



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: September 28, 2016
MAHS Docket No.: 16-007746
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, an in-person hearing was held on August 9, 2016, from Houghton, Michigan. The Petitioner was represented by [REDACTED], Attorney, [REDACTED] the Petitioner, appeared and testified. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor, and [REDACTED], Assistance Payments Worker.

A telephone hearing was originally scheduled for July 13, 2016. Petitioner's adjournment request for an in-person hearing was granted and the hearing was re-scheduled for August 9, 2016.

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

Department Exhibit A:

- o May 25, 2016, Medical-Social Eligibility Certification (Exhibit A, pp. 1-7)
- o May 25, 2016, Social Security Administration (SSA) Disability Determination Explanation (Exhibit A, pp. 8-21)
- o May 27, 2016, SSA Document Index (Exhibit A, p. 22)
- o Undated SSA Disability Report-Adult (Exhibit A, pp. 23-33)
- o May 14, 2016, SSA Disability Report-Field Office (Exhibit A, pp. 34-37)
- o SSA Case Development Sheets (Exhibit A, pp. 38-43)
- o SSA coversheet and Authorization to Disclose Information to the SSA (Exhibit A, pp. 44-45)
- o May 10, 2016, Psychiatric/Psychological Medical Report from the April 20, 2016, consultative evaluation from [REDACTED] (Exhibit A, pp. 46-48)

- o February 2016 to March 2016 records from [REDACTED] (Exhibit A, pp. 49-70)
- o February 10, 2016, response to medical record request from [REDACTED] (Exhibit A, pp. 71-73)
- o Coversheet, Department medical record request for [REDACTED], and Department Authorization to Release protected health information (Exhibit A, pp. 74-76)
- o July 2015 to October 2015 records from [REDACTED] (Exhibit A, pp. 77-94)
- o November 30, 2015, and February 10, 2016, responses to medical record request from [REDACTED] (Exhibit A, pp. 95-99)
- o July 1, 2015, Psychiatric/Psychological Medical Report from the June 12, 2015, consultative evaluation with Mental Residual Functional Capacity Assessment from [REDACTED] (Exhibit A, pp. 100-104)
- o Coversheet (Exhibit A, p. 105)
- o April 18, 2015, Medical Examination Report from [REDACTED] (Exhibit A, pp. 106-108)
- o October 2013 and March 2014 records from [REDACTED] (Exhibit A, pp. 109-113)
- o April 8, 2015, record from [REDACTED] (Exhibit A, pp. 114-115)
- o Undated Activities of Daily Living-Third Party (Exhibit A, pp. 116-123)
- o February 10, 2016, Activities of Daily Living (Exhibit A, pp. 124-127)
- o November 23, 2015, Department Authorization to Release Protected Health Information (Exhibit A, pp. 128-130)

Department Exhibit B:

- o Department's Hearing Summary (Exhibit B, pp. 1-2)
- o Disability Determination Details Printouts (Exhibit B, pp. 3-5)
- o May 30, 2016, Benefit Notice (Exhibit B, pp. 6-7)
- o June 6, 2016, Hearing Request (Exhibit B, p. 8)
- o January 20-22, 2016, emails between the local Department office and the Traverse City Medical Review Team (MRT) (Exhibit B, p. 9)
- o October 16, 2015, Verification of Application or Appeal for SSI/RSDI (Exhibit B, p. 10)
- o October 16-22, 2016, emails between the local Department office and the Michigan Rehabilitation Services office (Exhibit B, pp. 11-12)

Petitioner Exhibit 1:

- o Coversheet and August 3, 2016, Medical Source Statement from [REDACTED] (Exhibit 1, pp. 1-8)

Petitioner Exhibit 2:

- o July 2016 and August 2016 records from [REDACTED] (Exhibit 2, pp. 1-7)

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 10, 2016, an Interim Order Extending the Record was issued giving Petitioner's Representative 30 days to submit additional evidence, specifically: evaluation, assessment, and/or treatment records from Petitioner's treating mental health provider.

On September 6, 2016, the following Exhibit was entered into the record:

Petitioner Exhibit 3:

- o Coversheet (Exhibit 3, p. 1)
- o August 26, 2016, Mental Residual Functional Capacity Assessment from [REDACTED] (Exhibit 3, pp. 2-5)
- o August 26, 2016, Opinion Letter from [REDACTED] (Exhibit 3, p. 6)
- o Proof of Service (Exhibit 3, p. 7)

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 July 28, 2015, Petitioner was found disabled by the Department's MRT and eligible for SDA for the time period of April 2015 through October 2015. (Exhibit B, p. 2)
2. In October 2015, the Department was to review Petitioner's ongoing medical eligibility. (Exhibit B, p. 2)

3. On August 15, 2016, the local office denied Petitioner's SDA based on a request from the Department's MRT because they stated Petitioner had a final denial at the Appeals Council, with no subsequent application filed with SSA. (Exhibit B, p. 2)
4. On October 19, 2015, Petitioner's SDA case was reinstated after review and discussion with the SSA confirming that there was a pending application with them. (Exhibit B, p. 2)
5. On January 1, 2016, Petitioner's case was sent to the Medical Review Team. (Exhibit B, p. 2)
6. On May 25, 2016, the MRT/Disability Determination Services (DDS) found Petitioner not disabled for SDA (Exhibit A, pp. 1-7)
7. On May 30, 2016, the Department notified Petitioner of the MRT determination regarding SDA. (Exhibit B, pp. 6-7)
8. On June 6, 2016, the Department received Petitioner's timely written request for hearing. (Exhibit B, p. 8)
9. Petitioner alleged disabling impairments including back and neck pain, spina bifida, hypothyroidism, osteoporosis, hyperlipidemia, problems with both knees, bipolar, depression, and anxiety. (Exhibit A, p. 9; Exhibit 2, p. 6; Petitioner Testimony)
10. At the time of hearing, Petitioner was 48 years old with a [REDACTED], birth date; was 5'11" in height; and weighed 195 pounds. (Petitioner Testimony)
11. Petitioner completed the 10th grade, obtained a GED, and has not worked full time within the last 15 years. (Petitioner Testimony)
12. 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 back and neck pain, spina bifida, hypothyroidism, osteoporosis, hyperlipidemia, problems with both knees, bipolar, depression, and anxiety. (Exhibit A, p. 9; Exhibit 2, p. 6; Petitioner Testimony) While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

An April 8, 2015, Medical Examination Report from [REDACTED] listed diagnoses of cervical and lumbar disc disease with chronic pain and bipolar disorder. Physical limitations were expected to last more than 90 days and included lifting less than 10 pounds occasionally, stand/walk less than 2 hours in an 8-hour work day, sit less than 6 hours in an 8-hour work day, and unable to use hands/arms for pushing/pulling. Mental limitations with memory, sustained concentration, reading/writing and social interaction were also marked. (Exhibit A, pp. 106-108)

On June 12, 2015, Petitioner attended a consultative psychiatric/psychological evaluation. The Axis I diagnoses were depressive disorder and agoraphobia with panic attacks. Axis III and Axis IV noted chronic pain (neck, back, knees) as well as problems with social and occupation functioning. Petitioner's Global Assessment of Functioning (GAF) was 49. The prognosis, in part, states that "[Petitioner's] medical and psychological issues combined appear to be significant enough to prevent him from finding and maintaining employment." (Exhibit A, pp. 100-102) The Mental Residual

Functional Capacity Assessment from this examination indicates moderate limitations with eight and marked limitations with three of the twenty listed mental activities. (Exhibit A, pp. 103-104)

