

**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.: 15-023423
Issue No.: 2009, 4009
Agency Case No.: [REDACTED]
Hearing Date: February 3, 2016
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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on February 3, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], medical contact worker.

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 recipient.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On an unspecified date, the Medical Review Team (MRT) determined that Petitioner was no longer a disabled individual (see Exhibit 1, pp. 1-9).
4. On [REDACTED], MDDHS terminated Petitioner's SDA eligibility, effective December 2015, and mailed a Notice of Case Action (Exhibit 1, pp. 54-55) informing Petitioner of the termination.
5. Petitioner alleged continuing disability based on cardiac restrictions.

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).

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 no further analysis is required. This consideration requires a summary and analysis of presented medical documents.

A Medical Examination Report (Exhibit 1, pp. 16-18) dated [REDACTED], was presented. The form was completed by a cardiologist with an approximate 16 month history of treating Petitioner. Petitioner's cardiologist listed diagnoses of CHF, CAD, and fatigue. An impression was given that Petitioner's condition was stable. It was noted that Petitioner could not meet household needs; the needs were not specified. A need for a walking assistance device was not indicated. It was noted that Petitioner's limitation(s) was expected to last 90 days. Petitioner's cardiologist opined that Petitioner was restricted to less than 2 hours of standing and/or walking over an eight-hour workday. Petitioner was noted as capable of sitting 6 hours over an 8 hour workday. Petitioner was restricted to occasional lifting/carrying of 10 pounds or less, never 20 pounds or more. Petitioner's physician opined Petitioner was restricted from performing repetitive pushing/pulling or operating foot controls. Petitioner's cardiologist stated restrictions were justified based on the severity of CHF, ventricular dysfunction, and malignant hypertension.

An internal medicine examination report (Exhibit 1, pp. 25-27) dated [REDACTED], was presented. The report was noted as completed by a consultative physician. Petitioner reported a history of gout, HTN, and cardiac problems. Petitioner denied chest pain, angina, or dyspnea. Petitioner's gait was noted as normal. Abnormal physical examination findings were not indicated. Petitioner's health was noted to be good. The examiner made no statements concerning Petitioner's ability to work.

An internal medicine examination report (Exhibit 1, pp. 51-53) dated [REDACTED] was presented. The report was noted as completed by the same consultative physician who examined Petitioner in June 2015. The examiner stated there was no evidence of CHF, pneumonia, or COPD. Petitioner's health was again noted to be good.

Petitioner testified his physician sent him to a hospital in 2013. Petitioner testified his body was retaining too much fluid. Petitioner testified the hospital drained the fluid and a heart stent was inserted. Petitioner testified he has not been back to the hospital since.

Petitioner testified he can walk for about 20 minutes before he needs to break for 5-10 minutes. Petitioner testimony conceded he has no sitting or standing restrictions. Petitioner testified he does not use walking assistance device. Petitioner testimony conceded he has no difficulties with daily activities.

A listing for chronic heart failure (Listing 4.02) was considered based on Petitioner's low ejection fraction testing. The listing was rejected because of the absence of evidence of the following: inability to perform an exercise test, three or more episodes of acute congestive heart failure or a conclusion that an exercise test poses a significant risk to Petitioner's health.

Other cardiac-related listings (Listing 4.00) were considered based on Petitioner's cardiac treatment history. Petitioner failed to meet any cardiac listings.

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).

Petitioner's physician indicated restrictions that would be considered severe impairments (e.g. less than 2 hours of standing and less than 20 pounds of lifting/carrying). The restrictions were completely unsupported as cardiac treatment records and testing was not presented. The restrictions also appear to be outdated as the only other submitted evidence (2 consultative examination reports) indicated no restrictions. Even Petitioner's testimony was not indicative of ongoing restrictions.

Evidence supporting continued disability was extremely underwhelming. A second step analysis is not intended to evaluate continued disability; it is intended to consider only medical improvement.

To establish medical improvement, MDHHS is expected to include a summary of medical documents supporting 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 is not known what diagnoses, restrictions, and treatments supported the finding of disability. Without the packet of medical records supporting the original basis for disability, it cannot be determined whether presented records fully address Petitioner's restrictions. Without the packet of medical records supporting the original basis for disability, it cannot be found that MDHHS established medical improvement.

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 December 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 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:

