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: June 9, 2016
MAHS Docket No.: 16-004061
Agency No.: [redacted]
Petitioner: [redacted]

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 May 16, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. [redacted], Petitioner's daughter, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [redacted], hearing facilitator.

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 benefit recipient.

2. Petitioner's only basis for SDA eligibility was as a disabled individual.

3. On [redacted], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual for purposes of SDA eligibility (see Exhibit 1, pp. 4-11).

4. On [redacted], MDHHS terminated Petitioner's eligibility for SDA benefits, effective February 2016, and mailed a Notice of Case Action (Exhibit 1, pp. 13-14) informing Petitioner of the termination.

5. On [redacted], Petitioner requested a hearing disputing the termination of SDA benefits (see Exhibit 1, pp. 2-3).

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Petitioner's hearing request checked a dispute concerning Family Independence Program (FIP) benefits. Petitioner testified a dispute of cash assistance based on disability (i.e. SDA) was intended. MDHHS was not confused by Petitioner's error and prepared for an SDA dispute. MDHHS agreed to defend the denial of SDA benefits and the hearing was conducted accordingly.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (July 2015), p. 5. 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 (July 2015), p. 1. A person is disabled for SDA purposes if he [or she]:

- Receives other specified disability-related benefits or services…, 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., pp. 1-2.

Generally, state agencies such as MDDHS must use the same definition of disability as used under SSI regulations (see 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. MDHHS adopted a functionally identical definition of disability (see BEM 260 (July 2015, p. 10)). The definition of SDA disability is identical except that only a 90 day period of disability is required.

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 (July 2015), 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*.

Once an individual has been found disabled for purposes of disability-related 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. It was not disputed that Petitioner was an ongoing SDA recipient whose benefits were terminated by MDHHS.

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. There was no evidence suggesting that Petitioner received any wages since receiving disability benefits.

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.

Cardiologist office visit notes (Exhibit 1, pp. 76-79) dated [redacted], were presented. It was noted a 2-week event monitor demonstrated "only occasional" isolated PVCs and no evidence of tachycardia. BP was noted to be elevated.

Physician office visit notes (Exhibit 1, pp. 87-93) dated [redacted], were presented. It was noted Petitioner complained of a cough, ongoing for 2 weeks.

Cardiologist office visit notes (Exhibit 1, pp. 72-75) dated [redacted], were presented. Blood pressure was noted to be better controlled. Petitioner's EF was noted to be 53% following MUGA testing (see Exhibit 1, pp. 84-85).

Physician office visit notes (Exhibit 1, pp. 94-98) dated [redacted], were presented. Various Petitioner medications were refilled. Petitioner reported a stable condition.

A Physical Capacities Evaluation (Exhibit A, pp. 5-6) dated [redacted], was presented. The evaluation was signed by a physician with an unspecified history with Petitioner. Petitioner was restricted to 2 hours of standing/walking per 8 hour workday. Petitioner was restricted from using hands for pushing/pulling and repetitive motions (e.g. writing, typing, assembly…). Petitioner was restricted to occasional lifting/carrying of less than 10 pounds, never 10 or more pounds. Petitioner was restricted from bending, squatting, climbing and reaching above shoulder level. Petitioner had "total" restrictions from working on unprotected heights, exposure to marked temperature changes, driving automotive equipment, and exposure to dust, fumes, and gases. The physician stated Petitioner's concentration and attention ability was restricted in a "severe" manner. The basis for restrictions was decreased mental capacity.

Physician office visit notes (Exhibit 1, pp. 99-100) dated [redacted], were presented. Petitioner's weight was noted to be 248 pounds. Ongoing assessments of HTN, cardiomyopathy, CHF, hypercholesterolemia, and BMI exceeding 36 were noted.

Cardiologist office visit notes (Exhibit 1, pp. 68-71) dated [redacted], were presented. It was noted Petitioner had improving left ventricular systolic function. Ankle swelling was reported to be "significantly" improved. Blood pressure was noted to be better controlled.

Physician office visit notes (Exhibit 1, pp. 101-106) dated [redacted], were presented. Petitioner's blood pressure was noted to be 176/90 and 180/120. Petitioner had anxiety meds refilled because he "gets worked up" sometimes.

Cardiologist office visit notes (Exhibit 1, pp. 64-67, 139-142) dated [redacted], were presented. It was noted Petitioner reported chest tightness when he arises; dyspnea was denied. Petitioner's BP was noted to be high. An EKG was noted as performed.

Cardiologist office visit notes (Exhibit 1, pp. 60-63, 134-138) dated [redacted], were presented. It was noted Petitioner's blood pressure was difficult to control. It was noted Petitioner admitted needing to reduce salt intake. A renal artery duplex was planned to check for stenosis.

Cardiologist office visit notes (Exhibit 1, pp. 56-59, 129-133) dated [redacted], were presented. It was noted Petitioner's blood pressure was "much better controlled" after starting on hydralazine. Cardiomyopathy was noted to be well compensated. A renal ultrasound was noted to show no stenosis (see Exhibit 1, p. 83, 126). Petitioner's weight was noted to be 254 pounds. A return visit in 6 months was planned.

An echocardiogram report (Exhibit 1, pp. 80-82, 123-125) dated [redacted], was presented. Petitioner's EF was 50%. Mild regurgitation was noted for Petitioner's aortic, mitral, tricuspid, and pulmonic valves.

