

**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.: 15-019539
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: January 28, 2016
County: Washtenaw

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; and Mich Admin Code, R 792.11002. After due notice, a 3-way telephone hearing was held on January 28, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED], Petitioner's roommate, testified on behalf of Petitioner. [REDACTED], Petitioner's former employer, testified on behalf of Petitioner. [REDACTED], Petitioner's mother, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

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 [REDACTED], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual for purposes of SDA eligibility (see Exhibit 1, pp. 1-2).

4. On [REDACTED], MDHHS terminated Petitioner's eligibility for SDA benefits, effective October 2015, and mailed a Notice of Case Action informing Petitioner of the termination.
5. On [REDACTED], Petitioner requested a hearing disputing the termination of SDA benefits.
6. As of the date of the hearing, Petitioner was a 21-year-old male.
7. As of the date of the hearing Petitioner was not earning substantial gainful activity.
8. Petitioner's highest education year completed was the 11th grade.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on restrictions related to gastroparesis.

CONCLUSIONS OF LAW

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

Petitioner requested a hearing to dispute a termination of SDA eligibility. It was not disputed that Petitioner's only basis for SDA eligibility was based on disability.

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 DHS 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 analysis of SDA eligibility will factor the above-cited 90 day durational period.

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.*

The disability analysis differs between individuals applying for disability-based benefits and those who are terminated from receiving disability benefits. It was not disputed that Petitioner was an ongoing SDA recipient previously certified by MDHHS as disabled.

Once an individual has been found disabled for purposes of disability 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. In the present case, the Medical Review Team determined a continuing review of eligibility indicated Petitioner is no longer disabled (see Exhibit 1, p. 6)

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. Petitioner denied employment since being determined disabled by MDHHS; MDHHS presented no contradictory evidence.

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

further analysis is not required. This consideration requires a summary and analysis of presented medical documents.

Physician office visit notes (Exhibit 1, pp. 7-13) dated [REDACTED], were presented. It was noted that issuance of domperidone resulted in Petitioner vomiting "much less often." Petitioner called the improvement 50%. It was noted Petitioner used marijuana to control his abdominal pain. Daily nausea, intermittent pain, intermittent vomiting were noted as reported by Petitioner. A diagnosis of gastroparesis was noted. The diagnosis was indicated to have "a fair chance for resolution" with a viral-related etiology. A follow-up in 3 months was noted. A letter corresponding to the visit (Exhibit 1, pp. 14-17) was also presented.

A Medical Examination Report (Exhibit 1, pp. 4-6) was presented. The form was completed by a treating gastroenterologist with an approximate 3 month history of treating Petitioner. The form was undated, but is presumed to have been completed shortly after [REDACTED], the date of Petitioner's most recent examination. Petitioner's physician listed a diagnosis of gastroparesis. Petitioner's height was noted to be 6'2" and his weight was noted to be 164 pounds. An impression was given that Petitioner's condition was stable. It was noted that Petitioner can meet household needs. It was noted that Petitioner did not need an assistive device for ambulation. Walking, standing, sitting, lifting/carrying repetitive actions were not indicated to be restricted.

Treatment history documents (Exhibit A, pp. 1-8) were presented. The documents appeared to summarize Petitioner's treatment history as of [REDACTED]. Assessments of gastroparesis and major depressive disorder (recurrent and severe) were noted.

Petitioner presented documents obtained from the internet concerning gastroparesis (Exhibit A, pp. 9-14). The documents were not medical records and were not considered in the analysis.

Petitioner testified he has ongoing symptoms of nausea and vomiting. Petitioner estimated he throws up 7 times per week. Petitioner testified he is unable to control vomiting despite being compliant with his diet and medications. Petitioner testified he can eat seafood, but has difficulty eating red meat and poultry. Petitioner testified consuming liquids also tends to make him vomit. Petitioner testified this causes him to be dehydrated. Petitioner testified that his vomiting is sudden and unpredictable.

Petitioner testified he also experiences abdominal pain from gastroparesis. Petitioner's mom testified Petitioner cannot take opiate medication to control abdominal pain because the medications adversely affect his digestive tract. Petitioner also reported symptoms of light-headedness, exhaustion, and vision loss.

Petitioner testimony expressed uncertainty to the possibility of part-time employment. Petitioner testified he is dyslexic and constantly exhausted.

Petitioner testified he is limited to 1-2 blocks of walking before he feels like he might collapse. Petitioner testified sitting makes him light-headed after 30-60 minutes. Petitioner testified he can only lift/carry 15 pounds.

Petitioner testified he had 2 near falls when showering. Petitioner testified he has difficulty carrying laundry because it is too heavy. Petitioner testified shopping is exhausting after 30 minutes. Petitioner testified cleaning makes him tire easily. As an example of his limits, Petitioner stated he had to use a wheelchair while at Disneyland.

Petitioner testified that he unintentionally lost 100 pounds over a 3 month period. Petitioner testimony estimated he was throwing up 4 times per day during that period. Petitioner testified his weight was 150 pounds about 1-2 months ago. As of the date of hearing, Petitioner reported his weight to be 160 pounds.

Petitioner verified a diagnosis of gastroparesis. Gastroparesis has no corresponding SSA listing, but weight loss does.

A listing for weight loss disorder (Listing 5.08) was considered based on Petitioner's weight loss. As of [REDACTED], Petitioner's BMI was 21.1 based on height and weight provided by his physician. The listing was rejected because it was not established that Petitioner's BMI was less than 17.50 on occasions at least two months part, but within six months.

It is found that Petitioner does not meet a SSA listing. Accordingly, the disability analysis may proceed 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).

The analysis typically begins with a summary of medical documents that were the basis of the original finding that Petitioner was a disabled individual. MDHHS did not present such a packet. Without the packet of medical records supporting the original basis for disability, it cannot be found that medical improvement occurred.

A Medical-Social Eligibility Certification (Exhibit 1, pp. 32-33) dated [REDACTED], was presented. The document verified MRT determined Petitioner was disabled. An analysis supporting the determination was not presented. Supporting medical documents were presented.

Two pages of a Medical Examination Report (Exhibit 1, pp. 34-35) was presented. The form included physical examination findings and some statements of concerning

medical condition. The form was not considered because it was undated and not clearly linked to Petitioner.

Gastroenterologist office visit notes (Exhibit 1, pp. 60-61) dated [REDACTED], were presented. Complaints of abdominal pain, vomiting, and nausea, ongoing for 3 months, were noted. A 30-40 pound weight loss was noted.

Physician office visit notes (Exhibit 1, pp. 45-48) dated [REDACTED], were presented. It was noted that Petitioner complained of mid-low back pain. Petitioner reported difficulty exiting bed. A history of "profound" depression was noted. It was noted Petitioner smoked marijuana for non-medicinal purposes. "Mildly present" scoliosis was noted. Mild tenderness was noted from T10-L5. Petitioner's pain was stated to possibly be related to poor core strength, hamstring tightness, inactivity and/or poorly controlled depression. A plan of physical therapy was noted.

An operative report (Exhibit 1, pp. 39-40, 42-43) dated [REDACTED] was presented. It was noted Petitioner underwent an esophagogastroduodenoscopy.

Gastroenterologist office visit notes (Exhibit 1, pp. 54-59) dated [REDACTED], were presented. It was noted Petitioner reported ongoing abdominal pain, nausea, and sudden vomiting. A weight loss of 60 pounds over 2014 was noted. It was noted a recent endoscopy (see Exhibit 1, pp. 64-65) showed marked gastric retention suggestive of gastroparesis, possibly stemming from a severe viral illness in 2012.

Colonoscopy reports (Exhibit 1, p. 52, 54-55,) from December 2014, and a corresponding letter (Exhibit 1, p. 53) dated [REDACTED], were presented. It was noted no significant abnormality or inflammation was found.

A nuclear medicine gastric emptying report dated [REDACTED] (Exhibit 1, p. 66) was presented. An impression of abnormal imaging consistent with gastroparesis was noted.

Physician office visit notes (Exhibit 1, pp. 49-51) dated [REDACTED], were presented. It was noted that Petitioner was diagnosed with gastroparesis. An ongoing complaint of nausea and abdominal pain, ongoing for 1 year. Pain and nausea were noted to have increased over the summer, causing sudden vomiting. It was noted psychological factors likely exacerbated gastro-intestinal symptoms.

A Medical Examination Report (Exhibit 1, pp.36-38) dated [REDACTED], was presented. The form was completed by a gastroenterologist with an approximate 4 month history of treating Petitioner. Petitioner's physician listed diagnoses of gastroparesis with symptoms of vomiting, abdominal pain, and weight loss. An impression was given that Petitioner's condition was deteriorating. It was noted that Petitioner can meet household needs. It was noted that Petitioner did not need an assistive device for ambulation. It was noted Petitioner had various restrictions which

were expected to last 90 days. The physician opined that Petitioner was restricted to less than 2 hours of standing and/or walking over an eight-hour workday. Petitioner had a total lifting/carrying restriction. In response to a question asking for the stated basis for restrictions, Petitioner's physician cited "severe" gastroparesis causing Petitioner to be weak and fragile; a 40+ pound weight loss was also cited.

Petitioner testimony initially denied any improvement since being found disabled. Later Petitioner testimony reluctantly conceded "slight" improvement. Presented records established more than slight improvement.

Petitioner lost a drastic amount of weight in 2014. Petitioner's weight appears to have stabilized at 160-165 pounds. Given Petitioner's height, Petitioner appears to be at a healthy weight.

A lack of recent treatment records was notable. Petitioner testified he has not seen a doctor since September 2015. Petitioner testified he has not been to the hospital since September 2015. The lack of recent physician intervention is indicative of medical improvement.

It is also notable that medical records implied Petitioner's condition is exacerbated by depression. Despite indication of Petitioner's lethargy being partially psychological-based, Petitioner has not sought psychological treatment.

It is found Petitioner has experienced medical improvement since the finding of disability made by the MRT. Accordingly, the analysis may proceed to the third step.

The third step of the analysis considers medical improvement and its effect on the ability to perform SGA. Medical improvement is not related to the ability to work if there has been a decrease in the severity of the impairment(s) present at the time of the most recent favorable medical decision, but *no* increase in functional capacity to do basic work activities. 20 CFR 416.994(b)(1)(ii). If there has been any medical improvement, but it is not related to the ability to do work and none of the exceptions applies, benefits will be continued. *Id.* If medical improvement is related to the ability to do work, the process moves to step five.

Though Petitioner's weight loss stabilized, there appear to be ongoing problems for Petitioner. The most recently submitted records verified 50% improvement of chronic vomiting and abdominal pain. Despite the improvement, daily nausea and intermittent vomiting were still noted as ongoing problems. Petitioner testimony indicated a decrease in vomiting from 4 times per day to once per day. The decrease is encouraging, but not indicative of improvement that increases functional capacity.

Petitioner testified he vomited on the day of hearing. Petitioner's roommate testified he witnessed the incident and observes Petitioner to be chronically weak and lethargic. Petitioner's mother provided comparable testimony.

It is found MDHHS failed to establish medical improvement related to Petitioner's functional capacity. Accordingly, the analysis proceeds to the fourth step.

Based on presented records, it is found that MDHHS failed to establish that Petitioner had medical improvement. Accordingly, the analysis skips Step 3 and proceeds directly to the fourth step.

Step 4 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 allow a finding that a petitioner is not disabled even when medical improvement had not occurred. 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 allow 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. Accordingly, it is found Petitioner is still a disabled individual 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 MDHHS improperly terminated Petitioner's eligibility for SDA benefits. 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 eligibility, effective October 2015;
- (2) evaluate Petitioner's 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 no less than twelve months 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: **2/9/2016**

Date Mailed: **2/9/2016**

CG / hw

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:

