

**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.: 15-019184
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: January 26, 2016
County: Huron

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, telephone hearing was held on January 26, 2016, from Lansing, Michigan. Petitioner appeared and testified on her own behalf. [REDACTED] (Medical Social Services Advocate from [REDACTED]) appeared as a witness for Petitioner. [REDACTED] (Eligibility Specialist) appeared on behalf of the Department of Health and Human Services (Department).

PROCEDURAL HISTORY

The Department offered the following exhibits that were marked and admitted into evidence:

Department's Exhibit No. 1 (pages A through H) is a copy of the hearing summary, request for hearing, Medical-Social Eligibility Certification (DHS-49-A), and the Notice of Case Action (DHS-1605) dated October 21, 2015.

Department's Exhibit No. 2 (pages 1 through 5) is a copy of the October 27, 2015 Notice of Case Action (DHS-1605)

Department's Exhibit No. 3 (pages 1 through 733) is a copy of Petitioner's medical records from 2007 through 2015.

The Petitioner offered the following exhibits that were marked and admitted into evidence:

Petitioner's Exhibit 1 is a memorandum in support of benefits, Global Assessment of Functioning (GAF) Scale and a list of Petitioner's prescription medications.

The record was closed at the conclusion of the hearing.

ISSUE

Did the Department properly determine that Petitioner was no longer disabled and deny her review application for State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an SDA benefit recipient during the relevant time period.
2. Petitioner's SDA case was initially scheduled for review in June, 2012. Following the medical review, the Medical Review Team (MRT) determined that Petitioner was still disabled.
3. Petitioner's SDA case was scheduled for a second review in March, 2014.
4. On or about October 27, 2015, the MRT denied Petitioner's review application for SDA and found she was no longer disabled.
5. On October 27, 2015, the Department sent Petitioner notice that her SDA case would be closed based upon medical improvement.
6. On October 27, 2015, Petitioner requested a hearing to contest the Department's negative action.
7. A telephone hearing was held on January 2, 2016.
8. Petitioner has alleged the following disabling impairments: bulging discs in lower back, bipolar disorder, borderline personality disorder, severe anxiety, and chronic migraine headaches.
9. Petitioner, at the time of the hearing, was a [REDACTED] (thirty-five) year-old woman with a birth date of [REDACTED].
10. Petitioner is 5'2"; and, at the time of the hearing, weighed approximately 212 (two-hundred and twelve) pounds (lbs).
11. Petitioner has a high school education and was a Certified Nurse's Assistant (CNA) until her certificate was revoked in 2000 after a felony conviction.
12. Petitioner testified that she is literate but she reports to have dyslexia. She stated that she has basic math skills; however, she has problems with multiplication and division.
13. Petitioner last worked as a production worker/machine operator for two months in 2014. Petitioner's work was sedentary, which involved inserting

wires into a machine, bundling the wires and then placing them into a bucket. Petitioner stated that after she was no longer able to concentrate and was easily distracted, she was eventually terminated for poor performance.

14. Previously, Petitioner worked as a nurse's assistant for five years from 2000 to 2004 until she lost her CNA certificate.
15. Petitioner, at the time of the hearing, testified that she worked 1 ½ hours per week at an AFC home owned by her aunt. She is paid \$ [REDACTED] per hour (and per week) to keep a written record when residents enter and leave. She does not have any other duties or responsibilities.
16. During the hearing, Petitioner testified credibly that she suffers from auditory and visual hallucinations on a daily basis. Petitioner also credibly testified that she has difficulty with concentration, is unable to focus on a task at hand, and is unable to deal with changes in a routine work setting.
16. Petitioner takes the following medications:
 - a. Alprazolam
 - b. Geodon
 - c. Hydrocodone/Acetaminophen
 - d. Metoprolol Tartrate
 - e. Ranitidine
 - f. Dicyclomine
 - g. Gabapentin
 - h. Topiramate
 - i. Sumatriptan Succinate
17. During the relevant time period, the objective medical records show that Petitioner has the following medical conditions based on medically acceptable clinical and laboratory diagnostic techniques:
 - a. Petitioner has right achilles tendinosis, right tarsal tunnel, right plantar fasciitis with heel spur syndrome. [Exh. 3, p. 41].
 - b. Petitioner has a history of Irritable Bowel Syndrome (IBS) and colitis with recurrent flare up. [Exh. 3, p. 29, 35].
 - c. Petitioner was diagnosed with bipolar disorder, migraines and fibromyalgia. [Exh. 3, pp. 27, 31].
 - d. Petitioner has tachycardia since July, 2015. [Exh. 3, p. 35].
 - e. On [REDACTED] Petitioner visited the [REDACTED] [REDACTED] clinic for treatment and she indicated that she continued to have hallucinations and continued to hear voices. [Exh. 3, p. 280].

f. Petitioner's MRI of the cervical spine taken on [REDACTED] revealed "broad-based left paracentral disc protrusion at C5-C6 with mass effect upon the cervical cord especially the anterior left aspect resulting in severe canal stenosis and moderate left neural foramina narrowing." [Exh. 3, p. 73]. [Emphasis added].

