assess if required under DHS policy and procedure.

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: 7/26/13

Date Mailed: 7/30/13

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that affect the substantial rights of the claimant,
 - failure of the ALJ to address other relevant issues in the hearing decision.

201316418/JGS

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JGS/tb

cc:

