



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: October 19, 2016
MAHS Docket No.: 16-007507
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 August 23, 2016, from Lansing, Michigan. The Petitioner was represented by [REDACTED], mother. [REDACTED], the Petitioner, appeared and testified. Petitioner's minor children were also present. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

A telephone hearing was originally scheduled for July 5, 2016. On July 7, 2016, an Order of Dismissal was issued. On August 12, 2016, an Order Vacating the Dismissal and Order to Schedule the Matter for Hearing was issued. The hearing was then re-scheduled for August 23, 2016.

The following Exhibits were entered into the record during the hearing:

Department Exhibit A:

- o Department's Hearing Summary (Exhibit A, p. 1)
- o November 26, 2014, Medical-Social Eligibility Certification (Exhibit A, pp. 2-3)
- o October 23, 2014, Medical-Social Eligibility Certification (Exhibit A, pp. 4-5)
- o May 16, 2016, Social Security Administration (SSA) Disability Determination Explanation (Exhibit A, pp. 6-19)
- o May 16, 2016, SSA Disability Determination Explanation (Exhibit A, pp. 20-33)
- o May 1, 2016, Reminder to Attend Medical Examination (Exhibit A, p. 34)
- o April 19, 2016, Confirmation for Disability Examination (Exhibit A, p. 35)

- o April 14, 2016, correspondence regarding rescheduled medical evaluation appointment (Exhibit A, pp. 36-42)
- o March 20, 2016, Reminder to Attend Medial Examination (Exhibit A, p. 43)
- o March 11, 2016, Confirmation for Disability Examination (Exhibit A, p. 44)
- o March 3, 2016, correspondence regarding a scheduled medical evaluation appointment (Exhibit A, pp. 45-51)
- o January 30, 2016, SSA Report of Contact (Exhibit A, p. 52)
- o January 25, 2016, SSA Request for Evidence (Exhibit A, p. 53)
- o January 6, 2016, SSA Function Report- Adult (Exhibit A, pp. 54-66)
- o January 9, 2016, SSA Report of SGA Determination (Exhibit A, pp. 67-69)
- o December 18, 2015, SSA Work Activity Report-Self Employment (Exhibit A, pp. 70-78)
- o January 4, 2016, correspondence from SSA to Petitioner (Exhibit A, pp. 79-93)
- o December 11, 2015 SSA Reports of Contact (Exhibit A, pp. 94-97)
- o Undated SSA Disability Report-Adult (Exhibit A, pp. 98-105)
- o December 8, 2015, SSA Disability Report-Field Office (Exhibit A, pp. 106-108)
- o May 11, 2016, consultative medical examination report (Exhibit A, pp. 109-115)
- o Medical Records Request for [REDACTED] (Exhibit A, pp. 116-119)
- o September 2014 through December 2015, records from [REDACTED] (Exhibit A, pp. 120-148)
- o Coversheet (Exhibit A, p. 149)
- o September 9, 2015, Medical Examination Report from [REDACTED] (Exhibit A, pp. 150-152)
- o February 3, 2014, record from [REDACTED] (Exhibit A, p. 153)
- o February 19, 2015, Psychiatric/Psychological Examination Report and Mental Residual Functional Capacity Assessment (Exhibit A, pp. 154-158)
- o December 9, 2014, record from OB/GYN Healthcare Associates (Exhibit A, p. 159)
- o November 13, 2014, record from [REDACTED] (Exhibit A, pp. 160-162)
- o November 11, 2014, consultative psychological evaluation (Exhibit A, pp. 163-166)
- o December 2012 through September 2014, records from [REDACTED] (Exhibit A, pp. 167-190)
- o July 2012 through June 2014, records from [REDACTED] (Exhibit A, pp. 191-225)
- o March 2013 through September 2014, records from [REDACTED] (Exhibit A, pp. 226-261)
- o February 1, 2013, consultative Psychological/Psychiatric evaluation (Exhibit A, pp. 262-268)
- o November 15, 2015, SSA application for Supplemental Security Income (SSI) Exhibit A, pp. 269-278)

- o September 9, 2015, Medical Examination Report from [REDACTED] (Exhibit A, pp. 279-281)
- o August 31, 2015, Medical Social Questionnaire Update (Exhibit A, pp. 282-285)
- o August 31, 2015, Activities of Daily Living (Exhibit A, pp. 286-290)
- o August 31, 2015, Activities of Daily Living-Third party (Exhibit A, pp. 291-298)
- o August 31, 2015, Work History Questionnaire (Exhibit A, pp. 299-304)
- o August 31, 2015, Authorization to Release Protected Health Information (Exhibit A, pp. 305-307)
- o August 24, 2015, Verification of Application or Appeal for SSI/RSDI (Exhibit A, pp. 308-309)
- o February 3, 2014, record from [REDACTED] (Exhibit A, p. 310)
- o March 19, 2015, Authorization to Release Protected Health Information (Exhibit A, pp. 311-313)
- o February 19, 2015, Psychiatric/Psychological Examination Report and Mental Residual Functional Capacity Assessment (Exhibit A, pp. 314-318)
- o December 9, 2014, record from OB/GYN Healthcare Associates (Exhibit A, p. 319)
- o November 26, 2014, Medical-Social Eligibility Certifications (Exhibit A, pp. 320-321)
- o November 13, 2014, record from [REDACTED] (Exhibit A, pp. 322-323)
- o November 15, 2014, November 11, 2014, consultative psychological evaluation (Exhibit A, pp. 324-326)
- o October 23, 2014, Medical-Social Eligibility Certification (Exhibit A, pp. 327-329)
- o October 15, 2014, Social Summary (Exhibit A, pp. 330-331)
- o December 2012 through September 2014, records from [REDACTED] (Exhibit A, pp. 332-355)
- o July 2012 through June 2014, records from [REDACTED] (Exhibit A, pp. 356-390)
- o March 2013 through September 2014, records from [REDACTED] (Exhibit A, pp. 391-427)
- o July 8, 2014, SSA Request for Review of Hearing Decision/Order (Exhibit A, p. 428)
- o August 28, 2014, Medical-Social Questionnaire (Exhibit A, pp. 429-431)
- o August 28, 2014, Activities of Daily Living (Exhibit A, pp. 432-436)
- o Portion of a Medical-Social Eligibility Certification (Exhibit A, p. 437)
- o May 23, 2016, Notice of Case Action (Exhibit A, pp. 438-442)
- o May 26, 2016, Request for Hearing (Exhibit A, pp. 443-444)
- o May 27, 2016, Notice for Pre-Hearing Conference (Exhibit A, pp. 445)

Department Exhibit B:

- o March 31, 2015, Hearing Decision MAHS Docket No. 14-017666 (Exhibit B, pp. 1-9)

Petitioner Exhibit 1:

- o May 27, 2016, August 17, 2016, and August 12, 2016, letters from [REDACTED] (Exhibit 1, pp. 1-3)
- o August 10, 2016, Work Order from [REDACTED] (Exhibit 1, p. 4)

During the hearing, Petitioner waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. On August 24, 2016, an Interim Order Extending the Record was issued giving the Department 30 days to submit the specified additional medical records. The additional records were received and admitted on September 19, 2016.

Department Exhibit C:

- o August 26, 2016, Medical Examination Report from [REDACTED] with an ECG (Exhibit C, pp. 1-4)

ISSUE

Whether the Department properly determined that Petitioner was not 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. On March 31, 2015, a Hearing Decision found Petitioner disabled as of August 2014 based on a less than sedentary residual functional capacity (RFC). (Exhibit B, pp. 1-9)
2. Petitioner's case was due for another review in August 2015. (Exhibit B, p. 8)
3. On December 18, 2016, the local Department office sent Petitioner's case to the Department's Medical Review Team/Disability Determination Services (MRT/DDS). (Exhibit A, p. 1)
4. On or about May 23, 2016, the MRT/DDS found Petitioner not disabled for SDA. (Exhibit A, pp. 1 and 437)

5. On May 23, 2016, the Department notified Petitioner of the MRT/DDS determination regarding SDA. (Exhibit A, pp. 438-442)
6. On May 26, 2016, the Department received Petitioner's timely written request for hearing. (Exhibit A, pp. 443-444)
7. Petitioner alleged disabling impairments including chronic back pain, nerve damage in back and neck, high blood pressure, carpal tunnel syndrome, anemia, panic disorder, bipolar, anxiety, depression, post-traumatic stress disorder, and agoraphobia. (Exhibit A, p. 282; Petitioner Testimony)
8. At the time of hearing, Petitioner was 44 years old with a [REDACTED], birth date; was 5'5" in height; and weighed 150 pounds. (Petitioner Testimony)
9. Petitioner completed the 12th grade, attended some college, and has a work history including [REDACTED], waitress at [REDACTED], and braiding hair. (Petitioner Testimony)
10. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

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 416.913. 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 regulation requires 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. 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 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.

In the present case, Petitioner alleged disabling impairments including chronic back pain, nerve damage in back and neck, high blood pressure, carpal tunnel syndrome, anemia, panic disorder, bipolar, anxiety, depression, post-traumatic stress disorder, and agoraphobia. (Exhibit A, p. 282; Petitioner Testimony) While many older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

September 2014 through December 2015, records from [REDACTED] document diagnosis and treatment for generalized anxiety. (Exhibit A, pp. 120-148)

A September 9, 2015, Medical Examination Report from [REDACTED] documented diagnoses of hypertension, depression, anxiety, bipolar disorder, panic disorder, and back pain with mild to moderate degenerative disease of L5-S1 facet. Physical limitations were expected to last more than 90 days and included: never lift less than 10 pounds; stand/walk less than 2 hours in an 8-hour day; and never using hands/arms for repetitive actions. (Exhibit A, pp. 150-152 and 279-281)

On May 11, 2016, Petitioner attended a consultative medical examination. The conclusions sections of the report indicates a history of hypertension with chest pains as well as chronic pain of cervical and lumbar spine, for which Petitioner should follow up with her physician on a regular basis and use her medication as directed. At the examination, Petitioner was able to complete all tasks asked of her with some mild difficulty secondary to pain. Range of motion was intact. Petitioner did not require the use of an assistive device and her gait was normal. Grip strength was decreased bilaterally with 80% remaining and no digital dexterity loss bilaterally. Cardiac and pulmonary examination was essentially normal. (Exhibit A, pp. 111-115)

An August 10, 2016, Work Order from [REDACTED] documents that a quad cane was delivered to Petitioner. (Exhibit 1, p. 4)

An August 26, 2016, Medical Examination Report from [REDACTED] documented diagnoses of back pain, neck pain, depression, and anxiety. Physical limitations were expected to last more than 90 days and included: never lift less than 10 pounds; stand/walk less than 2 hours in an 8-hour day; never using hands/arms for most of the listed repetitive actions, questionable for simple grasping; and unable to use feet/legs for repetitive action. Mental limitations were also noted with comprehension, memory, sustained concentration, following simple directions, and social interaction. (Exhibit C, pp. 1-3)

Based on the objective medical evidence, considered listings included 1.00 Musculoskeletal System and 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Petitioner cannot be found disabled, or not disabled at this step.

Step 2 requires a determination of whether there has been medical improvement. On March 31, 2015, a Hearing Decision found Petitioner disabled as of August 2014 based on a less than sedentary residual functional capacity (RFC). (Exhibit B, pp. 1-9) As described above, the recent Medical Examination Reports from the treating medical provider's office document physical limitations that continue to preclude the performance of a full range of sedentary work activities. (Exhibit A, pp. 150-152; Exhibit C, pp. 1-3) The opinion of the treating medical provider is given more weight than the consultative medical examination report because the treating provider of several years is in a better position to give an opinion regarding Petitioner's functional abilities on a regular and continuing basis.

In consideration of all medical evidence, it is found that, overall, there has been no medical improvement. The exceptions contained in 20 CFR 416.994(b)(3) and 20 CFR 416.994(b)(4) are not applicable. Accordingly, Petitioner is found disabled for purposes of continued SDA benefits.

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 SDA benefit program.

DECISION AND ORDER

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 SDA benefit program.

Accordingly, the Department's determination is **REVERSED**.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Reinstate Petitioner's SDA case retroactive to the July 1, 2016, effective date of the closure, if not done previously, to determine Petitioner's non-medical eligibility. The Department shall inform Petitioner of the determination in writing. The Department shall supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy. A review of this case shall be set for July 2017.

CL/mc



Colleen Lack
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]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]