



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: October 24, 2016
MAHS Docket No.: 16-012435

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 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on September 28, 2016, from Lansing, Michigan. Petitioner personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist [REDACTED] [REDACTED] testified on behalf of the Department. The Department submitted [REDACTED] exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Whether the Department properly determined that Petitioner was no longer disabled and denied his Redetermination for State Disability Assistance (SDA) 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. On October 6, 2015, Petitioner timely submitted his Redetermination for SDA alleging continued disability. [Hearing Summary].
2. On May 2, 2016, Petitioner met with his neurologist for an EMG and nerve conduction study of his bilateral lower extremities regarding lumbosacral pain.

Petitioner was referred by his neurosurgeon. Petitioner had a L1 compression fracture, status post vertebroplasty in 2012. He had a compression fracture of L4 with vertebroplasty in 2015 and he continued to have severe pain in the lumbosacral region. Most of Petitioner's pain appeared to be located on the left paraspinal, left hip, and radiated down the left lower extremity. Petitioner also had transient numbness and a tingling sensation in his feet. Petitioner's most recent x-rays revealed he had severe osteoporosis, which was a lifelong problem for him. Petitioner also had complex partial epilepsy, osteoarthritis, chronic sinusitis, left ankle pain secondary to a work-related injury in 1996 with complex regional pain syndrome, right wrist pain secondary to previous history of fracture, history of bladder cancer treated in 1996, glaucoma, osteoporosis and insomnia. At the time of the evaluation, Petitioner was wearing a splint on his right wrist. He had a normal EMG and nerve conduction study. Straight leg raising was positive at 90 degrees on the left side. The lumbosacral pain was secondary to compression fractures with vertebroplasty and transient clinical radiculopathy. The MRI of the brain revealed mild microvascular ischemic changes. [Dept. Exh. 21-24].

3. On August 11, 2016, the Medical Review Team (MRT) denied continuing Petitioner's SDA benefits. [Dept. Exh. 9-15].
4. On August 22, 2016, the Department mailed Petitioner a Notice of Case Action, informing Petitioner the SDA benefits would close effective October 1, 2016. [Dept. Exh. 5-8].
5. On September 2, 2016, Petitioner submitted a Request for Hearing indicating that he was still and would be permanently disabled. His left ankle was broken and he had subtalar arthrodesis. His left shoulder was broken and had an artificial ball surgically inserted in the socket. He had numerous broken vertebra for which he underwent surgery and fusions. He had a broken right wrist that would not heal. He also had epilepsy and lesions on the brain severely affecting his memory. [Dept. Exh. 3-4].

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.

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).

Petitioner was evaluated by his neurosurgeon on May 2, 2016. The evaluation does not indicate a decrease in medical severity based on improvement of Petitioner's symptoms.

As a result, the Department has not met its burden of proof. The Department has provided no evidence that indicates Petitioner's medical conditions have 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 Disability 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 OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall process Petitioner's October 6, 2015 SDA Redetermination, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in October, 2017, unless his Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

It is **SO ORDERED**.



A handwritten signature in blue ink that reads "Vicki 2. 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]