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 25, 2016
MAHS Docket No.: 16-011957
[redacted]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 September 21, 2016, from Lansing, Michigan. The Petitioner was represented by herself and her godmother, [redacted]. The Department of Health and Human Services (Department) was represented by [redacted], Medical Contact Worker.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

Whether the Department properly determined that Petitioner was not disabled for purposes of continued State Disability Assistance (SDA) benefit programs?

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 April 7, 2015, the Petitioner was approved for SDA by the Medical Review Team (MRT) with a medical review due on October 2015 due to a non-exertional impairment.

2. On August 10, 2016, the MRT denied the Petitioner's medical review for SDA stating that the Petitioner had medical improvement where she was capable of performing work within 90 days due to a non-exertional impairment.

3. On August 11, 2016, the Department Caseworker sent the Petitioner a notice that she was denied for SDA because of medical improvement.

4. On August 22, 2016, the Department received a hearing request from the Petitioner, contesting the Department's negative action.

5. The Petitioner is a [redacted] year-old woman whose date of birth is [redacted]. The Petitioner is [redacted] tall and weighs [redacted] pounds. She has gained 60 pounds because of her medications and stress. The Petitioner has completed the 10th grade of high school. The Petitioner can read and write, but has problems with comprehension and basic math. The Petitioner was last employed as a home health provider at the light level for 8 to 10 years working 20 to 25 hours, but is not substantially gainfully employed.

6. The Petitioner's alleged impairments are eye vision issues, diabetes type I, COPD, anxiety, depression, paranoid schizophrenia, and right shoulder torn rotator cuff.

On [redacted], the Petitioner was admitted to [redacted], with a discharge of [redacted]. She was emotional with suicidal ideation and auditory hallucinations. She was diagnosed with depression, nos, PTSD with alcohol, cocaine, cannabinoid abuse. The Petitioner was at risk because of her pattern of use of illicit and prescription drugs which may impair her judgment under the influence and lead to impulsive acts. She was started on medications. On discharge, she was improved with a guarded prognosis because of pending compliance with medications and refraining from use of illicit street drugs. She was given a GAF of [redacted]. Department Exhibit 1, pgs. 223-228.

On [redacted], the Petitioner was given a psychiatric evaluation at the [redacted] She was given a primary diagnosis of cocaine abuse, uncomplicated, a secondary diagnosis of cannabis abuse, uncomplicated, and tertiary diagnosis of schizoaffective disorder. She was given a GAF of [redacted]. The Petitioner was a recently hospitalized after a suicide attempt. Her medications were reviewed as needed. Department Exhibit 1, pgs. 191-200.

On [redacted], the Petitioner was given a Medical Review Note at the [redacted]. She was improving on the current medication regiment with no side effects. The Petitioner denied suicidal/homicidal thoughts. She had stopped using drugs. She had stabilized with the current medications and therapy. The Petitioner was stable bipolar with no illicit drug use for 2 months. There was no evidence of a severe thought disorder or risk factors. She was given a diagnosis of schizoaffective disorder with illicit drugs use. Department Exhibit 1, pgs. 148-153.

CONCLUSIONS OF LAW

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.

The Department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. BEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- receives other specified disability-related benefits or services, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.

- Supplemental Security Income (SSI), due to disability or blindness.

- Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
  - a DE/MRT/SRT determination, or
  - a hearing decision, or
  - having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

    Medicaid received by former SSI recipients based on policies in BEM 150 under **"SSI TERMINATIONS,"** INCLUDING **"MA While Appealing Disability Termination,"** does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See **"Medical Certification of Disability"** below.

- Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.

- Special education services from the local intermediate school district. To qualify, the person may be:

  - attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**

  - not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be

designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.

- Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit BEM, Item 261, pp. 1-2.

