



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: September 28, 2016
MAHS Docket No.: 16-011026

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ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 - 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on September 13, 2016, from Lansing, Michigan. Petitioner and his mother, ██████████, personally appeared and testified. Petitioner submitted four exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Family Independence Manager ██████████ ██████████ testified on behalf of the Department. The Department submitted 750 exhibits which were admitted into evidence. The record was closed at the completion of the hearing.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program based upon medical improvement?

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 receiving SDA at all times pertinent to this case.
2. Petitioner filed a Redetermination for SDA benefits alleging continuing disability.
3. The Medical Review Team (MRT) denied Petitioner's continuing SDA benefits. [Dept Exh. 716-720].

4. Petitioner has been diagnosed with fetal alcohol syndrome, open traumatic brain injury with depressed frontal skull fracture, ruptured globe – right eye, right orbit fracture, traumatic intraparenchymal hemorrhage, nasal laceration, laceration of right eyelid, traumatic cerebral edema with loss of consciousness, left hemiparesis, vitamin D deficiency, asthma, normocytic anemia, depression, posttraumatic stress disorder, borderline personality disorder, concussion, hyperhidrosis, psoriasis, and seizure disorder post head injury.
5. On [REDACTED], Petitioner was transported to the [REDACTED] medical center for attempted suicide using a crossbow for a self-inflicted injury. He shot the crossbow directly at his head and when that did not work, he manually drove the arrow through his eye which went through his frontal lobe and out through his skull. Petitioner was medically stabilized and a transfer to a psychiatric unit was requested to ensure his stability before discharge to home/placement. Due to the impulsiveness and severity of the suicide attempt and his limited judgment, along with new factors impending on Petitioner's life, hospital staff and family were concerned for his welfare and inpatient hospitalization was warranted and authorized. [Dept. Exh. 18-26].
6. On [REDACTED], Petitioner was transferred to a psychiatric unit. Petitioner was diagnosed with Severe Recurrent Major Depressive Disorder without psychotic features and Posttraumatic Stress Disorder. [Dept. Exh. 18-26].
7. On [REDACTED], Petitioner saw his primary care physician for a follow up from [REDACTED]. Skull surgery and surgery for an eye prosthesis were scheduled for [REDACTED]. Diagnosis: Concussion, General Hyperhidrosis, Psoriasis and Left Hemiplegia. [Dept. Exh. 52-53].
8. On [REDACTED], Petitioner was diagnosed by [REDACTED] with Borderline Personality Disorder; Major Depressive Disorder, Single Episode; Cannabis Dependence, partial remission; Disorder of Infancy, Childhood or Adolescence; and rule out Mild Mental Retardation per traumatic brain injury. At the time of the evaluation, Petitioner was diagnosed with a traumatic brain injury, lost right eye, left side paralysis and no plate in the right side of his skull. [Dept. Exh. 27-28].
9. On [REDACTED], Petitioner presented for follow up and was status post right eye evisceration with silicone implant placement on [REDACTED]. There was complete extrusion of the orbital implant. The eyelid lacerations were healing well but there was scarring and tethering around the medial aspect of the upper lid which may eventually benefit from some scar revision or 5FU injection. [Dept. Exh. 194-202].
10. On [REDACTED], Petitioner underwent a psychological evaluation on behalf of the Department. Petitioner was diagnosed with Major Depressive Disorder, Recurrent, Severe, without psychotic symptoms, managed well with medication at the time. The psychologist recommended IQ and Achievement testing as it was clear that

Petitioner had limited concentration, possible memory loss and possible brain injury issues as well. His prognosis was fair to guarded. It was also noted that Petitioner was unable to manage his benefit funds. The psychologist opined that Petitioner was clearly a vulnerable adult who was unable to manage detailed and complex tasks. He would clearly have difficulty managing common work stressors and working with other people. He may be able to perform simple and repetitive tasks but he would likely struggle to do so on a sustained basis. [Dept. Exh. 503-508].

11. On [REDACTED], Petitioner underwent an independent medical evaluation on behalf of the Department. Petitioner reported a history of a self-inflicted injury. He had a right eye prosthesis. On neurological examination, there remained modest motor weakness involving the left upper extremity. Grip strength in the left hand as well as digital dexterity was moderately diminished. He had difficulty opening a door and picking up a coin with the left hand. He was not able to button buttons. Other than mild hyperreflexia in the left lower extremity versus the right, no overt weakness or sensory changes were noted. He had a normal gait. He did not have difficulty with orthopedic maneuvers. He described what appeared to be generalized seizures of the petit mal type. He reported one to two a month despite a multiple medical regime. [Dept. Exh. 499-502].
12. On July 28, 2016, the Department mailed Petitioner a Notice of Case Action, informing Petitioner the SDA benefits would close effective September 1, 2016. [Dept Exh. 1-2].
13. On August 9, 2016, Petitioner submitted a Request for Hearing to the Department contesting the Department's denial.

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 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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits, the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first question asks:

(i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Petitioner is not disqualified from this step because he has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Petitioner has a severe impairment which meets or equals a

listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CF 416.994(b)(5)(ii).

The next step asks the question if there has been medical improvement. 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). 20 CFR 416.994(b)(1)(i).

If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

In this case, Petitioner underwent a medical evaluation on behalf of the Department on June 10, 2016. The evaluation does not indicate a decrease in medical severity based on improvement of Petitioner's symptoms.

Additionally, Petitioner had a psychological evaluation on [REDACTED], on behalf of the Department. The psychologist opined that Petitioner was clearly a vulnerable adult who was unable to manage detailed and complex tasks. She indicated that Petitioner would clearly have difficulty managing common work stressors and working with other people. He may be able to perform simple and repetitive tasks but he would likely struggle to do so on a sustained basis.

As a result, the Department has not met its burden of proof. The Department has provided no evidence that indicates Petitioner's medical condition has improved or that any improvement relates to his ability to do basic work activities. The agency provided no objective medical evidence from qualified medical sources that show Petitioner is currently capable of doing basic work activities. Accordingly, the agency's SDA eligibility determination cannot be upheld at this time.

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 back to the date of denial and issue any retroactive SDA benefits he may otherwise be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. Redetermine Petitioner's SDA eligibility in October, 2017.

Vicki Z. Armstrong

Vicki Armstrong
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

[REDACTED]

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

[REDACTED]

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