



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 11, 2016
MAHS Docket No.: 16-011566
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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, three-way telephone conference hearing was held on September 15, 2016, from Lansing, Michigan. Petitioner appeared and testified on his own behalf. [REDACTED], Family Independence Specialist, appeared on behalf of the Department of Health and Human Services (Department).

PROCEDURAL HISTORY

The Department offered the following that was marked and admitted into evidence as Department's Exhibit No. 1: Hearing Summary (page 1), Request for Hearing (pages 2-4), Notice of Case Action (pages 5-6), Medical-Social Eligibility Certification (pages 7-13), SSA-416 form (page 14), Physical Residual Functional Capacity Assessment (pages 15-26), Activities of Daily Living (page 27-44), and Medical Records, Operative Reports, X-rays, CT Scans/MRI Reports, EMG Reports, from [REDACTED], [REDACTED] and [REDACTED] dated April 1, 2015, to April 14, 2016. (pages 45-231).

Petitioner did not offer any exhibits into evidence.

The record was closed at the conclusion of the hearing.

ISSUE

Did the Department properly determine that Petitioner was no longer disabled and deny his review application for State Disability Assistance (SDA)?

FINDINGS OF FACT

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

1. Petitioner had been found disabled and was eligible for SDA benefits. [Department's Exhibit 1, p. 7].
2. Petitioner's SDA case was scheduled for review on or about July 8, 2016. [Dept. Exh. 1, p. 7].
3. On or about July 15, 2016, the Medical Review Team (MRT) denied Petitioner's review application for continued SDA benefits because he was no longer disabled. [Dept. Exh. 1, pp. 7-13].
4. On July 15, 2016, the Department sent Petitioner notice that his SDA case would be closed effective August 1, 2016, based upon medical improvement. [Dept. Exh. 1, pp. 5-6].
5. On August 22, 2016, Petitioner requested a hearing to contest the Department's negative action. [Dept. Exh. 1, pp. 2-4].
6. A telephone hearing was held on September 15, 2016.
7. Petitioner was once found to have been disabled after he sustained a lateral dislocation of the right knee with rupture of the lateral collateral ligaments, avulsion fracture of the tibia and right peroneal nerve palsy. Petitioner underwent surgery for ligament repair and/or reconstruction. At the time, Petitioner met Listing 1.06. [Dept. Exh. 1, p. 14].
8. At the hearing, Petitioner testified that he injured his right knee following a fall on April 19, 2015. He said that he severed a nerve and required three surgeries. Petitioner had as many physical therapy visits as could be permitted through his Medicaid coverage, but that he still feels pain and cannot ambulate without assistance (a cane and/or crutches). He said he has sustained muscle atrophy and has lost mobility in his right knee. Petitioner stated that he suffers from a condition known as "drop foot." At the time of the hearing, Petitioner says that he was scheduled for tendon transfer surgery on [REDACTED].
9. Petitioner is a 30-year-old man with a birth date of [REDACTED].
10. Petitioner is 6'3" tall; and weighed approximately 210 (two-hundred ten) pounds (lbs) at the time of the hearing.

11. Petitioner has a high school education. He is able to read and write and has basic math skills.
12. Petitioner was not working at the time of the review. Petitioner last worked as a construction worker in April 2015.
13. The objective medical records indicate that Petitioner has the following relevant tests, diagnoses, and/or medical conditions:
 - a. Injury of his peroneal nerve of the lower right leg. [Dept. Exh. 1, p. 45].
 - b. Drop foot, right. [Dept. Exh. 1, p. 45].
 - c. Right knee sprain of other specified parts, subsequent encounter. [Dept. Exh. 1, p. 45].
 - d. Right knee lateral, collateral sprain. [Dept. Exh. 1, p. 45].
 - e. He had right knee repair surgery on [REDACTED]. [Dept. Exh. 1, pp. 126-127].
 - f. He had another surgery on [REDACTED], because the earlier repair was unsuccessful and he had consistent complaints of instability and pain. [Dept. Exh. 1, pp. 131-132].
 - g. He takes the following medications: Norvasc, Lipitor, Chlorthalidone, B-12, Fish Oil, and Vitamin D. [Dept. Exh. 1, p. 46].
 - h. On [REDACTED], the sports medicine clinic follow-up visit notes indicated Petitioner's condition was "unchanged," but he was referred to [REDACTED] for tendon transfer surgery. [Dept. Exh. 1, pp. 47-49].
 - i. Right knee x-rays taken on [REDACTED] when compared to previous x-rays dated [REDACTED], showed no significant change or improvement. [Dept. Exh. 1, p. 51].
 - j. Petitioner is scheduled to undergo tendon transfer surgery on [REDACTED]. [Dept. Exh. 1, p. 231].
14. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

In this case, the Medical Review Team (MRT) upheld the denial of SDA benefits on the basis that Petitioner's medical condition had improved. Petitioner requested a hearing because he believes that his medical condition has not improved and that he continues to be disabled.

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).

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).

This section indicates:

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 inquiry that must be addressed is whether the client is engaging in substantial gainful activity¹. If the client is engaged in substantial gainful activity (and any applicable trial work period has been completed), he or she will be found no longer disabled. See 20 CFR 416.994(b)(3)(v). In this matter, the record shows that Petitioner is not disqualified from the first step because he has not engaged in substantial gainful activity at any time relevant to this matter.

The second step requires the trier of fact to determine whether the evidence on the record establishes that Petitioner has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1. 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).

Here, the objective medical evidence shows that Petitioner does have a severe impairment that meets or equals the following listed impairment(s): 1.06 (Fracture of the femur, tibia, pelvis or one or more of the tarsal bones). The records show that Petitioner fractured his right knee and was found to have met 1.06. [Dept. Exh. 1, p. 9]. The records do not show any significant subsequent medical improvement has occurred.

With regard to medical improvement, the Code of Federal Regulations, Section 20 provides:

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). [Emphasis added].

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

¹ "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)).

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).

Pursuant to the above-mentioned federal regulations, the Department, at medical review, has the burden of not only proving Petitioner's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The Department has the burden of establishing that Petitioner is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

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, then 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).

At Step 2, this Administrative Law Judge finds that at medical review, the Department has failed to meet its burden to show that Petitioner's condition has medically improved. This is based on Petitioner's credible testimony during the hearing that Petitioner continues to have the inability to ambulate without assistance and has muscle atrophy and difficulty with mobility. This is also based on the objective medical records which confirms that Petitioner's right knee condition is "unchanged" and has not improved. [Dept. Exh. 1, pp. 47-49]. Petitioner's right knee requires additional surgery which was scheduled for [REDACTED]. [Dept. Exh. 1, pp. 47-49, 231]. Moreover, the Department has not shown that Petitioner's condition has medically improved such that he now possesses the ability to do basic work activities.

This Administrative Law Judge finds that the Department has not met its burden of proof. The evidence in the instant matter does not show that Petitioner's medical conditions have decreased in severity as defined by 20 CFR 416.994(b)(2)(ii). In addition, the Department had not provided sufficient objective medical evidence from qualified medical sources to show Petitioner is currently capable of doing basic work activities.

Therefore, 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 upon the above findings of fact and conclusions of law, decides that the Department erred when it determined that Petitioner's SDA case should be closed based upon a finding of medical improvement at review.

Accordingly, the Department's action 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 benefits back to the effective date of closure, if not previously done.
2. Return Petitioner's case to the local office for benefit continuation to the extent that Petitioner meets all other eligibility criteria.
3. Initiate a medical review of Petitioner's case in October 2017.
4. Provide Petitioner with a supplement for lost benefits, if any, that Petitioner is entitled to receive, if eligible, and only if in accordance with Department policy.
5. Notify Petitioner of the determination in writing.

IT IS SO ORDERED.

CAP/mc



C. Adam Purnell

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]