



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: December 29, 2016
MAHS Docket No.: 16-014446
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 December 1, 2016, from Lansing, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED] Hearing Facilitator. Department Exhibit 1, pp.1-1051 was received and admitted. Petitioner Exhibit A. p.1 was received and admitted.

ISSUE

Whether the Department properly determined that Petitioner was no longer disabled for purposes 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. Petitioner was previously awarded SDA benefits.
2. In March 2016, the Department reviewed Petitioner's SDA eligibility.
3. On September 13, 2016, the MRT found Petitioner no longer disabled.
4. The Department notified Petitioner of the MRT determination.
5. On September 21, 2016, the Department received Petitioner's timely written request for hearing.

6. Petitioner has physically disabling impairments including COPD, right shoulder injury, schizoaffective disorder, bipolar disorder, and panic disorder.
7. Petitioner has the following symptoms: pain, fatigue, shortness of breath, insomnia, memory and concentration problems, auditory hallucinations, paranoia, and panic attacks.
8. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.
9. Petitioner has had no medical improvement in his condition.
10. Petitioner credibly testified that his physical health has not improved significantly since he was found to be disabled.
11. Petitioner takes the following prescribed medications:
 - a. zyprexa
 - b. resteril
 - c. neurontin
 - d. klonopin
 - e. baclofen
 - f. ventolin
 - g. propanolol
 - h. invega
 - i. tudor
12. Petitioner testified to the following physical limitations:
 - I. Sitting: 30 minutes
 - II. Standing: 30 minutes
 - III. Walking: 2 blocks
 - IV. Bend/stoop: difficulty
 - V. Lifting: 10-15 lbs.
 - VI. Grip/grasp: no limitations
13. In a Consultative Psychological Examination Report dated July 13, 2016, Petitioner was found to have the following prognosis: "He has a guarded prognosis. He can be expected to have thinking difficulties that will interfere with his ability to sustain a normal work day. He seems quite anxious around others. Drinking was likely a way to cope with these feelings and he is embedded in services at this point to help him find other ways to cope, but his mental health appears chronic." (Dept. Ex. 1. pp. 386-390)
14. Petitioner's Treating Psychiatrist [REDACTED] provided the following statement

dated August 9, 2016. "[REDACTED]" is receiving psychiatric services from this agency. He will not be able to hold a gainful employment in his current state of mind." (Petitioner Ex. A, p.1)

15. Petitioner was not working at the time of hearing. Petitioner last worked in 2013 as an exterior painter.

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.

Receipt of SSI or RSDI 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.

Disability is defined as 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(a). The person claiming a physical, or mental, disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities, or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician, or mental health professional, that an individual is disabled or blind, absent supporting medical evidence is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes

to relieve pain; (3) any treatment, other than pain medication, that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Once an individual has been found disabled for purposes of MA 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. In evaluating a claim for ongoing MA 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 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 first step in the analysis in determining whether an individual's disability has ended 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 CFR 416.994(b)(5)(i). If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, 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 no medical improvement is found and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii).

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v). If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi). If an individual can perform past relevant work, disability

does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical, or mental, abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) 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.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement 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). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Petitioner's disability continues looks at the severity of the impairment(s) and whether it meets, or equals, a listed impairment in Appendix 1.

At the time of Petitioner's initial approval, Petitioner had a diagnosis of shoulder injury, schizoaffective disorder and COPD. Petitioner was previously found disabled.

Listing:

In this case, Petitioner's diagnosis has not changed. Petitioner's impairments do not meet or equal listing, 12.03, 3.03 and 1.02. In light of the foregoing, a determination of whether Petitioner's condition has medically improved is necessary.

As noted above, Petitioner was previously found disabled. In comparing those medical records to the recent evidence (as detailed above), it is found that Petitioner's condition has not medically improved. Accordingly, Petitioner's disability is found to have continued at Step 2. 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii) The Department has failed to meet its burden proving that Petitioner has had medical improvement that would warrant a finding that Petitioner is no longer disabled. The Department could not explain at hearing in what way Petitioner's health had improved.

In this case, Petitioner is found disabled for purposes of continued SDA entitlement. The Department failed to present adequate proof that Petitioner has had medical improvement.

Therefore, the Administrative Law Judge finds that Petitioner met the Department's definition of disabled for the purposes of continued SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds Petitioner disabled for purposes of continued SDA benefits.

Accordingly, it is **ORDERED:**

1. The Department's determination is **REVERSED**.
2. The Department shall initiate review of the March 2016 redetermination application for SDA to determine if all other non-medical criteria are met, and inform Petitioner of the determination.
3. The Department shall supplement for any lost benefits (if any) that Petitioner was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review Petitioner's continued eligibility in December 2017 in accordance with Department policy.

AM/mc



Aaron McClintic
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

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