

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

IN THE MATTER OF:



MAHS Reg. No.: 15-018685
Issue No.: 4009
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 18, 2015, the Medical Review Team (MRT) determined that Petitioner was not a disabled individual for purposes of SDA eligibility (see Exhibits 5-13).
4. On September 25, 2015, MDHHS terminated Petitioner's eligibility for SDA benefits, effective November 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.

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.

MDHHS failed to acknowledge that Petitioner was an ongoing SDA recipient in their Hearing Summary. In their summary, MDHHS alleged that Petitioner applied for SDA benefits and was denied. The summary was not a persuasive indicator of facts. A Notice of Case Action (Exhibits 1-4) verified that Petitioner was an ongoing recipient whose SDA eligibility would cease as of November 2015. It is found that Petitioner was an ongoing SDA recipient and not an SDA applicant.

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; thus, the analysis may commence.

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 lumbar spine MRI report (Exhibits A2-A3) dated September 17, 2014, was presented. An impression of a left L5-S1 disc extrusion causing stenosis and nerve root compression was noted.

A lumbar spine MRI report (Exhibits A4-A5) dated March 4, 2015, was presented. An impression of post-surgical changes including peridural and perineural fibrosis surrounding the left L5-S1 nerve root was noted. Mild degenerative changes were noted at L4-L5.

A Medical Examination Report (Exhibits 14-16) dated April 29, 2015, was presented. The form was completed by an internal medicine physician with an approximate 10-year history of treating Petitioner. Petitioner's physician listed diagnoses of low back pain,

asthma, and pseudotumor cerebri. An impression was given that Petitioner's condition was deteriorating. It was noted that Petitioner can meet household needs. It was noted that Petitioner's limitation(s) was expected to last 90 days. A need for a walking-assistance device was not stated. Petitioner was restricted to frequent lifting/carrying of less than 10 pounds, never 10 pounds or more. Petitioner's physician listed low back pain to justify stated restrictions. Diagnostic reports were not attached.

A physician order (Exhibits A6-A7) dated October 12, 2015, was presented. A post-laminectomy syndrome diagnosis was noted. A referral to a pain clinic was noted.

Hospital pain center documents (Exhibits A8-A11) dated October 14, 2015, were presented. Caudal epidural steroid injection procedure information was provided. Petitioner was instructed to "consider" the injection along with spinal cord stimulator information.

Claimant's most prominent impairment appears to be back pain. Spinal disorders are covered by Listing 1.04 which reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Looking at Part C, the inability to ambulate effectively is a requirement. SSA defines this as follows:

Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to

permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

Petitioner testimony recalled her back pain beginning in 2008. Petitioner testified she believed her pain began following a fall at her home. Petitioner testified she underwent a laminectomy in October 2014, though the procedure did little to reduce her pain. Petitioner testified she takes Gabapentin twice per day and Norco as needed. Petitioner testified she is considering the implementation of a spinal core stimulator.

Petitioner testified that her spinal pain adversely affects her ambulation. Petitioner testified her left leg is numb from her foot to her knee because of spinal abnormalities. Petitioner's testimony also alleged severe pain which makes it impossible for her to walk more than a block, or to maintain employment. Petitioner testified that an unspecified injection into her foot and two rounds of physical therapy for her left foot did not reduce her pain nor improve her functioning level.

Petitioner testified that she has poor balance, though she conceded she does not use a cane. Medical evidence failed to indicate a need for a cane. Generally, no need for a walking-assistance device is contradictory to an inability to ambulate effectively.

On a Medical Examination Report, Petitioner's physician stated that Petitioner could and could not sit about 6 hours within an 8 hour workday. Petitioner's physician stated that Petitioner could and could not stand/walk about 6 hours in an 8 hour workday. The contradictory restrictions provide no insight into Petitioner's condition.

Petitioner's physician also stated that Petitioner was restricted from performing the following repetitive actions: simple grasping, reaching, pushing/pulling, fine manipulating, and operating leg/foot controls. The restrictions appeared to be unsupported. Petitioner did not allege any hand restrictions. It is plausible that spinal pain could preclude grasping and manipulating, however, such complaints were not documented within presented medical records.

A listing for asthma (Listing 3.03) was considered based on a diagnosis. The listing was rejected based on Petitioner testimony that her asthma is well controlled and that it does not impact her ability to work.

SSA does not have a listing for pseudotumor cerebri. Petitioner would unlikely meet any theoretical listing as her testimony conceded that taking Topamax reduced her headaches to the point where it does not prevent her from working.

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. When medical improvement is not established, 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)

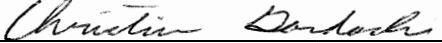
There was no evidence that any of the above exceptions are applicable. It is found that no listed exceptions are applicable, and therefore, Petitioner is still a disabled individual. Accordingly, it is found that MDDHS improperly terminated Petitioner's SDA eligibility.

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 November 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: **12/1/2015**

Date Mailed: **12/1/2015**

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:

