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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]

Date Mailed: December 13, 2016
MAHS Docket No.: 16-012432
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 [REDACTED], from Sterling Heights, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [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. The Petitioner was an ongoing recipient of SDA benefits.
2. In a [REDACTED] medical review, the Disability Determination Service (DDS)/Medical Review Team (MRT) reviewed Petitioner's medical evidence and concluded that she continued to be disabled and eligible for SDA benefits. DDS/MRT referred Petitioner's case for medical review in [REDACTED]. (Exhibit A, pp. 24-48.)
3. In connection with a [REDACTED] review, DDS/MRT determined on [REDACTED], that Petitioner's condition had significantly improved, that he had a residual functional capacity to perform sedentary work, and that he was capable of substantial gainful activity and could adjust to other work. . DDS/MRT concluded that Petitioner was no longer disabled. (Exhibit A, pp. 48).

4. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his SDA case would close effective [REDACTED], because, among other things, he was not disabled.
5. On [REDACTED], the Department received Petitioner's timely written request for hearing concerning the closure of his SDA case (Exhibit A, p. 2).
6. Petitioner alleged disabling impairment due to low back pain, cervical spine pain and carpal tunnel syndrome (CTS) of both wrists, and hypertension.
7. The Petitioner alleged mental disabling impairments, including schizoaffective disorder, Bipolar disorder, learning disability and low IQ.
8. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED], birth date; he is [REDACTED] in height and weighs about [REDACTED] pounds.
9. Petitioner completed a GED and attended special education classes.
10. Petitioner has no employment history of work within the last [REDACTED] years.
11. Petitioner has a pending disability claim with the Social Security Administration (SSA) on remand from the appeals council.

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.

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.

On [REDACTED], an extensive psychological assessment by a consultative examiner was performed. During the exam, the Petitioner was noted to have difficulty concentrating, questions had to be repeated numerous times; he would jump from topic to topic and was distracted by noises in the lobby. Claims of continuing suicidal thoughts, but no plans, as well as feelings of helplessness were noted. The Medical Examiner noted that Petitioner was superficially cooperative and most of the time responded appropriately to questions. The responses were slow and many times during testing Petitioner would use the maximum amount of time to get an incorrect response. Effort was noted as fair. Insight and problem-solving skills were rated as poor. It was noted Petitioner has a history of temper tantrums and inability to focus and concentrate; his math skills were poor. The diagnostic impression was attention deficit/hyperactivity disorder, combined presentation. Generalized anxiety disorder, rule out specific learning disorder with impairment and reading, written expression and mathematics. The examiner also noted Intellectual disability, Bipolar disorder with psychotic features and rule out schizoaffective disorder.

The report also evaluated Petitioner's full-scale IQ score, which was [REDACTED]. The score places him in the extremely low range of intellectual functioning. The Examiner concluded that this does appear to be an accurate assessment of his current level of functioning based on intra-test scatter and pattern of near misses. He clearly had difficulty with most aspects of the test and was noted to be easily distracted. Directions were repeated numerous times; and he would still indicate he did not know the answer, or how to proceed with the problem he was confronted with. His performance in intellectual functioning is commensurate to a special education diagnosis.

The Medical Source Statement concluded Petitioner does not appear to be able to manage his own benefit funds based on the evaluation. He knows the basics of math problems and is able to do some simple addition and subtraction. He was noted to have difficulty carrying out one-step instructions. He was able to read only some words and stated he was not illiterate; but he could not read many words. He would appear to have difficulty maintaining standards of safety issues and work routines due to chronic mental illness. He has difficulty with social interactions, and his ability to respond appropriately to changes in work routine and to maintain standard of safety issues would be a problem. He appeared to make a fair effort during his evaluation. He stated "I do not like doing all of this, and I get irritated when I have to do things like this."

A Mental Residual Functional Assessment was also completed as part of the examination. The Petitioner was rated as having marked limitations (there is serious limitation in this area, and there is a substantial loss in the ability to function effectively). The following abilities were evaluated as marked: ability to understand and remember simple instructions, carry out simple instructions, ability to make judgments on simple work-related decisions, understand and remember complex instructions, carry out complex instructions, and the ability to make judgments on complex work-related decisions. The identifying factors listed by the evaluator to support the evaluation noted

claimant was unable to focus on questions and would jump from topic to topic. He is easily agitated especially when he does not understand or know the answer.

Also affected as part of the Mental Residual evaluation was the Petitioner's ability to interact appropriately with supervision, coworkers and the public. In regards to this category, the following abilities were noted as marked: ability to interact appropriately with public, interact appropriately with supervisors, ability to appropriately interact with co-workers and respond appropriately to usual work situation and changes in routine work setting. The Medical Examiner noted [REDACTED] has little tolerance for groups; and individually he attempts to intimidate, as he did to the writer. When asked are there any other capabilities affected by the impairment, the Examiner noted "yes" and responded "[REDACTED] has no ability to interact socially." He is harsh and at times juvenile when his needs are not immediately met. He has difficulty with comprehension and gets irritated and frustrated easily. It remains a question if he is compliant with his medications. Factor supporting this statement was that he was administered an IQ test and received a full-scale IQ score of [REDACTED] indicating he functions in the extremely low range.

A discharge summary from [REDACTED] County Community Mental Health was also completed on [REDACTED]. At that time, the diagnosis was schizoaffective disorder and learning disorder. The history notes that the Petitioner had been seen for the past five years at another treatment center, [REDACTED]. At the time of the discharge, the Petitioner's GAF score was [REDACTED].

An earlier psychiatric/psychological examination report was completed together with a mental residual functional capacity assessment by his then-treating Doctor at first Resources [REDACTED] County Mental Health. The date of the examination was [REDACTED]. The Examiner rated the Petitioner markedly limited in all categories including understanding and memory, social interaction, and adaptation. The Psychological Examination Report noted a history of emotional problems and that he has experienced psychotic symptoms of paranoid suspicious thinking and auditory hallucinations as well as visual hallucinations of ghosts and shadows. He exhibits irritability and physical aggression. Also has a learning disorder. At the mental status examination, the thought processes were noted as slow, with impaired memory, reduced comprehension and below-average intelligence, no active hallucinations, but paranoid suspicious thinking was present. At the time, the diagnosis was schizoaffective disorder, and learning disabilities; the GAF score was [REDACTED].

In the first step of the sequential analysis 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. As the Petitioner has alleged mental disabling impairments with a diagnosis of bipolar disorder, schizophrenic hallucinations, and learning disorder with consistent GAF scores of 35 -40 and has received ongoing treatment.

Listings 12.03 Schizophrenic, paranoid and other psychotic disorders 12.04 Affective Disorders and 12.05 Intellection disability were examined in light of Petitioner's lifelong

and ongoing bipolar disorder and auditory hallucinations and related impairments and full scale IQ testing score of 49. The Listing 12.04 provides:

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking; or
2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions or paranoid thinking; or
3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

Based upon a review of the consultative psychological evaluation and prior evaluations by Petitioner's treating doctor, which both included diagnosis of bipolar disorder and hallucinations with both difficulty concentrating and distractibility and social behavioral difficulties characterized by at least sleep disturbance, difficulty concentrating or thinking, easy distractibility, as well as satisfying the requirements of the listing for bipolar syndrome which results in marked restrictions of activities, difficulties in maintaining social functioning and difficulties in maintaining concentration, persistence or pace, it is determined that the Petitioner has satisfied the requirements or its medical equivalent of listing 12.04 B for bipolar disorder and, therefore, is found disabled at Step 1 of the analysis. In addition, in light of the full scale IQ of [REDACTED] the Petitioner meets listing 12.05 as well.

Therefore, Petitioner is found disabled for purposes of SDA on a continuing basis at Step 1 with no further analysis required.

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.

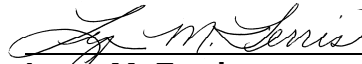
Accordingly, the Department's determination is **REVERSED**.

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. Reinstate Petitioner's SDA case effective [REDACTED];
2. Issue supplements to Petitioner for any lost SDA benefits that he was entitled to receive from [REDACTED], 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 [REDACTED] in accordance with Department policy.

LMF/jaf



Lynn M. Ferris

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

Via USPS

[REDACTED]

Petitioner

Via email

[REDACTED]

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]