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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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Date Mailed: June 17, 2016
MAHS Docket No.: 16-004538
Agency No.: [REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 19, 2016, from Lansing, Michigan. The Petitioner was represented by himself and his brother, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor and [REDACTED], Eligibility Specialist.

ISSUE

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

FINDINGS OF FACT

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

1. On November 21, 2014, the Petitioner was approved for SDA by the Medical Review Team with medical review due on October 2015. Department Exhibit 1, pgs 1-2.
2. On March 11, 2016, the Medical Review Team (MRT) denied the Petitioner's medical review for SDA stating that the Petitioner had medical improvement and was capable of performing other work. Department Exhibit 1, pgs 1-2.
3. On March 15, 2016, the Department Caseworker sent the Petitioner a notice that he was denied for continued SDA because he had had medical improvement.

4. On March 28, 2016, the Department received a hearing request from the Petitioner, contesting the Department's negative action.
5. The Petitioner is a ■ year-old man whose date of birth is ■■■■■■■■■■. The Petitioner is 5' 5" tall and weighs 138 pounds. The Petitioner has a High School diploma. The Petitioner was special education in all subjects in high school. The Petitioner can read, but not write well and can do basic math except for division. The Petitioner was last employed as an insulator in 2007 at the medium level.
6. The Petitioner's alleged impairments are 2 heart attacks in December 2011 and December 2012, reading disability, and 30% diabetic heart capacity.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . 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.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.

- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not

enough to establish that there is a physical or mental impairment.

- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

In general, Petitioner has the responsibility to prove that he/she is disabled. Petitioner's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only Petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the Petitioner has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be “disabled” for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual’s disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual’s ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

Step 1

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the Petitioner is not engaged in substantial gainful activity and has not worked since 2007. Therefore, the Petitioner is not disqualified from receiving disability at Step 1.

Step 2

In the second step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner’s impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Petitioner’s medical record will not support a finding that Petitioner’s impairment(s) is a “listed impairment” or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the Petitioner’s impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the Petitioner is disqualified from receiving disability at Step 2.

Step 3

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the Petitioner was disabled or continues 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 Petitioner’s impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the Petitioner’s ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

On September 10, 2015, the Petitioner was seen by his treating physician for an office visit. He presented with diabetes and hypertension. The Petitioner had an essentially normal physical examination. He was still smoking cigarettes even with his past heart

history. His blood sugars were vastly improved. He was advised to increase his physical activity. His ischemic heart disease was stable and he was to continue his medications. It was strongly recommended that he stop smoking. Department Exhibit 1, pgs. 59-66.

On January 27, 2016, the Petitioner was seen by a clinical psychologist for an Intelligence Testing with Mental Status Evaluation. His intellectual ability has declined since 2014 where he would be qualified to be assessed as Mild Mental Retardation. His prognosis was guarded. The Petitioner would require some level of guardianship and some degree of help in daily functioning. He may have some difficulty maintaining focus and follow through on tasks requiring adult supervision. In addition, he may also have some difficulty following direction and approaching tasks in a reasonably organized manner. The Petitioner is not capable of managing his benefit funds. His diagnosis was other specified attention deficit hyperactivity disorder, predominantly inattentive type. Department Exhibit 1, pgs. 51-57.

On January 26, 2016, the Petitioner was seen for a medical evaluation at [REDACTED]. His chief complaints were diabetes, heart attacks, ischemic cardiomyopathy, head injury, and copd. He had an essentially normal physical examination. He walks with a normal gait without the use of an assistive device. The Petitioner was not dyspneic. His obstructive disease appears to be due to his chronic tobacco use. He had valvular disease today, but there was no finding of lower extremity edema. He does not appear to be actively declining at present. Department Exhibit 1, pgs. 44-50.

On March 1, 2016, the Petitioner was seen for a Pulmonary Function Report at [REDACTED]. He was 134 pounds and 65 inches tall. His FEV1 was 1.62/1.62/1.38 before bronchodilator and after bronchodilator 0.92/0.86/0.85 and FVC 2.74/2.66/2.71 before bronchodilator and after bronchodilator 2.54/2.57/2.53. Department Exhibit 1, pgs. 42-43.

