

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

IN THE MATTER OF:

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MAHS Reg. No.: 15-021646
Issue No.: 4009
Agency Case No.: ██████████
Hearing Date: February 01, 2016
County: Ingham

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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, a telephone hearing was held on February 1, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. The Department was represented by ██████████, Hearing Facilitator.

ISSUE

Whether the Department properly close Petitioner's State Disability Assistance (SDA) benefit case based on its determination that Petitioner was no longer disabled?

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 recipient of SDA benefits.
2. In May 2015, Petitioner's updated medical packet was forwarded to the Medical Review Team (MRT) for review of his ongoing eligibility for SDA benefits based on allegations of back and knee pain and lupus.
3. On September 8, 2015, MRT found Petitioner no longer disabled (Exhibit A, pp. 22-29).
4. On November 4, 2015, the Department sent Petitioner a Notice of Case Action notifying him that his SDA case would close effective December 1, 2015 because, among other things, he was not disabled (Exhibit B).

5. On November 12, 2015, the Department received Petitioner's timely written request for hearing concerning the closure of his SDA case (Exhibit A, p. 1).
6. Petitioner reapplied for Supplemental Security Income (SSI) with the Social Security Administration in December 2015 (Exhibit 1).
7. Petitioner alleged physical disabling impairment due to back and knee pain and lupus.
8. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED] birth date; he was [REDACTED]" in height and weighed about [REDACTED] pounds.
9. Petitioner has a GED.
10. Petitioner has an employment history of work as a furniture mover.

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 Human Services Reference Tables Manual (RFT).

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 disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment lasting, or expected to last, at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Once an individual has been found disabled, continued entitlement to benefits based on a disability 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(a). If the individual is not engaged in substantial gainful activity, the trier of fact must apply an 8 step sequential evaluation in evaluating whether an individual's disability continues. 20 CFR 416.994. The review

may cease and benefits may be continued at any point if there is sufficient evidence to find that the individual is still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5). In this case, Petitioner has not engaged in SGA at any time since he became eligible for SDA. Therefore, his disability must be assessed to determine whether it continues.

An eight-step evaluation is applied to determine whether an individual has a continuing disability:

Step 1. If the individual has an impairment, or combination of impairments, which meets or equals the severity of an impairment listed in 20 CFR Appendix 1 of subpart P of part 404, the disability will be found to continue. 20 CFR 416.994(b)(5)(i).

Step 2. If a listing is not met or equaled, it must be determined whether there has been medical improvement as defined in paragraph (b)(1)(i) of 20 CFR 416.994 and shown by a decrease in medical severity. If there has been a decrease in medical severity, Step 3 is considered. If there has been no decrease in medical severity, there has been no medical improvement unless an exception in Step 4 applies. 20 CFR 416.994(b)(5)(ii).

Step 3. If there has been medical improvement, it must be determined whether this improvement is related to the individual's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv); *i.e.*, there an increase in the individual's residual functional capacity (RFC) based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to the individual's ability to do work, the analysis proceeds to Step 4. If medical improvement *is* related to the individual's ability to do work, the analysis proceeds to Step 5. 20 CFR 416.994(b)(5)(iii).

Step 4. If it was found at Step 2 that there was no medical improvement or at Step 3 that the medical improvement is not related to the individual's ability to work, the exceptions in 20 CFR 416.994(b)(3) and (b)(4) are considered. If none of them apply, the disability will be found to continue. If an exception from the first group of exceptions to medical improvement applies, the analysis proceeds to Step 5. If an exception from the second group of exceptions to medical improvement applies, the disability is found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(iv).

Step 5. If medical improvement is shown to be related to an individual's ability to do work or if one of the first group of exceptions to medical improvement applies, **all** the individual's current impairments in combination are considered to determine whether they are severe in light of 20 CFR 416.921. This determination considers all the individual's current impairments and the impact of the combination of these impairments on the individual's ability to function. If the RFC assessment in Step 3 shows significant limitation of the individual's ability to do basic work activities, the analysis proceeds to Step 6. When the evidence shows that all the individual's current impairments in combination do not significantly limit the individual's physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature and the individual will no longer be considered to be disabled. 20 CFR 416.994(b)(5)(v).

Step 6. If the individual's impairment(s) is severe, the individual's current ability to do substantial gainful activity is assessed in accordance with 20 CFR 416.960; *i.e.*, the individual's RFC based on all current impairments is assessed to determine whether the

individual can still do work done in the past. If so, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

Step 7. If the individual is not able to do work done in the past, the individual's ability to do other work given the RFC assessment made under Step 6 and the individual's age, education, and past work experience is assessed (unless an exception in 20 CFR 416.994(b)(5)(viii) applies). If the individual can, the disability has ended. If the individual cannot, the disability continues. 20 CFR 416.994(b)(5)(vii).

Step 8. Step 8 may apply if the evidence in the individual's file is insufficient to make a finding under Step 6 about whether the individual can perform past relevant work. If the individual can adjust to other work based solely on age, education, and RFC, the individual is no longer disabled, and no finding about the individual's capacity to do past relevant work under Step 6 is required. If the individual may be unable to adjust to other work or if 20 CFR 416.962 may apply, the individual's claim is assessed under Step 6 to determine whether the individual can perform past relevant work. 20 CFR 416.994(b)(5)(viii).

Step One

Determining whether an individual's disability has ended for Step 1 requires consideration of 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.

In this case, Petitioner alleges disabling impairments due to lupus, back pain, and knee pain. The medical record presented was reviewed and is briefly summarized below.

On July 24, 2015, Petitioner went to the emergency department complaining of hip pain, knee pain, and oral pain. Lupus was noted in his medical history. (Exhibit A, pp. 43-45). The file included records of a dental abscess in 2013 (Exhibit A, pp. 34-38, 46-48).

An August 7, 2015 lumbar spine MRI showed severe neural foraminal stenosis bilaterally at L5-S2 and disc desiccation, endplate changes and disc bulges at L4-L5 and L5-S1 (Exhibit A, pp. 41-42, 54-55).

An August 17, 2015 left knee MRI showed (i) tearing involving the posterior horn and body of the medial meniscus with apparent flipped fragment seen anteriorly just superior to the anterior horn of the medial meniscus with an additional fragment suggest at the intra condylar notch area and free edge fraying involving the lateral meniscus; (ii) high-grade partial tear involving the anterior cruciate ligament; (iii) longitudinal tearing involving the posterior cruciate ligament; (iv) tricompartmental osteoarthritis worse at the medial compartment; (v) large joint effusion with synovitis and low-density loose bodies; and (vi) mild patellar tendinosis and mild popliteus tendinosis. (Exhibit A, pp. 39-40.)

Based on the medical evidence presented, Listings 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), and 14.02 (systemic lupus erythematosus) were considered. The medical evidence presented is insufficient to establish an inability to

ambulate effectively under 1.00B2b as required to meet or equal a listing under 1.02. There was no evidence of a nerve root compression to support a listing under 1.04, and insufficient evidence that Petitioner's lupus meets or equals a listing under 14.02.

Because the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration, a disability is not continuing under Step 1 of the analysis, and the analysis proceeds to Step 2.

Step Two

If the impairment(s) does not meet or equal a Listing under Step 1, 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 there is medical improvement, the analysis proceeds to Step 3, and if there is no medical improvement, the analysis proceeds to Step 4. 20 CFR 416.994(b)(5)(ii).

In this case, the Department failed to provide any evidence to establish the medical basis for the prior finding of Petitioner's disability and approval for SDA benefits, including whether the prior decision had been made by MRT, the State Hearing Review Team (SHRT), or an administrative hearing. There was no evidence that the prior file was lost. See 20 CFR 416.994(b)(2)(iv)(E). In the absence of any medical evidence establishing the basis for the earlier finding that Petitioner was disabled, the Department has failed to substantiate a decrease in the medical severity of the impairments which were present at the time of the most favorable medical decision in Petitioner's favor. Because there is no evidence of medical improvement, the analysis proceeds to Step 4.

Step Four

When there is no medical improvement, an assessment of whether one of the exceptions in 20 CFR 416.994(b)(5)(iv) applies is required. If no exception is applicable, disability is found to continue. *Id.*

The first group of exceptions 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.

In this case, the Department did not present any evidence establishing that, since he had been approved for SDA benefits to the time of the medical review, one of the above first set of exceptions to medical improvement applied to Petitioner's situation.

The second group of exceptions to medical improvement are found in 20 CFR 416.994(b)(4) and 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).

In this case, the Department has failed to establish that any of the listed exceptions in the second group of exceptions to medical improvement apply to Petitioner's case.

Step 6

In light of the absence of a record concerning the prior basis for the Department's finding that Petitioner was disabled, the medical record reviewed by MRT and presented at the hearing was reviewed, as well as Petitioner's testimony, to determine if Petitioner, based on **all current** impairments, is able to engage in substantial gainful activity, based on his current RFC. 20 CFR 416.994(b)(5)(vi); 20 CFR 416.994(b)(2)(iv)(E). At Step 6, Petitioner's ability to engage in past work based on current RFC is considered.

In this case, Petitioner testified that his knee and back pain affected his ability to walk, stand, sit and lift weight. While he completed household chores, he testified that, because he lived alone, he did not have to perform these tasks on a consistent basis. Both the August 7, 2015 lumbar spine MRI and the August 17, 2015 left knee MRI in particular provide medical support for Petitioner's limitations. Based on the medical evidence and Petitioner's testimony, Petitioner retained the exertional RFC to perform sedentary work. See 20 CFR 416.967(a).

Petitioner's prior employment involved moving furniture, an activity that required that he stand most of the day and lift up to 50 pounds regularly. Therefore, his prior work involved medium work. Based on Petitioner's current RFC limiting him to sedentary work, Petitioner is incapable of performing his past work.

Step 7

In Step 7, an assessment of an individual's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.994(5)(B)(vii). If the individual can adjust to other work, then the disability has ended. *Id.* If the individual cannot adjust to other work, then the disability continues. *Id.*

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, Petitioner was ■ years old at the time of review and at the time of hearing, making him advanced age (age 55 and over) for purposes of Appendix 2. He has a GED. Because his past work involved unskilled labor, he does not have transferable skills. As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities. In light of these factors, the Medical-Vocational Guidelines, 201.04, result in a disability finding based on Petitioner's exertional RFC. Therefore, Petitioner's disability is found to continue at Step 7.

Because (i) the evidence presented does not show a medical improvement and no exception under either group of exceptions at Step 4 applies and (ii) the evidence shows that Petitioner is unable to adjust to other work based on his current RFC, the Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Petitioner has a continuing disability for purposes of the SDA benefit program. Because Petitioner's SDA eligibility continues, the Department did not act in accordance with Department policy when it closed his SDA case.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Petitioner's SDA case effective December 1, 2015;
2. Issue supplements to Petitioner for any lost SDA benefits that he was entitled to receive from December 1, 2015 ongoing if otherwise eligible and qualified in accordance with Department policy;
3. Notify Petitioner of its decision in writing; and
4. Review Petitioner's continued SDA eligibility in September 2016 in accordance with Department policy.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
ment of Health and Human Services

Date Signed: **2/19/2016**

Date Mailed: **2/19/2016**

ACE / tlf

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]