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.
...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

(1) Medical history.
(2) Clinical findings (such as the results of physical or mental status examinations);
(3) Laboratory findings (such as blood pressure, X-rays);
(4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).
Medical findings consist of symptoms, signs, and laboratory findings:

(a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

(c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

(1) The nature and limiting effects of your impairment(s) for any period in question;

(2) The probable duration of your impairment; and

(3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

In general, Petitioner has the responsibility to prove that he/she is disabled. Petitioner's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the petitioner has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

Step 1

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the Petitioner is not engaged at a level of substantial gainful activity. Therefore, the Petitioner is not disqualified from receiving disability at Step 1.

Step 2

In the second step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Petitioner's medical record will not support a finding that Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the Petitioner's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the Petitioner is disqualified from receiving disability at Step 2.

Step 3

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the Petitioner was disabled or continues 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 Petitioner's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the Petitioner's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

On [redacted], the Petitioner was admitted to [redacted], with a discharge of [redacted]. She was emotional with suicidal ideation and auditory hallucinations. She was diagnosed with depression, nos, PTSD with alcohol, cocaine, cannabinoid abuse. The Petitioner was at risk because of her pattern of use of illicit and prescription drugs which may impair her judgment under the influence and lead to impulsive acts. She was started on medications. On discharge, she was improved with a guarded prognosis because of pending compliance with medications and refraining from use of illicit street drugs. She was given a GAF of 55. Department Exhibit 1, pgs. 223-228.

On [redacted], the Petitioner was given a psychiatric evaluation at the [redacted]. She was given a primary diagnosis of cocaine abuse, uncomplicated, a secondary diagnosis of cannabis abuse, uncomplicated, and tertiary diagnosis of schizoaffective disorder. She was given a GAF of 45. The Petitioner was a recently hospitalized after a suicide attempt. Her medications were reviewed as needed. Department Exhibit 1, pgs. 191-200.

On [redacted], the Petitioner was given a Medical Review Note at the [redacted]. She was improving on the current medication regiment with no side effects. The Petitioner denied suicidal/homicidal thoughts. She had stopped using drugs. She had stabilized with the current medications and therapy. The Petitioner was stable bipolar with no illicit drug use for 2 months. There was no evidence of a severe thought disorder or risk factors. She was given a diagnosis of schizoaffective disorder with illicit drugs use. Department Exhibit 1, pgs. 148-153.

At Step 3, this Administrative Law Judge finds that the Petitioner does not have medical improvement and her medical improvement is related to the Petitioner's ability to perform substantial gainful activity. She was hospitalized for a suicide attempt in January 2016 with subsequent therapy and medications. She is currently in treatment and taking medications for her mental impairments. As a result, the Petitioner is not able to perform simple and unskilled work. Therefore, the Petitioner is not disqualified from receiving disability at Step 3.

Step 4

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to Petitioner 's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has not been medical improvement where she can perform work.

At Step 4, the Petitioner testified that she does perform some of her daily living activities. The Petitioner testified that her condition has gotten worse because she does not want to be around people. She does have mental impairments where she is taking medications and in therapy. The Petitioner does smoke ½ a pack of cigarettes a day. She stopped using illegal or illicit drugs in 2015 where before she used crack cocaine. She stopped drinking alcohol in 2014 where years before she drank a cooler. The Petitioner did not think that there was any work that she could perform.

This Administrative Law Judge finds that the Petitioner has not had medical improvement related to her ability to do work. Therefore, the Petitioner is not disqualified from receiving disability at Step 4. If there is a finding of medical improvement related to Petitioner's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

Step 5

At Step 5, this Administrative Law Judge finds that there is still disability and no medical improvement occurred. The Petitioner was hospitalized for a suicide attempt and has continued in therapy and taking medications for a mental impairments. She has stabilized and has improved, but not to a level to be able to work at the level of substantial gainful employment. As a result, disability continues.

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 medical review of SDA benefit programs. The Petitioner is eligible for SDA retroactive to September 2016 with a medical review in August 2017.

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 medical review 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 of initiating a redetermination of the Petitioner's eligibility for SDA retroactive to September 2016 with a medical review required in August 2017.

Carmen G. Fahie

[redacted]

Carmen G. Fahie
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

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