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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 16, 2016
MAHS Docket No.: 16-010111
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 26, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. His mother, [REDACTED], appeared as his witness. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly determine that Petitioner was not disabled for purposes of continued State Disability Assistance (SDA) benefit program eligibility?

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 approved for SDA benefits beginning May 2015. (Exhibit A, p. 114.)
2. In connection with an October 2015 medical review, the Disability Determination Service (DDS)/Medical Review Team (MRT) reviewed Petitioner's medical evidence to determine ongoing allowance for healing of bilateral calcaneal fractures and limited left ankle range of motion. Petitioner had alleged additional surgeries to be performed in June 2016, but DDS/MRT found no additional surgeries were performed. DDS/MRT also noted that, although Petitioner also alleged bipolar disorder and post-traumatic stress disorder (PTSD), he stated he was not being seen by a doctor nor on any medication. On June 17, 2016, DDS/MRT concluded Petitioner was no longer disabled. (Exhibit A, pp. 7-15, 26-36).

3. On June 22, 2016, the Department sent Petitioner a Notice of Case Action notifying him that his SDA case would close effective August 1, 2016 because, among other things, he was not disabled (Exhibit A, pp. 91-94).
4. On July 19, 2016, the Department received Petitioner's timely written request for hearing concerning the closure of his SDA case (Exhibit A, pp. 2-3).
5. Petitioner alleged disabling impairment due to heel fractures, vitamin D deficiency, bipolar disorder and PTSD.
6. At the time of hearing, Petitioner was [REDACTED] years old with an [REDACTED] birth date; he is [REDACTED]" in height and weighs about [REDACTED] pounds.
7. Petitioner completed trade school but not high school.
8. Petitioner has an employment history of work as a carpenter and courier/delivery driver.
9. Petitioner has a claim pending disability claim with the Social Security Administration (Exhibit B).

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 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 disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment lasting, or expected to last, at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Once an individual has been found disabled, continued entitlement to benefits based on a disability is periodically reviewed in accordance with the medical improvement review standard in order to make a current determination or decision as to whether disability

remains. 20 CFR 416.993(a); 20 CFR 416.994(a). If the individual is not engaged in substantial gainful activity (SGA), the trier of fact must apply an eight-step sequential evaluation in evaluating whether an individual's disability continues. 20 CFR 416.994. The review may cease and benefits may be continued at any point if there is sufficient evidence to find that the individual is still unable to engage in SGA. 20 CFR 416.994(b)(5). In this case, Petitioner has not engaged in SGA at any time since he became eligible for SDA. Therefore, his disability must be assessed to determine whether it continues.

An eight-step evaluation is applied to determine whether an individual has a continuing disability:

Step 1. If the individual has an impairment or combination of impairments which meets or equals the severity of an impairment listed in 20 CFR Appendix 1 of subpart P of part 404, the disability will be found to continue. 20 CFR 416.994(b)(5)(i).

Step 2. If a listing is not met or equaled, it must be determined whether there has been medical improvement as defined in paragraph (b)(1)(i) of 20 CFR 416.994 and shown by a decrease in medical severity. If there has been a decrease in medical severity, Step 3 is considered. If there has been no decrease in medical severity, there has been no medical improvement unless an exception in Step 4 applies. 20 CFR 416.994(b)(5)(ii).

Step 3. If there has been medical improvement, it must be determined whether this improvement is related to the individual's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv); *i.e.*, there was an increase in the individual's residual functional capacity (RFC) based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to the individual's ability to do work, the analysis proceeds to Step 4. If medical improvement *is* related to the individual's ability to do work, the analysis proceeds to Step 5. 20 CFR 416.994(b)(5)(iii).

Step 4. If it was found at Step 2 that there was no medical improvement or at Step 3 that the medical improvement is not related to the individual's ability to work, the exceptions in 20 CFR 416.994(b)(3) and (b)(4) are considered. If none of them apply, the disability will be found to continue. If an exception from the first group of exceptions to medical improvement applies, the analysis proceeds to Step 5. If an exception from the second group of exceptions to medical improvement applies, the disability is found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(iv).

Step 5. If medical improvement is shown to be related to an individual's ability to do work or if one of the first group of exceptions to medical improvement applies, **all** the individual's current impairments in combination are considered to determine whether they are severe in light of 20 CFR 416.921. This determination considers all the individual's current impairments and the impact of the combination of these impairments on the individual's ability to function. If the RFC assessment in Step 3 shows significant limitation of the individual's ability to do basic work activities, the analysis proceeds to Step 6. When the evidence shows that all the individual's current impairments in combination do not significantly limit the individual's physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature and the individual will no longer be considered to be disabled. 20 CFR 416.994(b)(5)(v).

Step 6. If the individual's impairment(s) is severe, the individual's current ability to do substantial gainful activity is assessed in accordance with 20 CFR 416.960; i.e., the individual's RFC based on all current impairments is assessed to determine whether the individual can still do work done in the past. If so, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

Step 7. If the individual is not able to do work done in the past, the individual's ability to do other work given the RFC assessment made under Step 6 and the individual's age, education, and past work experience is assessed (unless an exception in 20 CFR 416.994(b)(5)(viii) applies). If the individual can, the disability has ended. If the individual cannot, the disability continues. 20 CFR 416.994(b)(5)(vii).

Step 8. Step 8 may apply if the evidence in the individual's file is insufficient to make a finding under Step 6 about whether the individual can perform past relevant work. If the individual can adjust to other work based solely on age, education, and RFC, the individual is no longer disabled, and no finding about the individual's capacity to do past relevant work under Step 6 is required. If the individual may be unable to adjust to other work or if 20 CFR 416.962 may apply, the individual's claim is assessed under Step 6 to determine whether the individual can perform past relevant work. 20 CFR 416.994(b)(5)(viii).

Step One

Step 1 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.

The medical record presented was reviewed and is briefly summarized below.

In March 2015, Petitioner fell and sustained bilateral calcaneal fractures. Open reduction internal fixation (ORIF) surgery was performed on both heels, for the right heel calcaneal fracture and the arthrodesis of subtalar joint (STJ) of the left calcaneus (Exhibit A, pp. 23, 41).

On [REDACTED], Petitioner's primary care doctor noted low vitamin D level and high hyperparathyroidism and referred Petitioner to a specialist (Exhibit A, pp. 74-78). The endocrinologist found that the hyperparathyroidism was mild and Petitioner was asymptomatic. (Exhibit A, pp. 88-99.)

Petitioner's visits with his podiatrist from September 2015 to April 2016 show ongoing complaints of pain of both heels despite injection treatment at the [REDACTED] visit (Exhibit A, pp. 41-52, 55-56). At the [REDACTED] office visit, he complained of pain primarily with weight-bearing, worse on the left than the right, controlled with Norco. It was noted that he was recently diagnosed with a vitamin D deficiency but his levels were on the rise. The doctor informed Petitioner that the [REDACTED] CT of the left foot showed delayed/nonunion of the left STJ arthrodesis site and advised that the majority of his pain stemmed from the nonunion site as well as plate hardware. Surgery to remove all hardware from the left foot and insert a bone graft was scheduled tentatively on [REDACTED] (Exhibit A, pp. 41-43, 53-54, 57-58, 72-73.)

On [REDACTED], Petitioner requested a second opinion concerning surgery to resolve his left foot pain. Petitioner reported chronic ankle pain, joint aches or pain, limited motion in joints, and stiffness or pain in the feet in the morning. Reviewing x-rays brought by Petitioner, the consulting doctor confirmed ORIF of the left heel with plates and screws, incomplete healing of the fusion site at the left STJ and incomplete healing of bone. On the right foot, the doctor noted appropriate reduction of the fracture and appropriately placed hardware with some mild resorption of bone at the plantar posterior heel where the heads of the screws were located. Petitioner was advised that he had arthritis and nonunion of the fracture on the left heel and would benefit surgically from removal of the hardware and insertion of a bone graft with re-fixation of the fusion site. (Exhibit A, pp. 20-22.)