g. Petitioner's neurologist diagnosed bilateral upper extremity paresthesias which was due to median nerve irritation. He recommended Petitioner use wrist splints. [Exh. 3, p. 77].

h. Petitioner's April, 2015 follow up appointment at [REDACTED] indicated she was under a lot of stress and did not appear to be adjusting well. [Exh. 3, p. 80].

i. On [REDACTED], Petitioner's lumbar x-ray showed a straightening of the normal lumbar curvature with muscle spasm. [Exh. 3, p. 55].

j. On March, 2015, Petitioner's [REDACTED] records indicated that she felt "lost" and had increased sedation while taking Seroquel. Her medications were adjusted. [Exh. 3, 83].

k. Petitioner's March, 2015 [REDACTED] records indicated that she had to develop a strategy for what to do when she hears the audio hallucinations. [Exh. 3, p. 83].

l. Petitioner's [REDACTED] records dated [REDACTED], indicated that she required ongoing medications, and psychological services to reduce her anxiety, work on coping skills and to ensure she is taking the proper medications. [Exh. 3, p. 87].

m. Petitioner has been diagnosed with bipolar disorder, borderline personality disorder, alcohol dependence and cannabis abuse. [Exh. 3, p. 95].

n. On [REDACTED], Petitioner had an Annual Assessment at [REDACTED]. With regard to activities of daily living, Petitioner indicated, ". . . I don't do a whole lot of anything. I try to deal with the voices in my head the visual hallucinations." [Exh. 3, p. 91].

18. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

In this case, the MRT upheld the denial of SDA benefits on the basis that Petitioner's medical condition had improved. Petitioner requested a hearing because she believes that her medical condition has not improved and that she continues to be disabled.

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits; the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

This section indicates:

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first inquiry that must be addressed is whether the client is engaging in substantial gainful activity¹? If the client is engaged in substantial gainful activity (and any applicable trial work period has been completed), he or she will be found no longer disabled. See 20 CFR 416.994(b)(3)(v). Despite Petitioner's testimony that she works 1½ hours per week and earns approximately \$████ per hour/week, Petitioner is not disqualified at the first step because she has not engaged in substantial gainful activity at any time relevant to this matter. In this matter, the record shows that Petitioner is not disqualified from the first step because she has not engaged in substantial gainful activity at any time relevant to this matter.

Furthermore, the evidence on the record establishes that Petitioner has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1.

¹ "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)).

The next step asks the question if there has been medical improvement. The Code of Federal Regulations, Section 20 provides as follows:

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). [Emphasis added].

If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

Pursuant to the above-mentioned federal regulations, the Department, at medical review, has the burden of not only proving Petitioner's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The Department has the burden of establishing that Petitioner is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C). First, an individual's pertinent symptoms, signs and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively and on a sustained basis. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings,

medication and other treatment, and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

In this case, the Department upheld the denial of SDA benefits on the basis that the MRT found Petitioner's medical condition had improved. Pursuant to the above-mentioned federal regulations, the Department, at medical review, has the burden of not only proving Petitioner's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The Department has the burden of establishing that Petitioner is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

The Administrative Law Judge finds the Department has not met its burden of proof. The Department has not provided sufficient objective medical evidence from qualified medical sources that show Petitioner is currently capable of doing basic work activities during a normal work day. The fact that Petitioner is employed by her aunt's AFC home and works for 1 ½ hours per week does not mean that she possesses the capacity to perform light duties on an exertional basis or is able to perform unskilled work. The objective medical evidence in this matter reveals that Petitioner continues to have a mental and/or emotional impairment that can fairly be characterized as "severe" and has not improved. This evidence shows that Petitioner has a medically determinable mental impairment based on the absence of documented signs, symptoms, and laboratory findings to show improvement. Petitioner's testimony regarding her symptoms and functional limitations is credible because it is consistent with the objective medical records.

In this case, the Department has not met its burden of proof. The records in the instant matter do not show that Petitioner's bipolar disorder, borderline personality disorder and related mental health problems have decreased in severity as defined by 20 CFR 416.994(b)(2)(ii). Petitioner still continues to experience hallucinations and these symptoms have not been controlled. The undersigned finds that Petitioner would not be able to engage in basic work activities on a sustained basis with these symptoms. The Department has not provided sufficient evidence that established how Petitioner's condition has improved, or that the alleged improvement relates to her ability to do basic work activities. Accordingly, the Department's SDA eligibility determination cannot be upheld at this time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department erred in proposing to close Petitioner's SDA case based upon a finding of improvement at review.

Accordingly, the Department's action is **REVERSED**, and this case is returned to the local office for benefit continuation as long as all other eligibility criteria are met, with Petitioner's next mandatory medical review scheduled in February, 2016, (unless she is approved eligible for Social Security disability benefits by that time).

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: 2/9/2016

CAP/las

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:

