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GOVERNOR

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

MIKE ZIMMER
DIRECTOR

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Date Mailed: March 23, 2016
MAHS Docket No.: 15-023295

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ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 March 17, 2016, in Flint, Michigan. Petitioner, accompanied by her friend ██████████ personally appeared and testified. The Department of Health and Human Services (Department) was represented by Assistance Payment Supervisor ██████████ and Assistance Payment Worker ██████████.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program based upon medical improvement?

FINDINGS OF FACT

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

1. The Department offered a copy of Petitioner's medical records. (Dept Ex. A, pp 1-88, 91-167).
2. Petitioner was receiving SDA at all times pertinent to this case.

3. On May 28, 2015, Petitioner followed up with her primary care physician. Petitioner was diagnosed with severe chronic obstructive pulmonary disease by a pulmonary function test. A spirometry completed on May 14, 2015 was reviewed and there was no change when compared to the prior study. Petitioner was to continue Advair, Tudorza and Albuterol. She was to follow-up in six months with Spirometry. (Dept Exh. A, p 94).
4. On July 6, 2015, Petitioner had an appointment with her primary care physician to review the results of her blood test, medication refills and complaints regarding her chronic obstructive pulmonary disease. Petitioner was diagnosed with hyperlipidemia and left wrist pain. The physician noted Petitioner was currently using Tudorza, Qvar and a nebulizer with good effect. Petitioner had been given samples of Spiriva, Qvar, Breo, Anoro, and Symbicort which had not worked. (Dept Exh. A, p 129).
5. On September 23, 2016, Petitioner underwent a Pulmonary Function Test. During the test, it was noted Petitioner had severe shortness of breath. The results indicated the reduced FVC and FEV1 showed moderate restriction and very mild obstruction. There was no marked improvement in FEV1 after the bronchodilator. Lung age was noted at ■. (Dept Exh. A, pp 85-86)
6. On October 29, 2015, Petitioner filed a Redetermination for SDA benefits alleging continuing disability. (Dept Exh. A, pp 157-163)
7. On December 3, 2015, the Medical Review Team (MRT) denied Petitioner's continuing SDA benefits. The Department mailed Petitioner a Notice of Case Action, informing Petitioner the SDA benefits would close. (Hearing Summary).
8. On December 10, 2015, Petitioner submitted a Request for Hearing to the Department contesting the Department's denial.

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 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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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).

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 question asks:

(i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Petitioner is not disqualified from this step because she has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Petitioner has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CFR 416.994(b)(5)(ii).

The next step asks the question if there has been medical improvement. 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).

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).

In this case, Petitioner underwent a Pulmonary Function Test on September 23, 2015. During the test, it was noted Petitioner had severe shortness of breath. The results indicated the reduced FVC and FEV1 showed moderate restriction and very mild obstruction. There was no marked improvement in FEV1 after the bronchodilator. Lung age was noted at 76. The evaluation does not indicate a decrease in medical severity based on improvement of Petitioner's symptoms.

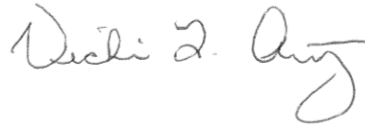
As a result, the Department has not met its burden of proof. The Department has provided some evidence that indicates Petitioner's medical condition may have improved but no that any improvement relates to her ability to do basic work activities. The agency provided no objective medical evidence from qualified medical sources that show Petitioner is currently capable of doing basic work activities. Accordingly, the agency's SDA eligibility determination cannot be upheld at this time.

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 OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Petitioner's SDA back to the date of denial and issue any retroactive SDA benefits she may otherwise be entitled to.
2. Redetermine Petitioner's SDA eligibility in March, 2017.



VLA/db

Vicki Armstrong
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



Petitioner

