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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: April 11, 2016
MAHS Docket No.: 16-002160
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 April 4, 2016, from Detroit, Michigan. Petitioner appeared and was represented by [REDACTED] [REDACTED] Petitioner's sister. 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. 7-13).
4. 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.

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).

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.*

Petitioner requested a hearing to dispute a termination of SDA eligibility, effective February 2016. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 4-6) verifying the basis for termination was Petitioner was not disabled (and did not meet other SDA qualifying factors).

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.

A summary of Petitioner's history was reported to Petitioner's treating psychiatrist (see Exhibit 1, p. 67) by Petitioner's sister. Petitioner's sister reported that Petitioner was very close with her aunt. Petitioner's sister reported that Petitioner underwent a dramatic change in mental status after her aunt died (documentation suggested that Petitioner's aunt was killed in the house while Petitioner was present). Petitioner was 4 years old at the time. Petitioner's sister reported that Petitioner had to be made to attend school. Petitioner's sister reported that one of Petitioner's teachers was physically abusive which caused Petitioner to be physically ill (fevers and vomiting) and to avoid school. Petitioner was reported to have dropped-out of school while in the 5th grade.

Petitioner's sister testified Petitioner has since been socially isolative and incapable of taking care of her basic needs. Petitioner's testified Petitioner has been taken care of by her family for Petitioner's entire life.

A Medical Examination Report (Exhibit 1, pp. 118-120) dated [REDACTED], was presented. The form was completed by a general practitioner with an approximate 5

year history of treating Petitioner. Petitioner's physician listed diagnoses of moderate mental retardation, hypertension, and depression. It was noted Petitioner was limited in sustaining concentration.

A Psychiatric Evaluation dated [REDACTED] (Exhibit 1, pp. 61-68) from a treating mental health agency was presented. It was noted Petitioner was a patient of the agency since 2013. Mental health assessments included the following: dramatic appearance, poor concentration, emotional insight, and goal-directed speech. Petitioner's GAF was 50.

A Psychiatric/Psychological Examination Report (Exhibit 1, pp. 130-131 and 133) dated [REDACTED], was presented. The form was completed by Petitioner's treating psychiatrist. It was noted Petitioner speaks minimally and uses hand gestures to explain behaviors. It was noted Petitioner was dependent on family members. Petitioner's GAF was 40. Moderate mental retardation was noted.

A Mental Residual Functional Capacity Assessment (Exhibit 1, pp. 131-132) dated [REDACTED], was presented. The assessment was noted as completed by a treating psychiatrist. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. Petitioner was assessed to be markedly limited in all 20 work activities, which included the following:

- Remembering locations and other work-like procedures
- Understanding and remembering 1 or 2-step directions
- Understanding and remembering detailed instructions
- Carrying out simple 1-2 step directions.
- 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
- Making simple work-related decisions
- Completing a normal workday without psychological symptom interruption
- Interacting appropriately with the general public
- Asking simple questions or requesting assistance
- Accepting instructions and responding appropriately to criticism
- Getting along with others without exhibiting behavioral extremes
- Maintaining socially appropriate behavior and adhering to general cleanliness standards
- Responding appropriately to changes in the work setting
- Being aware of normal hazards and taking appropriate precautions
- Traveling to unfamiliar places including use of public transportation
- Setting realistic goals or making plans independently of others.

Medical review notes (Exhibit 1, pp. 54-59) from a treating mental health facility dated [REDACTED], were presented. Petitioner's sister reported symptoms of fatigue, social withdrawal, impatience, lack of concentration, and memory loss. Petitioner's sister reported that her sister watches television constantly. Mental status examination assessments included dramatic appearance, unresponsive attitude, poor concentration, emotional insight, limited judgment, depressed affect, isolative psychomotor activity, and poverty of speech. A diagnosis of major depressive disorder (single episode and mild) was noted.

Medical review notes (Exhibit 1, pp. 37-42) from a treating mental health facility dated [REDACTED], were presented. It was noted Petitioner's sister reported Petitioner was doing better in sleep, appetite, and hygiene.

A mental status examination report (Exhibit 1, pp.32-34) dated [REDACTED], was presented. The report was noted as completed by a consultative licensed psychologist. It was noted Petitioner spoke 7-8 words during the interview and that she refused to answer questions. It was noted Petitioner's sister provided all of Petitioner's history. Petitioner's sister reported that Petitioner does not know how to do anything. As an example, Petitioner's sister reported that her sister will continuously eat unless she is told to stop. Another provided example was that Petitioner would not shower or change clothes unless her family tells her to do so. Other activities Petitioner reportedly could not perform included: tying shoes, making a sandwich, or making clothes right-side out. Petitioner's sister reported that Petitioner's problems have been ongoing since she was 4 years old. The examiner determined Petitioner appeared to be in contact with reality. Petitioner's manner and motivation were poor. Insight and judgment were not addressable, presumably due to Petitioner's lack of cooperation. A diagnostic impression of adjustment disorder with mixed anxiety and depression was noted. It was noted Petitioner could not manage funds. The examiner noted Petitioner appeared to have difficulty carrying out 1-step instructions. The examiner noted Petitioner did not appear to be able to adhere to standards of behavior or safety issues.

Various physician office visit notes (Exhibit 1, pp. 88-100) were presented. Petitioner's sister did not allege Petitioner had any physical problems. The documents were not considered other than a consistent reference that Petitioner displayed mental retardation.

Petitioner was brought to the hearing by her sister. Petitioner's sister testified that Petitioner rarely speaks. During the hearing, Petitioner was verbally unresponsive to questions. All information was provided by Petitioner's sister.

Petitioner's sister testified Petitioner rarely speaks to even her family. Petitioner's sister testified that her sister is getting less verbal over time. Petitioner's sister testified that Petitioner only speak a few words.

Petitioner's sister testified that a typical day for Petitioner includes watching 9 hours of television. Petitioner's sister testified that Petitioner does not like having her television

watching interrupted. Petitioner's sister testified that Petitioner can sometimes be heard grumbling in her room whenever her family forces her to perform some activity that Petitioner does not want to perform (e.g. showering or changing clothes).

Petitioner's sister testified that Petitioner is able to pick out her own clothes and dress herself. Petitioner's sister testified Petitioner will not shower or eat unless she is asked to do so. Petitioner's sister testified that Petitioner is unable to read, write, or count. Petitioner's sister testified that her sister will not leave the house by herself. Petitioner's sister testified that Petitioner has tried to help with cleaning and laundry; Petitioner's sister testified that the chores have to be redone whenever Petitioner helps.

Petitioner's sister testified that her sister's attitude improved since Petitioner began seeing a psychiatrist. As an example, Petitioner's sister testified Petitioner used to eat by herself, but she now eats with her family. Petitioner's sleep has also improved.

Only diagnoses of depression and adjustment disorder were established. Petitioner's symptoms and reported history are not closely aligned to adjustment disorder or depression symptoms (e.g. suicide attempts, hallucinations, feelings of worthlessness, anhedonia...). Petitioner's symptoms and history are more akin to autism, cognitive disorder, and/or post-traumatic stress. For purposes of this decision, Petitioner will be evaluated under the listing for autism which reads as follows:

12.10 Autistic disorder and other pervasive developmental disorders:

Characterized by qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often, there is a markedly restricted repertoire of activities and interests, which frequently are stereotyped and repetitive.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of the following:

1. For autistic disorder, all of the following:
 - a. Qualitative deficits in reciprocal social interaction; and
 - b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity; and
 - c. Markedly restricted repertoire of activities and interests;

OR

2. For other pervasive developmental disorders, both of the following:
 - a. Qualitative deficits in reciprocal social interaction; and
 - b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration

Petitioner's near absence of speech was well established. It is of little importance whether it is caused by cognitive impairment or psychological restriction. It is found Petitioner possesses qualitative deficits in reciprocal social interaction. Thus, Petitioner meets Part A of the autism listing.

Petitioner's GAF was assessed to be 40 and 50. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." A GAF of 31-40 is described as "some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood." Petitioner's GAFs are consistent with marked social, concentration, and/or daily activity restrictions.

Presented evidence also sufficiently verified Petitioner has marked restrictions in performing daily activities and maintaining social function. The evidence was highly suggestive that Petitioner meets SSA listing requirements for autism. The evidence was supportive of Petitioner's reported history and presented treatment records. MDHHS presented records that suggested Petitioner is not so disabled.

A Mental Residual Functional Capacity Assessment (Exhibit 1, pp. 14-17) dated [REDACTED], was presented. The assessment appeared to be completed by a psychologist (based on PhD credentials) employed by SSA. The psychologist stated Petitioner was moderately limited in the following abilities: understanding and remembering detailed instructions, carrying out detailed instructions, maintaining attention and concentration for extended periods, sustaining an ordinary routine without special supervision, interacting appropriately with the public, getting along with coworkers without exhibiting extreme behaviors, and responding appropriately to changes in the work setting. Petitioner was found to have no significant limits in following simple instructions, carrying out simple instructions, or in completing a normal workday.

A Psychiatric Review Technique (Exhibit 1, pp. 18-31) dated [REDACTED], was presented. The review was completed by the same psychologist who completed the mental functional capacity assessment. A diagnosis of affective disorder was noted. Moderate restrictions in daily activities, social function, and maintaining concentration were noted.

The SSA assessments appear to be highly inconsistent with Petitioner's treatment history and physician statements. The SSA assessments also provided no details on which the conclusions were justified. For example, it cannot be determined if the assessments were based on interviewing Petitioner or from examining petitioner's

treatment records. The assessments were found to be unpersuasive indicators of Petitioner's abilities.

Based on presented records, it is found Petitioner meets the equivalent of Listing 12.10. Accordingly, Petitioner is disabled and it is found 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]

Authorized Rep

[REDACTED]