On March 28, 2016, the Petitioner underwent a psychological evaluation with HRA Psychological Services. There was no evidence of a severe thought disorder or risk factors. He was cognitively impaired at the higher end of the borderline range. His prognosis for significant improvement was limited primarily due to the maintenance impact of his medical status. Competency is marginal, but he appears accepting of outside help. He appears to function at the low skilled work, with significant and ongoing supervision and tolerance. He is not viewed as having the cognitive capabilities to maintain gainful employment. Petitioner Exhibit 1, pgs. a-j.

At Step 3, this Administrative Law Judge finds that the Petitioner does not have medical improvement. He does continue to be a chronic smoker that exacerbates his copd. The Petitioner is cognitively impaired. The Petitioner has physical impairment with his heart with 3 stents and 2 heart attacks that affect his stamina. As a result, the Petitioner is not able to perform simple and unskilled work. Therefore, the Petitioner is not disqualified from receiving disability at Step 3.

Step 4

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to Petitioner's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been medical improvement where he can perform work.

At Step 4, the Petitioner testified that he does perform some of his daily living activities. The Petitioner testified that his condition has not worsened. He is has a learning disability as a mental impairments. The Petitioner smokes a ½ a pack of cigarettes a day. He also stopped drinking in 1993 where before he drank heavily. He stopped using illegal or illicit drugs of marijuana in 1985. The Petitioner did not think that there was any work that he could perform.

This Administrative Law Judge finds that the Petitioner's medical improvement is related to his ability to do work. The Petitioner is not currently able to perform at least work. He is physically and mentally limited. Therefore, the Petitioner is not disqualified from receiving disability at Step 4 where the Petitioner cannot perform work. If there is a finding of medical improvement related to Petitioner's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

Step 6

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the Petitioner's current impairment(s) is not severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a Petitioner's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. He has a learning disability resulting in cognitive impairments. He has heart issues from 3 stents and 2 heart attacks, which results in physical limitations. In this case, this Administrative Law Judge finds Petitioner cannot perform at simple and unskilled work. See Steps 3 and 4. Therefore, the Petitioner is not disqualified from receiving disability at Step 6 where the Petitioner passes for severity.

Step 7

In the seventh step of the sequential evaluation, the trier of fact is to assess a Petitioner's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the Petitioner's current residual functional capacity based on all current impairments and consider whether the Petitioner can still do work he/she has done in the past. At Step 7, The Petitioner was last employed as an insulator at the medium level in 2007. The Petitioner is physically limited. In this case, this Administrative Law Judge finds that Petitioner cannot perform simple and unskilled work. The Petitioner is not capable of performing his past, relevant work. See Steps 3 and 4. Therefore, the

Petitioner is not disqualified from receiving disability at Step 7 where the Petitioner is not capable of performing his past relevant work.

Step 8

The objective medical evidence on the record is sufficient that the Petitioner lacks the residual functional capacity to perform some other less strenuous tasks or that he is physically unable to do any tasks demanded of his. The Petitioner's testimony as to his limitation indicates his limitations are non-exertional and exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the Petitioner testified that he has a learning disability. He is not taking medications nor in therapy. See SDA analysis step 2. There was no evidence of risk factors or of a severe thought disorder. The medical evidence on the record is sufficient to support a mental impairment that is so severe to prevent the Petitioner from performing simple and unskilled work.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the Petitioner can do any other work, given the Petitioner's residual function capacity and Petitioner's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon the Petitioner's vocational profile of a closely approaching advanced individual, with a high school education, and a history of simple and unskilled work, SDA is approved using Vocational Rule 201.09 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as a learning disability. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. This Administrative Law Judge finds that Petitioner does not have medical improvement and the Department has not established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it proposed to close Petitioner's SDA case based upon medical improvement. Because the Petitioner does meet the disability criteria for SDA, he has not had medical improvement and is not capable of performing simple and unskilled work.

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 medical review of SDA benefit programs. The Petitioner is eligible for SDA based on his medical review closure of April 1, 2016 with a medical review date of July 2018.

DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED**. The Petitioner is eligible for SDA based on his medical review closure of April 1, 2016 with a medical review date of July 2018.

Carmen G. Fahie

Carmen G. Fahie
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

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