

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

IN THE MATTER OF:



MAHS Reg. No.: 15-018368
Issue No.: 2009
Agency Case No.: [REDACTED]
Hearing Date: November 30, 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 30, 2015, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [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 September 3, 2015, the Medical Review Team (MRT) determined that Petitioner was not a disabled individual for purposes of SDA eligibility (see Exhibits 5-8).
4. On September 8, 2015, MDHHS terminated Petitioner's eligibility for SDA benefits, effective October 2015, and mailed a Notice of Case Action (Exhibits 1-4) informing Petitioner of the termination.

5. On October 5, 2015, Petitioner requested a hearing disputing the termination of SDA benefits.
6. Petitioner alleged disability based on a frozen left shoulder and right hand nerve damage.

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.

Petitioner presented various treatment documents (Exhibits A1-A264) from 2012 and earlier. Surgical, treatment, and physical therapy documents for Petitioner's right hand were noted.

Physician office visit notes (Exhibits 26-30) dated October 13, 2014, were presented. It was noted that Petitioner reported fatigue, numbness, and weakness. An assessment of neuropathy was noted.

Physician office visit notes (Exhibits 23-25) dated November 13, 2014, were presented. It was noted that Petitioner reported ongoing lumbar pain (10/10). Petitioner reported mild relief by applying heat. A lumbar x-ray and left shoulder x-ray were noted to be negative.

Physician office visit notes (Exhibits 20-22) dated March 9, 2015, were presented. It was noted that Petitioner reported aching thoracic and lumbar pain (7/10). Physical

examination findings noted a normal range of motion. A plan of Motrin (800 mg, 4x per day) and a pain management physician referral was noted.

Physician office visit notes (Exhibits B17-B18) dated March 9, 2015, were presented. Back pain was noted as an active diagnosis.

Physician office visit notes (Exhibits B1-B3) dated April 9, 2015, were presented. It was noted that Petitioner reported lumbar and left shoulder pain, ongoing since December 2014. A normal gait and negative Romberg's test was noted. Assessments of left sacroiliitis and left scapula pain due to muscle/ligament sprain were noted.

Physician office visit notes (Exhibits B4-B6) dated June 2, 2015, were presented. It was noted that Petitioner reported ongoing lumbar and left shoulder pain. Reduced ranges of motion and motor strength loss were noted in Petitioner's left shoulder. Assessments of musculoskeletal strain and joint dysfunction were noted. A plan of physical therapy was noted.

Physician office visit notes (Exhibits 17-19) dated June 16, 2015, were presented. It was noted that Petitioner reported ongoing wrist pain. A history of controlled neuropathy was noted. It was noted Petitioner was s/p wrist surgery. Follow-up with a hand surgeon was planned.

A Medical Examination Report (Exhibits 10-12) dated June 16, 2015, was presented. The form was completed by a physician with an approximate 14-month history of treating Petitioner. Petitioner's physician listed a diagnosis of wrist pain. An impression was given that Petitioner's condition was stable. It was noted that Petitioner could not meet household needs, though specific needs were not listed.

Physician office visit notes (Exhibits B7-B9) dated July 10, 2015, were presented. It was noted Petitioner completed two weeks of physical therapy (PT), though it was not stated if it improved shoulder function. Muscle testing was noted to show 5/5 strength but reduced range of motion due to pain. An assessment of adhesive capsulitis was noted. A revised PT plan was noted.

Physician office visit notes (Exhibits B10-B13) dated August 13, 2015, were presented. Petitioner reported ongoing lumbar and left shoulder pain. It was noted Petitioner reported her physical therapist said Petitioner could not make further improvements. Petitioner's Ibuprofen prescription dosage was increased and a referral to an orthopedist was noted.

Therapy Orders (Exhibits B20-B21) dated September 3, 2015, were presented. A referral to PT for 24 visits for Petitioner's left shoulder was noted.

Petitioner testified she had 2 surgeries on her right hand in 2011. Petitioner testified the surgery and months of subsequent PT did "not really" help. Petitioner testified the hand

has irreparable nerve damage. Petitioner testified she is generally unable to write with her right (and dominant) hand, though some days the pain is more bearable than others.

Petitioner testified she was diagnosed with a frozen left shoulder (aka adhesive capsulitis). Petitioner testified PT helped but she still cannot lift her arm over her head. Petitioner testified an unspecified injection in September 2015 helped for a few days before her pain returned even worse than before the injection. Petitioner testified she just finished her second round of PT on the shoulder and it did not help much. Petitioner testified a physician recently advised she is unable to lift/carry any amount of weight.

Petitioner testified she sometimes (approximately 2 times per week) needs assistance getting out of bed. She testified when she needs help, one of her kids helps her roll-over and lifts her upright. Petitioner testified she needs assistance getting in and out of the bathtub due to back pain. Petitioner testified she needs assistance with putting on her shirt and pulling up her pants. Petitioner testified she also needs help pulling up her pants after going to the bathroom. Petitioner testified she does not go shopping because of her left shoulder pain.

Petitioner's most prominent problem appeared to be right hand and left shoulder restrictions, respectively due to nerve damage and adhesive capsulitis. Nerve damage is not joint dysfunction though the restrictions are comparable. Disability based on joint dysfunction is established by the following SSA listing:

- 1.02 Major dysfunction of a joint(s) (due to any cause):** Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;
 - OR
 - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

Petitioner's physician provided restrictions on a Medical Examination Report dated June 16, 2015. Neither standing nor sitting restrictions were listed. Petitioner was restricted to no type of lifting/carrying, not even less than 10 pounds. Petitioner's physician opined that Petitioner was restricted from performing the following repetitive actions: fine manipulating, simple grasping, pushing/pulling, and reaching. In response to a question asking for the stated basis for restrictions, Petitioner's physician did not respond.

Petitioner's physician also did not cite any diagnostic testing to support stated restrictions. It was noted that Petitioner's limitation(s) was expected to last 90 days.

A failure to list any diagnostic testing (or any other support) to justify the restrictions lessens the credibility of the physician-stated restrictions. Petitioner's medical treatment history was sufficient to justify restrictions.

Neuropathy and nerve damage to Petitioner's right hand was verified. Ongoing treatment including physical therapy to petitioner's left shoulder was verified. Reductions in range of motion to each were verified. Medical records also tended to verify that physical therapy failed to significantly improve the function of Petitioner's upper extremities.


It is found that Petitioner meets the listing equivalent for joint disorder. Accordingly, it is found that Petitioner is disabled and that MDHHS 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 October 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: **12/3/2015**

Date Mailed: **12/3/2015**

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 party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (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:

