

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-016435
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: November 2, 2015
County: Wayne (31)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on November 2, 2015, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED], petitioner's mother, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] specialist, and [REDACTED] supervisor.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner is not a disabled individual.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing SDA benefit recipient.
2. Petitioner's only basis for SDA eligibility was as a disabled individual.
3. On June 19, 2015, the Medical Review Team (MRT) determined that Petitioner was not a disabled individual for purposes of SDA eligibility (see Exhibits 1-3).
4. On June 23, 2015, MDHHS terminated Petitioner's eligibility for SDA benefits, effective August 2015, and mailed a Notice of Case Action informing Petitioner of the termination.

5. On September 2, 2015, Petitioner requested a hearing disputing the termination of SDA benefits.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (7/2014), p. 1.

A person is disabled for SDA purposes if he/she:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id.

Generally, state agencies such as MDDHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 definition of SDA disability is identical except that only a three month period of disability is required.

Substantial gainful activity means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. BEM 260 (7/2014), p. 10. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

Once an individual has been found disabled for purposes of disability-related benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. Petitioner was

previously certified by the MRT as unable to work for at least 90 days. At Petitioner's most recent SDA benefit redetermination, MDDHS determined that Petitioner was no longer disabled.

In evaluating a claim for ongoing disability benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding if an individual's disability has ended, the department will develop, along with the petitioner's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The below-described evaluation process is applicable for clients that have not worked during a period of disability benefit eligibility. There was no evidence suggesting that Petitioner received any wages since receiving disability benefits.

The first step in the analysis in determining the status of a petitioner's disability requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue and no further analysis is required. This consideration requires a summary and analysis of presented medical documents.

A Psychiatric/Psychological Examination Report (Exhibits 8-10) dated March 13, 2015, was presented. The form was completed by a treating psychiatrist with an unknown history of treating Petitioner. A statement about the frequency of Petitioner's visits was not legible. Noted observations included that Petitioner was withdrawn and had a flat affect. Depakote was noted as a current medication. Petitioner's GAF was noted to be 44.

A Mental Residual Functional Capacity Assessment (Exhibits 11-12) dated March 13, 2015, was presented. The assessment was noted as completed by a treating psychiatrist with an unstated history of treating Petitioner. An assessment of chronic schizophrenic disorder was noted. It was noted that Petitioner was markedly restricted in the following abilities:

- Understanding and remembering detailed instructions
- Carrying out detailed instructions
- Maintaining concentration for extended periods
- Completing a normal workday without psychological symptom interruption

A mental status examination report (Exhibits 30-33) dated May 8, 2015, was presented. The report was signed by a consultative licensed psychologist. It was noted that

Petitioner reported a history of bipolar disorder and schizophrenia. It was noted that Petitioner had no relationships other than with his mother, with whom he lived. Petitioner reported a history of audio hallucinations since 2008. Mental status examination notes included the following: spontaneous stream of mental activity, blunted expression, and eurhythmic mood. Petitioner reported attending a behavior center on a monthly basis for 7 years. The examining psychologist found that Petitioner had good social skills, good ADL performance, good communication, good relationships, good social support, good coping skills, and good frustration level. The examiner opined Petitioner could retain and follow simple directions. A diagnostic analysis found no psychiatric diagnosis and that Petitioner's unspecified mental health obstacles were mild.

A Mental Health Report (Exhibits A1-A2) dated October 20, 2015, was presented. The report was completed by Petitioner's therapist. An approximate 3½ year history between Petitioner and his therapist was noted. A diagnosis of schizoaffective disorder was noted. A fair-to-poor prognosis was noted. A history of hospitalizations related to paranoia, social withdrawal, and auditory hallucinations was noted. It was noted that Petitioner was unable to complete simple tasks. It was noted that Petitioner attended therapy and psychiatric appointments two times per month. Petitioner's therapist noted that Petitioner neither handles stress nor adapts to change well. It was also noted that Petitioner could not do any of the following: maintain satisfactory relationships with peers, relate appropriately to supervisors, know when to ask for assistance, perform tasks with required speed, or make simple work-related decisions.

Petitioner alleged disability based on schizoaffective disorder. The SSA listing for schizoaffective disorders reads as follows

12.03 Schizophrenic, paranoid and other psychotic disorders:

Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect; OR
4. Emotional withdrawal and/or isolation;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration;
- OR
- C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
1. Repeated episodes of decompensation, each of extended duration; or
 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Petitioner's psychiatrist stated that Petitioner's GAF was 44. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." Petitioner's GAF is representative of someone who meets a SSA listing.

Petitioner's therapist provided several statements which were indicative of disability. In particular, Petitioner's inability to make simple decisions or deal with peers are obstacles that inhibit Petitioner's ability to sustain any employment. The opinions of Petitioner's therapist were given little credence because a therapist is not an acceptable source (see SSR 06-03p).

A psychiatrist is an acceptable medical source. Petitioner's psychiatrist provided some statements indicative of disability. A statement that Petitioner was markedly restricted in completing a workday without psychological interruption was particularly compelling. Petitioner's psychiatrist's statements were virtually unsupported. A single psychiatric examination report was the only document provided (from an acceptable medical source) to support psychiatric restrictions. The report was mostly illegible and provided little insight into Petitioner's treatment history.

Petitioner's mother offered to provide a more legible statement from her son's psychiatrist. The request was declined because the termination of Petitioner's SDA eligibility can be decided based on documents that were presented.

Based on presented evidence, it is found that Petitioner failed to establish meeting a SSA listing. Accordingly, the analysis proceeds to the second step.

The second step of the analysis considers whether medical improvement occurred. CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i).

A second step redetermination analysis typically begins with a summary of documents used to support the original finding of disability. In the present case, no such documents were presented. Without documents supporting the original finding of disability, it can only be concluded that MDHHS failed to establish medical improvement in Petitioner's condition. When MDHHS fails to establish any medical improvement, the analysis proceeds directly to the fourth step.

The fourth step of the analysis considers whether any exceptions apply to a previous finding that no medical improvement occurred or that the improvement did not relate to an increase in RFC. 20 CFR 416.994(b)(5)(iv). If medical improvement related to the ability to work has not occurred and no exception applies, then benefits will continue. CFR 416.994(b). Step 4 of the disability analysis lists two sets of exceptions.

The first group of exceptions allows a finding that a petitioner is not disabled even when medical improvement is not established. The exceptions are:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology (related to the ability to work);
 - (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
 - (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
 - (iv) Substantial evidence demonstrates that any prior disability decision was in error.
- 20 CFR 416.994(b)(4)

If an exception from the first group of exception applies, then the petitioner is deemed not disabled if it is established that the petitioner can engage in substantial gainful activity. If no exception applies, then the petitioner's disability is established.

The second group of exceptions allows a finding that a petitioner is not disabled irrespective of whether medical improvement occurred. The exceptions are:

- (i) A prior determination was fraudulently obtained;

- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.
20 CFR 416.994(b)(4)

There was no evidence that any of the above exceptions are applicable. It is found that no fourth step exceptions apply, and therefore, Petitioner is still a disabled individual. Accordingly, it is found that MDDHS improperly terminated Petitioner's SDA eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law finds that MDDHS improperly terminated Petitioner's SDA eligibility. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's SDA benefit eligibility, effective August 2015;
- (2) evaluate Petitioner's ongoing SDA eligibility subject to the finding that Petitioner is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Petitioner is found eligible for future benefits.

The actions taken by MDHHS are **REVERSED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/4/2015**

Date Mailed: **11/4/2015**

CG/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

