RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: May 27, 2016
MAHS Docket No.: 16-004003
Agency No.: [redacted]
Petitioner: [redacted]

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, a telephone hearing was held on May 4, 2016, from Lansing, Michigan. Petitioner personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist [redacted]. [redacted] testified as a witness on behalf of the Department. Department Exhibit A, pages 1 - 1,595 was admitted.

The record closed at the conclusion of the hearing.

ISSUE

Whether the Department properly determined that Petitioner was no longer disabled and denied her Redetermination for Medical Assistance (MA-P) and State Disability Assistance (SDA) 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. Petitioner was an MA-P and SDA recipient at all times pertinent to this hearing.

2. Petitioner's MA-P SDA benefits were scheduled for review in November, 2015.

3. On October 28, 2015, Petitioner submitted her Redetermination.

4. On February 23, 2016, the Medical Review Team (MRT) denied Petitioner's Redetermination indicating that Petitioner was capable of performing other work. (Dept. Exh. A, pp 3-7).

5. On February 26, 2016, the Department issued Petitioner a Health Care Coverage Determination Notice informing her that her MA-P and SDA benefits would close.

6. On March 28, 2016, Petitioner submitted a Request for Hearing. (Dept. Exh. A, pp 2A-2B).

7. On [redacted], Petitioner was admitted to the hospital complaining of chest pain and paresthesia. Petitioner underwent an echocardiogram on [redacted] which showed left ventricular ejection fraction by visual examination of 55% – 60%, normal global left ventricular systolic function, impaired relaxation pattern on left ventricular diastolic filling and mild mitral valve regurgitation. On [redacted], Petitioner underwent a cardiac stress test which revealed an ejection fraction of 50%, down from 55% in August, 2014. (Dept. Exh. p 100-158).

8. On [redacted] Petitioner followed up with her cardiologist. The cardiologist noted Petitioner has hypertension, sarcoidosis, and coronary artery disease. Petitioner had a cholecystectomy in the past and has had thrombocytosis ever since. She has gastritis and had angioplasty and stenting of her mid-left anterior descending coronary artery with a drug-eluting stent in 2014. She also had 80% stenosis in a relatively small right coronary artery at the time, which is being treated medically. She has exertional dyspnea which the cardiologist opined could be related to her sarcoidosis or because of the stenosis in her right coronary artery. Her Imdur dosage was increased from 30 mg daily to 60 mg daily. (Dept. Exh. p 97).

9. On [redacted] Petitioner followed up with her neurologist regarding continued migraines since her hospitalization for a stroke. The neurologist noted Petitioner has a history of sarcoidosis with primary involvement in her joints. She also had thrombocytosis and was started on Hydroxyurea. She also had a history of coronary artery disease with stent placement and is a Hepatitis C carrier. She reported symptoms of stroke with left sided weakness in December, 2014. The neurologist noted Petitioner in the office the previous week complaining of slight worsening of her left sided weakness, left facial numbness which extended into her arm, slurred speech and headache. She was started on Topamax and given Toradol and her headache improved. The neurologist indicated that he explained to Petitioner that Topamax will take some time to become effective and since she was tolerating it, he increased the dose to 50 mg. She was also given a prescription for Lodine 400 mg. (Dept. Exh. A, pp 46-48).

10. On [redacted], Petitioner followed up with her neurologist. The neurologist indicated that Petitioner was tolerating Topamax without significant side effects. Petitioner reported that the Lodine did not help and she was no

longer taking it. She also indicated that her psychiatrist encouraged her to take her Visatril as well and she was taking it twice daily. The neurosurgeon noted Petition had dull and constant bifrontal headache, chronic slurring of her speech, mild left-sided weakness and a left facial droop. (Dept. Exh. A, pp 60-62).

11. On [redacted], Petitioner met with her psychiatrist for a medication review. The psychiatrist noted that Petitioner continued to show symptoms despite taking medications. The psychiatrist opined that he believed it was going to be extremely hard if not impossible for Petitioner to sustain any employment. (Dept. Exh. A, pp 159-163).

12. On [redacted], Petitioner followed up with her psychiatrist for a medication review. Petitioner is diagnosed with Major Depressive Disorder, Recurrent Episode, Moderate degree and Bipolar Affective Disorder. The psychiatrist indicated Petitioner is dealing with multiple medical problems. Petitioner reported her sarcoidosis was getting worse and that she had been put on chronic oxygen. According to the records available, Petitioner had been seeing her psychiatrist since October 2014 at least monthly for medication reviews. Despite the continued treatment involving multiple changes in medication and dosages, the psychiatrist opined that Petitioner's depression was severe and her treatment response was inadequate. (Dept. Exh. A, pp 156-205).

13. Petitioner's disabling impairments include transient ischemic attack, migraines, coronary artery disease, chest pain, left-sided weakness, paresthesia, hypertension, cardiomyopathy, angioedema of lips, ventricular bigeminy, atrial bigeminy, acute tachycardia, acute hypotension, systemic inflammatory response syndrome, hereditary elliptocytosis, chronic irritable bowel syndrome, and chronic sarcoidosis. (Dept. Exh. A, pp 38-42).

14. Petitioner is on oxygen 24/7 and uses a cane.

15. Petitioner is a 47-year-old woman born on [redacted]. Petitioner is 5'1" and weighs 150 pounds. Petitioner has a high school education. Petitioner last worked in 2013 as a library assistant.

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 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 impariment 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.

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 questions 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 CF 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).

Pursuant to federal regulations, at medical review, the Department has the burden of not only proving Petitioner's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The Department has the burden of establishing that Petitioner is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

In this case, the Department has not met its burden of proof. The Department has provided no evidence that indicates Petitioner's condition has improved, or that the alleged improvement relates to her ability to do basic work activities. The Department provided no objective medical evidence from qualified medical sources that show Petitioner is currently capable of doing basic work activities. Accordingly, the Department's SDA and MA eligibility determination cannot be upheld at this time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department erred in determining Petitioner is able to perform other work at this time for MA and SDA eligibility purposes.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Petitioner's August 21, 2015 MA and SDA redetermination, and shall award her all the benefits she may be entitled

to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The Department shall review Petitioner's medical condition for improvement in June, 2017, unless her Social Security Administration disability status is approved by that time.

3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.

VLA/las

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

[redacted]

Petitioner

[redacted]