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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

[REDACTED]

Date Mailed: March 9, 2016
MAHS Docket No.: 16-000600
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 March 2, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED] Petitioner's case manager from [REDACTED] testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

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], Petitioner's MDHHS specialist requested MRT to reconsider the determination of disability (see Exhibit 1, p. 12).
5. On an unspecified date, MRT again determined that Petitioner was not a disabled individual for purposes of SDA eligibility.
6. On [REDACTED], MDHHS terminated Petitioner's eligibility for SDA benefits, effective February 2016, and mailed a Notice of Case Action (Exhibit 1, pp. 14-15) informing Petitioner of the termination.
7. 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).

Before an SDA analysis is undertaken, it should be noted Petitioner's hearing request indicated she had difficulty with public transportation due to anxiety around people. Petitioner's hearing request also indicated she might be able to obtain suitable transportation from her mental health provider. Petitioner attended the hearing without special accommodation. During the hearing, Petitioner was asked if she required special transportation. Petitioner responded that her transportation needs were met.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (January 2013), p. 4. 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 2014), p. 1.

A person is disabled for SDA purposes if he/she:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, 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.

Generally, state agencies such as MDDHS must use the same definition of SSI disability as found in the federal regulations. 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. The definition of SDA disability is identical except that only a three month 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 2014), 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. Petitioner was previously certified by the MRT as unable to work for at least 90 days. At Petitioner's most recent SDA benefit redetermination, MDDHS determined that Petitioner was no longer disabled.

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.

A Mental Residual Functional Capacity Assessment (Exhibit 1, pp. 45-46) dated [REDACTED], was presented. The assessment was signed by a treating social worker with an unspecified history of treating Petitioner. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the

patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". It was noted that Petitioner was markedly restricted in the following abilities:

- Understanding and remembering detailed instructions
- Carrying out detailed instructions
- Maintaining concentration for extended periods
- Performing activities within a schedule and maintaining attendance and punctuality
- Sustaining an ordinary routine without supervision
- Working in coordination or proximity to other without being distracting
- Completing a normal workday without psychological symptom interruption
- Accepting instructions and responding appropriately to criticism
- Responding appropriately to changes in the work setting
- Traveling to unfamiliar places including use of public transportation

An internal medicine examination report (Exhibit 1, pp.37-45) dated [REDACTED], was presented. The report was noted as completed by a consultative physician. Petitioner reported she is short of breath when she exerts herself. Petitioner reported no hospital admissions related to the problem. Petitioner conceded she was a half pack per day tobacco smoker. Petitioner reported a history of back pain, left hand tendonitis, right hand CTS, and a history of a torn right foot ligament. Reduced ranges of motion were noted in bilateral hip forward flexion (50°- normal 100°). Impressions of bronchitis, neuropathy, depression, and chronic pain were noted. It was noted that Petitioner was able to perform all 23 listed work-related activities which included sitting, standing, lifting, carrying, stooping, bending, and reaching. The examiner stated that clinical evidence did not support a need for a cane.

A mental health center After Visit Summary (Exhibit 1, pp. 17-18) dated [REDACTED], [REDACTED] was presented. It was noted that Petitioner reported heightened depression and anxiety after thinking she was getting better. Petitioner also reported feeling like she was "going backwards." A medication review was planned.

Mental health center case management notes (Exhibit 1, pp. 19-23) dated [REDACTED] [REDACTED] were presented. Various Petitioner goals including the following were noted: meeting with psychiatrist monthly, case management meetings on at least a monthly basis, peer support treatment meetings, and attendance at group therapy when needed.

Petitioner testified she suffers from bilateral Meniere's disease which prevents her from driving. Petitioner also testified she has a dislocated rotator cuff in her right shoulder. Petitioner testimony conceded her physical problems do not restrict her from performing past employment. Petitioner testimony suggested her mental health problems are debilitating.

Petitioner testified she has symptoms of PTSD, in part because of recent domestic violence. Petitioner also testified she was traumatized after being robbed at gunpoint in January 2014.

Petitioner testified she attends weekly therapy sessions and regular psychiatric sessions (every 6 weeks). Petitioner testified her case manager regularly visits her at her home.

Petitioner testified she gets significant anxiety from talking to people. Petitioner testified she has to use breathing techniques to calm herself. During the hearing, Petitioner began to become hysterical when recounting some of the details of her past. Petitioner testified that she is afraid to leave her house alone. Petitioner testified that she must have someone accompany her to the store. Petitioner testified she shakes and has difficulty breathing whenever she leaves her home.

Petitioner's treating case manager testified she has frequently witnessed Petitioner experience panic attacks, particularly when discussing past trauma. Petitioner's case manager described Petitioner as "very emotionally unstable."

As an example of her instability, Petitioner recounted a job she was hired to perform in January 2015. A letter from Petitioner's former employer (it was read into the record) indicated Petitioner was a friend who worked with Petitioner in the past. Petitioner's former employer suggested Petitioner was hired based on her previous work excellence. The new job allowed Petitioner to work from home in some type of website sales development area. Petitioner testimony indicated she was fired after 2 weeks for lacking concentration. Petitioner's former employer indicated Petitioner's work abilities significantly diminished from the time he previously worked with Petitioner.

A listing for joint dysfunction (Listing 1.02) was considered based on Petitioner's complaints of shoulder, foot, and wrist pain. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively or perform fine and gross movements with her upper extremities.

A listing for spinal disorders (Listing 1.04) was considered based on Petitioner's back pain complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for chronic pulmonary insufficiency (Listing 3.02) was considered based on Petitioner's complaints of bronchitis. The listing was rejected due to a lack of respiratory testing evidence.

A listing for peripheral neuropathies (Listing 11.14) was factored based on a a documented diagnosis. The listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

A listing for affective disorder (Listing 12.04) was considered based on diagnoses of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration (from an acceptable medical source). It was also not sufficiently established that Petitioner required a highly

supportive living arrangement, suffered repeated episodes of decompensation, or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

A listing for anxiety-related disorders (Listing 12.06) was considered based on a diagnosis of an anxiety disorder. This listing was rejected for the same reasoning the affective disorder listing was rejected. It was also not sufficiently established that Petitioner had a complete inability to function outside of the home.

It should be noted that presented evidence was suggestive that Petitioner had symptoms of PTSD and/or depression that could meet listing requirements. The listings were ultimately rejected due to the very limited treatment history presented.

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).

The original finding of disability was based on a Hearing Decision (Exhibit 1, pp. 24-32) dated [REDACTED]. The authoring administrative law judge (ALJ) determined Petitioner met the requirements of Listing 12.04 (specifically, Parts A and B).

None of the documents corresponding to Petitioner's approval for disability were presented. Generally, MDHHS cannot establish medical improvement without the full presentation of documents associated with the original finding of disability. In the present case, the ALJ's citation of documents supporting disability will be accepted as an adequate substitute.

The authoring ALJ cited two documents to support the finding of disability. A Medical Examination Report dated [REDACTED] (presumably from a treating physician) indicated Petitioner was tearful, unable to work, and with a deteriorating condition. A psychological examination report (from an unknown source) dated [REDACTED], indicated diagnoses of depression and PTSD. Petitioner's GAF was stated to be 44.

Updated treatment documents provided little insight into Petitioner's current symptoms. Statements from a treating psychiatrist and/or psychologist were not presented. An updated GAF was not presented. Regular therapy and/or case management encounters were not presented. The only presented statements from an acceptable medical source came from a consultative examiner.

A mental status examination report (Exhibit 1, pp. 33-36) dated [REDACTED], was presented. The report was noted as completed by a consultative psychiatrist following

an examination of Petitioner. The report was authored by a consultative psychiatrist. Petitioner reported a history of depression. It was noted Petitioner cried when she spoke of a history of domestic violence, which began in 2012. Various episodes of brutalization by Petitioner's partner were noted. It was noted (and testified to by Petitioner) that her partner was shot and killed by police. Petitioner reported needing redirection with daily activities. A history of nightmares was also reported by Petitioner. Observation and assessments of Petitioner included marginal contact with reality and being overly-talkative. The examiner determined Petitioner was unable to function at a fully sustained basis. Diagnoses of major depressive disorder and PTSD were noted. A diagnosis of alcohol, cannabis, and nicotine disorder was also noted. A guarded prognosis was noted.

A statement that Petitioner is unable to function at a fully sustained basis is indicative of a lack of medical improvement. A guarded prognosis is indicative of doubt in Petitioner's response to therapy; this is also indicative of a lack of medical improvement.

Based on the limited presented evidence, it is found MDHHS failed to establish Petitioner is medically improved. Accordingly the analysis may proceed 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 in 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]

[REDACTED]

Petitioner

[REDACTED]