April through October 2015 records from [REDACTED], document diagnosis and treatment of multiple conditions including: bipolar disorder, lumbago, hypothyroidism, hyperlipidemia, degeneration of lumbar or lumbosacral intervertebral disc, chronic pain syndrome, neck pain, chronic knee pain, vitamin D deficiency, depressive disorder, upper back pain, generalized anxiety disorder, cervicgia, and osteoporosis. (Exhibit A, pp. 77-94 and 114-115)

February and March 2016 Chiropractic records document diagnoses involving the lumbar, thoracic and cervical regions of the spine. (Exhibit A, pp. 50-70)

On April 20, 2016, Petitioner attended a consultative psychiatric/psychological evaluation. The Axis I diagnoses were depressive disorder and social avoidant/anxiety disorder. Axis III and Axis IV noted chronic pain (neck, back, knees) as well as problems with social and occupation functioning. Petitioner's GAF was 52. The prognosis, in part, states that "[Petitioner's] medical and psychological issues combined still appear to be significant enough to be a significant hurdle in being able to seek and sustain employment." (Exhibit A, pp. 46-48)

July and August 2016 records from [REDACTED] and [REDACTED], document diagnosis and treatment of multiple conditions including: severe recurrent major depressive disorder, chronic pain disorder, bipolar disorder, generalized anxiety disorder, lumbago, cervicgia, hypothyroidism, hyperlipidemia, depression, vitamin D deficiency, and osteoporosis. (Exhibit 2, pp. 1-7)

An August 3, 2016, Medical Source Statement from [REDACTED] lists diagnoses and symptoms including lumbar disc disease, major depression, ADHD, chronic low back pain, chronic depression/anxiety, and poor concentration. Impairments were expected to at least 12 months. Limitations included lifting 1-5 pounds occasionally, stand/walk 2 hours total in an 8-hour work day, sit 3 hours total in an 8-hour work day, and rest 2 hours total in an 8-hour work day. Petitioner would medically require a cane for prolonged ambulation. It was estimated that Petitioner would be absent from work more than 3 times per month. (Exhibit 1, pp. 2-8)

An August 26, 2016, Mental Residual Functional Capacity Assessment from [REDACTED], who previously completed the consultative psychiatric/psychological evaluations, indicates he began treating Petitioner August 16, 2016. The Axis I diagnoses were depressive disorder, and social anxiety. Axis III and Axis IV noted chronic pain (neck, back, knees) as well as problems with social and occupation functioning. Petitioner's GAF was 50. It was noted that Petitioner has been complaint with treatment in the last year. Moderate limitations were marked with two of the three understanding and memory categories. Moderate to marked limitations were marked

with five of the eight sustained concentration and persistence categories. Marked limitations were marked with four of the five social interaction categories. (Exhibit 3, pp.2-5)

The August 26, 2016, Opinion Letter from [REDACTED], documents diagnoses of major depressive disorder moderate, post-traumatic stress disorder, and alcohol dependence in remission. In part, it was noted that Petitioner's PTSD symptoms have limited his ability to engage in interactions within the community. (Exhibit 3, p. 6)

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 July 28, 2015, Petitioner was found disabled by the Department's MRT and eligible for SDA for the time period of April 2015 through October 2015. (Exhibit B, p. 2) As described above, the more recent medical records do not document significant medical improvement regarding Petitioner's physical and mental health impairments. The physical limitations indicated by [REDACTED] would still preclude the full range of sedentary work activities. Regarding the mental impairments, Petitioner's GAF has remained around 50. The Mental Residual Functional Capacity Assessment continues to indicate moderate to marked impairments in numerous areas. Lastly, the formerly consultative and now treating mental health provider has indicated that Petitioner's medical and psychological issues combined still appear to be significant enough to be a significant hurdle in being able to seek and sustain employment.

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. Reinstatement of Petitioner's SDA case retroactive to the June 30, 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 January 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]

Petitioner

[REDACTED]

Counsel for Petitioner

[REDACTED]