



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: May 26, 2016
MAHS Docket No.: 16-004610
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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 25, 2016, from Lansing, Michigan. The Petitioner, [REDACTED] [REDACTED] appeared and testified. The Department of Health and Human Services (Department) was represented by Hearing Facilitator, [REDACTED] [REDACTED]

The following exhibits were offered and admitted into evidence:

- Department: A--October 13, 2015, redetermination.
B--March 3, 2016, Medical Review Team (MRT) denial.
C--requisite forms and list of medications, completed the Petitioner.
D--two pages of objective, psychiatric evidence.
E-- March 8, 2016, Notice of Case Action.

ISSUE

Whether the Department properly determined that the Petitioner was no longer disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

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

1. The Petitioner was an ongoing recipient of SDA with a review due in November, 2015.
2. On review, the Medical Review Team (MRT) denied the Petitioner's request.

3. On April 1, 2016, the Petitioner submitted to the Department a request for hearing.
4. The Petitioner is [REDACTED] years old.
5. The Petitioner completed schooling up through a high school equivalency.
6. The Petitioner has employment experience and last worked briefly in October and November 2015 at [REDACTED]. The Petitioner testified that she did not make more than \$ [REDACTED] a month and was fired for embezzling.
7. The Petitioner's limitations have lasted for 12 months or more.
8. The Petitioner suffers from PTSD, anxiety, depression, bipolar disorder, mood disorder at personality disorder. The Petitioner also suffers from Crohn's disease, IBS, severe asthma with underlying COPD, degenerative disc disease and scoliosis. The Petitioner also has pinched nerve in her back and legs.
9. The Petitioner has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
10. The Petitioner has significant limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of 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.

In order to receive SDA benefits based upon disability or blindness, the Petitioner must be disabled or blind as defined in Title XVI of the Social Security Act (20R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on disability applications.

The law defines disability as the inability to do 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).

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 a substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first step to be considered is whether the Petitioner can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, the Petitioner testified that she had been working, but that she did not make over \$400 a month. The Department testified that the Petitioner had been working, but submitted no evidence on how much money she was making a month. Furthermore, the SDA case closed due to medical improvement. There is no evidence to suggest her case closed because she was working again. Therefore, the Petitioner is not disqualified at this step in the evaluation. If the Department suspects that the Petitioner is engaged in substantial gainful activity and is therefore not otherwise eligible for SDA, then the Department should take action according to departmental policy, starting with closing her case because she is working and up to and including a FEE investigation and OIG referral.

In the second step, the trier of fact must determine if the Petitioner’s impairment (or combination of impairments) meets or equals the severity of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that The Petitioner’s medical record does not support a finding that the 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, the sequential evaluation process must continue.

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 any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s) (see §416.928). 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.

In this case, the evidence does not indicate when it was that the Petitioner was most recently approved for MA. In this case, the Administrative Law Judge could not compare past medical documentation with current medical documentation, because there are only two pages of objective, psychiatric evidence dated January 25, 2016 in the record. These are the only two pages of psychiatric or medical evidence in the record. There is no evidence of the Petitioner's physical condition in the record, though the two pages of psychiatric evidence indicate that the Petitioner is having difficulties with her asthma, her Crohn's disease, recent hysterectomy and frequent bladder and urinary tract infections. As such, this Administrative Law Judge concludes that the evidence is insufficient to establish that the Petitioner has medically improved.

In the fifth step of the sequential evaluation, the trier of fact must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) applies. If none of them applies, the Petitioner's disability must be found to continue. 20 CFR 416.994(b)(5)(v).

The first group of exceptions 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), is as follows:

- *Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work).*
- *Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).*
- *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision.*
- *Substantial evidence demonstrates that any prior disability decision was in error.*

In examining the record, this Administrative Law Judge finds that there is nothing to suggest that any of the exceptions listed above applies to the Petitioner's case.

The second group of exceptions to medical improvement, found at 20 CFR 416.994(b)(4), is as follows:

- *A prior determination or decision was fraudulently obtained.*
- *You did not cooperate with us.*
- *The Petitioner cannot be found.*
- *The Petitioner failed to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.*

After careful review of the record, this Administrative Law Judge finds none of the above-mentioned exceptions applies to the Petitioner's case. Accordingly, per 20 CFR 416.994, this Administrative Law Judge concludes that the Petitioner's disability for purposes of Medical Assistance and State Disability Assistance must continue.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Petitioner continues to be medically disabled.

Accordingly, the Department's decision is hereby **REVERSED** and the Department is ORDERED to maintain the Petitioner's eligibility for SDA if otherwise eligible for program benefits. A review of this case shall be set for December, 2016.

Susanne E. Harris

SH/nr

Susanne E. Harris
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




Petitioner

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]