



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 14, 2016
MAHS Docket No.: 15-023973
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, an in-person hearing was held on February 17, 2016, from Caro, Michigan. The Petitioner was represented by [REDACTED], father. [REDACTED], the Petitioner, appeared and testified. [REDACTED], stepmother, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

The following Exhibits were entered into the record during the hearing:

- o Department's January 5, 2016, Hearing Summary. (Department Exhibit A, p. 1)
- o Petitioner's December 18, 2015, Hearing Request with attached medical records, November 24, 2015, Notice of Case Action, and December 1, 2015, Health Care Coverage Determination Notice. (Department Exhibit A, pp. 2-14)
- o January 5, 2016, print outs of the case record regarding disability details and determinations. (Department Exhibit A, pp. 15-17)
- o November 19, 2015, Medical-Social Eligibility Certification. (Department Exhibit A, pp. 18-21)
- o November 2, 2015, [REDACTED] response explaining why they could not process the request for records. (Department Exhibit A, pp. 22-31)
- o September 16, 2015, Medical Social Questionnaire Update. (Department Exhibit A, pp. 32-35)
- o September 21, 2015, records regarding Social Security Administration application. (Department Exhibit A, pp. 36-52)
- o September 21, 2015, Medication List. (Department Exhibit A, pp. 53-54)

- September 16, 2015, Activities of Daily Living. (Department Exhibit A, pp. 55-59)
- September 15, 2015, medical records from Dr. [REDACTED]. (Department Exhibit A, pp. 60-78)
- December 18, 2013, State Hearing Review Team Decision. (Department Exhibit A, pp. 79-82)
- March 18, 2014, Hearing Decision. (Department Exhibit A, pp. 83-90)
- January 29, 2016, correspondence from Petitioner with attached medical record from [REDACTED]. (Petitioner Exhibit 1, pp. 1-4)
- January 19, 2016, additional medical records from [REDACTED] and hospital admission. (Petitioner Exhibit 2, pp. 1-53)
- Correspondence from Petitioner outlining his medication history. (Petitioner Exhibit 3, pp. 1-2)

ISSUE

Whether the Department properly determined that Petitioner was no longer disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) benefit programs?

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 had been found disabled and was eligible for Medicaid (MA-P) based on a July 11, 2013, application for MA-P and retroactive MA-P. (Department Exhibit A, pp. 83-90)
2. In March 2015, the Department was to review Petitioner's ongoing medical eligibility. (Department Exhibit A, p. 88)
3. On or about September 15, 2015, Petitioner's case was sent to the Medical Review Team (MRT) for review for the MA-P and SDA programs. (Department Exhibit A, p. 18)
4. On November 19, 2015, the MRT found Petitioner not disabled for MA or SDA. (Department Exhibit A, pp. 18-21)
5. On November 24, 2015, and December 1, 2015, the Department notified Petitioner of the MRT determination. (Department Exhibit A, pp. 9-14)
6. On December 18, 2015, the Department received Petitioner's timely written request for hearing. (Department Exhibit A, pp. 2-14)

7. Petitioner alleged disabling impairments including excessive stones in bladder, stones on prostate, unable to empty bladder fully, blood in urine, passing blood clots, bladder inflammation, bladder shrunk in size, frequent urination, bladder mass, as well as overactive bladder with psychiatric problems. (Department Exhibit A, pp. 2-8, 32, and 42; Petitioner Exhibit 1; Testimony)
8. At the time of hearing, Petitioner was [REDACTED] years old with an [REDACTED], birth date; was [REDACTED] in height; and weighed [REDACTED] pounds. (Testimony)
9. Petitioner has a high school education and has a work history including: deburring parts; production puller; packing and assembling; machine operator; washing and sanding parts; inspecting parts; and tugger driver. (Department Exhibit A, pp. 47-49; Testimony).
10. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity 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(a). The person claiming a physical or mental disability

has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Once an individual has been found disabled for purposes of MA 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 evaluating a claim for ongoing MA benefits, federal regulation requires 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 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 first step in the analysis in determining whether an individual's disability has ended 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 with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 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). If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue.

Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii).

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v). If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

- (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.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (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.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Petitioner's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

In the present case, Petitioner alleged disabling impairments including excessive stones in bladder, stones on prostate, unable to empty bladder fully, blood in urine, passing blood clots, bladder inflammation, bladder shrunk in size, frequent urination, bladder mass, as well as overactive bladder with psychiatric problems. (Department Exhibit A, pp. 2-8, 32, and 42; Petitioner Exhibit 1; Testimony)

June 2014 through June 2015 record from Dr. [REDACTED] show ongoing treatment for Petitioner's bladder problems. A [REDACTED] Operative Report from a cystoscopy documents postoperative diagnoses of large bladder stone with foreign body inside it and bladder contracture with marked inflammation of the bladder wall. On [REDACTED], [REDACTED], Petitioner underwent cystolithotomy of the large bladder stone. April 2015 records show: continued marked urinary frequency; blood in urine with clots; and abnormal urinalysis results. An [REDACTED], cystoscopy showed a large bladder stone built up around multiple small magnetic pellets. Postoperative diagnoses were severe degree of hemorrhagic cystitis and severely contracted bladder. In June 2015, an appointment was set up with [REDACTED]. (Department Exhibit A, pp. 62-78)

June 2015, through December 2015, records from [REDACTED] showed ongoing treatment for Petitioner's bladder problems. The [REDACTED] assessment of problems included bladder calculi, gross hematuria, nocturia, cystitis, urinary urgency, and urinary frequency. A [REDACTED], cystoscopy showed bladder stones and Petitioner was sent for cystolitholapaxy. Petitioner was hospitalized [REDACTED], through [REDACTED], and underwent cystolitholapaxy and bladder neck resection. Findings included small capacity bladder with friable, stone littered base as well as calcified mass at bladder neck that was resected. A [REDACTED], cystoscopy showed improved bladder neck patency and some recurrent stone material. [REDACTED] medical records from [REDACTED] document problems of bladder calculi, gross hematuria, and bladder mass. Impressions were: history of bladder stones- etiology may be voiding dysfunction or foreign body insertion; overactive bladder with urge incontinence and severe DO on fluoroscopic urodynamic studies; as well as psychiatric disorder-anxiety. From the procedure report, urodynamics diagnosis was: hypersensitivity, low bladder capacity, normal compliance, severe DO with urodynamic urge incontinence, no reflux, and patient voided with involuntary contraction but there was no signs of obstruction; and the impression was severe idiopathic

overactive bladder with urge incontinence. (Department Exhibit A, pp. 4-7; Petitioner Exhibit 1, p. 2-3; Petitioner Exhibit 2, pp. 3-52)

On [REDACTED], Petitioner was referred to psychiatry. (Department Exhibit A, p. 8)

Based on the objective medical evidence, considered listings included 6.00 Genitourinary Disorders and 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Petitioner cannot be found disabled, or not disabled at this step.

Step 2 requires a determination of whether there has been medical improvement. A [REDACTED] Hearing Decision found Petitioner disabled. The Hearing Decision stated Petitioner's testimony was consistent with the medical records that he was unable to engage in even a full range of sedentary work on a regular and continuing basis. The Hearing Decision stated the medical records indicated Petitioner suffered from polyuria, polydipsia, and a piece of metal in his bladder. It was also noted that a [REDACTED] cystoscopy showed Petitioner would need an open cystotomy and removal of a bladder stone. (Department Exhibit A, pp. 87-89)

Comparison of the Hearing Decision and recent medical records indicates there has not been significant medical improvement with Petitioner's impairments. As summarized above, Petitioner has continued to have ongoing treatment for bladder problems, including recurrent stones, blood in the urine with clots, as well as marked urinary urgency and frequency. After a [REDACTED], cystolitholopaxy and bladder neck resection, Petitioner's bladder impairments continued and he now has an added psychiatric diagnosis in relation to his bladder problems. (See Department Exhibit A, pp. 3-7 and 60-78; Petitioner Exhibit 1, pp. 2-3; Petitioner Exhibit 2, pp. 1-53) The recent medical records supported Petitioner's testimony during this hearing. For example, Petitioner testified that at this point the [REDACTED] doctor will not try a Botox injection treatment until Petitioner has established care with psychiatry. (See Petitioner Exhibit 1, pp. 2-3) Petitioner described his ongoing symptoms, which include going to the bathroom 4-5 times per hour, passing stones with related pain, passing blood and clots, and loss of sleep overnight. During the hearing a break was taken for Petitioner to use the restroom, during which time Petitioner passed another stone. (Petitioner Testimony) Petitioner's testimony at this hearing continues to be consistent with the medical records. (See Department Exhibit A, pp. 3-7 and 60-78; Petitioner Exhibit 1, pp. 2-3; Petitioner Exhibit 2, pp. 1-53) In consideration of all medical evidence, it is found that, overall, there has been no medical improvement. The exceptions contained in 20 CFR 416.994(b)(3) and 20 CFR 416.994(b)(4) are not applicable.

Accordingly, Petitioner is found disabled for purposes of continued MA and SDA benefits.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the MA and SDA benefit programs.

DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED**.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Reinstate Petitioner's MA and SDA cases retroactive to the January 1, 2016, effective date of the closure, if not done previously, to determine Petitioner's non-medical eligibility. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for March 2017.
2. The Department shall supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.

CL/mc



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]