On [REDACTED], Petitioner met with his orthopedic surgeon to discuss his options to address persistent pain and inability to function effectively. In reviewing x-rays, the doctor concluded that there was left calcaneal malunion/nonunion and painful hardware and right post-traumatic STJ arthritis. The doctor observed pain on palpation of the right lateral sinus tarsi and immediate pain with range of motion to the right STJ. He also observed pain along the lateral left calcaneus and the lateral STJ. The doctor proposed conservative and surgical treatment options. Due to the failure of conservative treatment options to date, Petitioner was agreeable to left foot hardware removal with revision of the STJ arthrodesis and possible Malerba calcaneal osteotomy for reconstruction and right STJ arthrodesis. (Exhibit A, pp. 23-25.)

On [REDACTED], Petitioner had the following surgical procedures on his left foot: bone grafting, STJ arthrodesis, hardware removal, calcaneal osteotomy/ peroneal tendon repair and debridement. He was advised to keep his foot elevated as much as possible to lessen swelling and discomfort. (Exhibit 1.)

In light of the medical evidence presented, listing 1.02 (major dysfunction of a joint) was considered. Because the medical evidence did not establish that Petitioner was unable to ambulate effectively, as that term is defined in 1.00B2b, the evidence does not support a listing under 1.02. Because the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration, a disability is not continuing under Step 1 of the analysis, and the analysis proceeds to Step 2.

Step Two

If the impairment(s) does not meet or equal a Listing under Step 1, 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). For purposes of determining whether medical improvement has occurred, the current medical severity of the impairment(s) present at the time of the most recent favorable medical decision that found the individual disabled, or continued to be disabled, is compared to the medical severity of that impairment(s) at the time of the favorable decision. 20 CFR 416.994(b)(1)(vii). If there is medical improvement, the analysis proceeds to Step 3, and if there is no medical improvement, the analysis proceeds to Step 4. 20 CFR 416.994(b)(5)(ii).

Based on the medical evidence presented, Petitioner had been approved for SDA following a March 2015 injury resulting in the fracture of both heels and surgery on both heels. As of [REDACTED], DDS/MRT had determined that Petitioner had not undergone any additional surgery on his feet, and he was found capable of sedentary work. (Exhibit A, pp. 26-30.)

In connection with the current review, the record showed that Petitioner had ongoing complaints of pain on both feet, greater on the left and with weight bearing, controlled with Norco. A [REDACTED] CT scan showed delayed/nonunion of the left STJ arthrodesis site. Two doctors recommended surgery on the left foot to remove all hardware from the foot and insert a bone graft. Petitioner presented evidence that he had surgery on his left foot on [REDACTED] for bone grafting, STJ arthrodesis, hardware removal, and calcaneal osteotomy/ peroneal tendon repair and debridement. One of the doctors also recommended surgery on the right foot. Because Petitioner had ongoing issues with his feet resulting in surgery on one foot in August 2016, the evidence fails to establish a decrease in the severity of Petitioner's condition since the

time his SDA application was first approved. Therefore, there was no medical improvement in Petitioner's condition as of the hearing date.

Step Four

When there is no medical improvement, Step 4 requires an assessment of whether one of the exceptions in 20 CFR 416.994(b)(3) or (b)(4) applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.*

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) applies when any of the following exist:

- (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; or
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

In this case, the Department did not present any evidence establishing that, from the time Petitioner was first approved for SDA benefits in May 2015 to the time of the current medical review, one of the above first set of exceptions to medical improvement applied to Petitioner's situation.

The second group of exceptions to medical improvement found in 20 CFR 416.994(b)(4) applies when any of the following exist:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate in providing requested medical documents or participating in requested examinations;
- (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). In this case, the Department has failed to establish that any of the listed exceptions in the second group of exceptions to medical improvement apply to Petitioner's case.

Because the evidence presented does not show a medical improvement and no exception under either group of exceptions at Step 4 applies, the Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Petitioner has continuing disability for purposes of the SDA benefit program. Therefore, Petitioner's SDA eligibility continues and the Department did not act in accordance with Department policy when it closed his SDA case.

DECISION AND ORDER

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 effective August 1, 2016;
2. Issue supplements to Petitioner for any lost SDA benefits that he was entitled to receive from August 1, 2016 ongoing if otherwise eligible and qualified in accordance with Department policy;
3. Notify Petitioner of its decision in writing; and
4. Review Petitioner's continued SDA eligibility in December 2016 in accordance with Department policy.



ACE/tlf

Alice C. Elkin
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]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via Email:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]