Cardiologist office visit notes (Exhibit 1, pp. 53-55) dated [redacted], were presented. It was noted Petitioner's blood pressure was still elevated despite 4 medications being prescribed. It was noted Petitioner's ejection fraction was about 50%.

A Medical Needs form (Exhibit 1, p. 16) dated [redacted], was presented. The form was signed by a phys9ician who stated to see Petitioner 1-2 times per 3 months. Diagnoses of HTN, CHF, and hyperlipidemia were noted. Petitioner's physician stated Petitioner needed help with bathing, grooming, mobility, meal preparation, shopping, laundry, and housework.

Cardiologist office visit notes (Exhibit 1, pp. 23, 49-52, 127-128) dated [redacted], were presented. It was noted Petitioner's blood pressure was under much better control since an increase in prescribed hydralazine in a previous visit. Petitioner denied chest pain or pressure. A NYHA classification of II was noted. Physical examination findings and a review of systems were all normal and/or unremarkable other than a heart murmur (grade 2/6). A follow-up in 6 months was scheduled. Current diagnoses included renovascular HTN, hyperintensive heart disease without heart failure, non-rheumatic valve insufficiency, dilated cardiomyopathy, artherosclerosis of renal artery, hyperintensive renal disease (malignant), and others.

Physician office visit notes (Exhibit 1, pp. 107-113) dated [redacted], were presented. It was noted Petitioner reported "functioning as not difficult at all." Anxiety, fearful thoughts, and diminished interest were reported. Petitioner's BP was 142/86.

Physician office visit notes (Exhibit 1, pp. 114-120) dated [redacted], were presented. It was noted Petitioner reported cold symptoms, ongoing for 12 days. Albuterol was prescribed. Petitioner's BP was 132/96.

A prescription form (Exhibit A, p. 7) with an illegible date from 2016 was presented. Diagnoses of HTN and CHF were noted.

A Physical Residual Functional Capacity Assessment (Exhibit 1, pp. 24-31) dated [redacted], was presented. The form was completed by a consultative physician, as part of the SSA application process. Petitioner was deemed capable of occasional lifting/carrying of 20 pounds and frequent carrying/lifting of 10 pounds. Petitioner was deemed capable of standing and/or walking 6 hours in an 8 hour workday. Petitioner had unlimited pushing/pulling abilities. The basis for stated restrictions included an echocardiogram dated [redacted], and office visit notes dated [redacted]

Hospital emergency room discharge documents (Exhibit A, pp. 1-4) dated [redacted] were presented. Hypokalemia was noted as the basis for the visit. Treatment details were not apparent.

Petitioner testified he experiences breathing difficulties when he over-exerts himself. Petitioner testified he has not suffered breathing difficulties since stopping employment

because he paces himself in activities. Petitioner testified he regularly experiences tiredness. Petitioner testified he is unable to cook because he might unexpectedly fall asleep.

Petitioner testified he can only walk less than a block before losing his breath. Petitioner estimated he can only stand 20-45 minutes before he feels leg and heart pain. Petitioner testified he could sit 1-2 hours, though he would have to get up to get his blood moving. Petitioner testimony estimated he could occasionally lift/carry 10-15 pounds.

Petitioner testified he uses a walker when in public. He testified he can bathe himself without help, though he uses a shower chair. Petitioner testified he dresses himself, but does so slowly. Petitioner testified he does very little housework and has laundry done by a caregiver. Petitioner testified he drives, though he is worried about falling asleep at the wheel.

Cardiac-related listings (Listing 4.00) were considered based on Petitioner's cardiac treatment history. In 2014, Petitioner's EF was dangerously low. It has since significantly increased. Petitioner failed to meet any cardiac listings.

A listing for anxiety-related disorders (Listing 12.06) was considered based on complaints of anxiety. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Petitioner had a complete inability to function outside of the home.

It is found Petitioner failed to establish meeting any SSA listings. Accordingly, the 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).

MDHHS testimony indicated Petitioner was approved for disability by MRT in October 2013. The testimony was not verified but was not disputed by Petitioner. The approval date is consistent with Petitioner's treatment history. October 2013 will be accepted as when Petitioner was approved by MDHHS for SDA benefits.

MDHHS presented no medical documents dated earlier than October 2013. Thus, MDHHS presented no documents that were a part of the original disability claim.

Medical records suggested Petitioner's medical condition improved from 2014 to the present. It is somewhat tempting to find medical improvement based on presented medical records. Ultimately, this temptation is trumped by the absence of records

justifying the original finding of disability. Medical records justifying the original determination of disability are needed for a full understanding of Petitioner's medical condition. Without the presentation of such records, an informed finding of medical improvement cannot be made.

It is found MDHHS failed to establish medical improvement. Accordingly, the analysis 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 claimant 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 claimant is deemed not disabled if it is established that the claimant can engage is substantial gainful activity. If no exception applies, then the claimant's disability is established.

The second group of exceptions allow a finding that a claimant 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. It is found that Petitioner is still a disabled individual. Accordingly, it is found 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 begin to perform the following actions within 10 days of the date of mailing of this decision:

(1) reinstate Petitioner's SDA eligibility, effective February 2016;
(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**.

CG/hw

Christian Gardocki
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]