



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 3, 2017
MAHS Docket No.: 17-002644
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on [REDACTED], from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], manager.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner is not a disabled individual.

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 an ongoing SDA benefit recipient.
2. Petitioner's only basis for SDA eligibility was as a disabled individual.
3. On [REDACTED], Disability Determination Services (DDS) determined that Petitioner was not a disabled individual, in part, without determining if Petitioner was medically improved.
4. On [REDACTED], DDS determined that Petitioner was not a disabled individual, in part, without determining if Petitioner was medically improved.

5. On an unspecified date, MDHHS terminated Petitioner's eligibility for SDA benefits, effective an unknown month, from [REDACTED] through [REDACTED].
6. On [REDACTED], Petitioner requested a hearing disputing the termination of SDA benefits.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

It was not disputed that Petitioner requested a hearing to dispute SDA eligibility. Petitioner's hearing request indicated she received SDA benefits for the "last 3 years". The statement was consistent with Petitioner's testimony that she wished to dispute a termination of SDA benefits. Unfortunately, the month of SDA termination was not established during the hearing.

Typically, the month of dispute can be easily discerned from a Notice of Case Action. MDHHS presented more than 1,000 documents, but not a Notice of Case Action.

A well prepared MDHHS case summary will state the month of benefits in dispute. As it happened, the MDHHS case summary framed Petitioner's dispute as that of a denied application from [REDACTED] rather than as a benefit termination. No mention was made when Petitioner's SDA eligibility ended.

Typically, clients will submit a SDA application shortly after a termination of SDA benefits. Thus, it is likely that MDHHS likely terminated Petitioner's SDA eligibility shortly before [REDACTED].

MDHHS presented a Medical-Social Questionnaire (Exhibit 3, pp. 10-17). The document was signed by a consulting physician on [REDACTED]. MDHHS submitted the document indicating a "Medical Rev. Date" of [REDACTED]. A review date of [REDACTED] is indicative that Petitioner's SDA eligibility was due for review around [REDACTED] or [REDACTED]. These considerations are suggestive that Petitioner's eligibility was not stopped before [REDACTED].

Given presented evidence, it is found that Petitioner intended to dispute a termination of SDA benefits, beginning some month from [REDACTED] through [REDACTED]. One final procedural consideration should be noted before an undertaking of the merits of Petitioner's claim.

MDHHS policy precludes clients from requesting hearings after 90 days from the date of written notice of the disputed action (see BAM 600). Petitioner's hearing request was

dated [REDACTED]. Petitioner's hearing request submission date is suggestive that Petitioner was too late to dispute a termination of SDA beginning as late as [REDACTED].

If Petitioner's hearing request was untimely, MDHHS failed to present any evidence to verify untimeliness. As noted above, MDHHS did not present a date verifying issuance of written notice. MDHHS also did not allege that Petitioner's hearing request was untimely. Thus, there is no evidentiary support to dismiss Petitioner's hearing request as tardy. Due to a lack of evidence, Petitioner's hearing request will be assumed to be timely to dispute a termination of SDA benefits.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (July 2015), p. 5. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.*

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (July 2015), p. 1. A person is disabled for SDA purposes if he [or she]:

- 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; [or]
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id., pp. 1-2.

Generally, state agencies such as MDDHS must use the same definition of disability as used under SSI regulations (see 42 CFR 435.540(a)). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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. MDHHS adopted a functionally identical definition of disability (see BEM 260 (July 2015, p. 10)). The definition of SDA disability is identical except that only a 90 day period of disability is required.

Substantial gainful activity means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. BEM 260 (July 2015), p. 10. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

Once an individual has been found disabled for purposes of disability-related benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994.

In evaluating a claim for ongoing disability benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding if an individual's disability has ended, the department will develop, along with the petitioner's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The below-described evaluation process is applicable for clients that have not worked during a period of disability benefit eligibility. There was no evidence suggesting that Petitioner received any wages since receiving disability benefits.

The first step in the analysis in determining the status of a petitioner's disability 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 and no further analysis is required.

At this point of the analysis, it is appropriate to undertake a review of medical records submitted since the most recent approval of disability. For purposes of this decision, the summary provided by MDHHS will be accepted as adequate.

MDHHS presented a Medical-Social Eligibility Certification (Exhibit 3, pp. 2-8). The document was signed by a consultative physician on [REDACTED]. The summary noted allegations of "severe anxiety"; related symptoms included difficulty controlling emotions, physical shaking, and anger management problems. Physical allegations included walking difficulty. The document determined Petitioner was not disabled based on an analysis of various medical records.

A finding of non-disability incorporates a finding that Petitioner did not meet any SSA listings. For purposes of this decision, the MDHHS analysis will be accepted as accurate.

It is found Petitioner failed to establish meeting any SSA listings. Accordingly, the analysis may proceed to the second step.

The second step of the analysis considers whether medical improvement occurred. CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i).

The Medical-Social Eligibility Certification signed by a consultative physician on [REDACTED] [REDACTED] concluded Petitioner was not disabled based on the steps appropriate for SDA application. No analysis of medical improvement was undertaken.

MDHHS presented a Medical-Social Eligibility Certification (Exhibit 3, pp. 10-17). The certification was signed by a consultative physician on [REDACTED]. The documents appeared to reflect the most recent analysis of disability before the certification from [REDACTED]. Various medical documents were referenced. It was noted that Petitioner failed to return function reports. The examiner concluded there was "insufficient information for adjudication". No evaluation of medical improvement was undertaken, presumably due to the allegedly "insufficient" information.

MDHHS might have properly terminated Petitioner's SDA eligibility if Petitioner failed to provide requested documents to MDHHS. MDHHS presented insufficient evidence verifying such a scenario. In lieu of more persuasive evidence, it must be assumed that no such scenario occurred.

MDHHS presented a Medical-Social Eligibility Certification (Exhibit 3, pp. 18-19). The document indicated Petitioner was evaluated for disability based on a review date of [REDACTED]. The certification indicated Petitioner was disabled.

The above-cited documents appear to reflect the 3 most recent disability certifications for Petitioner. None of the documents included an analysis of medical improvement.

Presented medical documents were sufficient to undertake a de novo review of medical improvement. A de novo review of medical improvement is deemed to be improper.

It is MDHHS's burden to establish medical improvement for redeterminations. By failing to evaluate Petitioner for medical improvement, MDHHS committed a procedural failure in the evaluation of Petitioner's ongoing SDA eligibility. The procedural failure justifies a summary finding that MDHHS failed to establish medical improvement. Based on a finding that MDHHS failed to establish medical improvement, the disability analysis may proceed to the fourth step.

The fourth step of the disability analysis considers whether any exceptions apply to a previous finding that no medical improvement occurred or that the improvement did not relate to an increase in RFC. 20 CFR 416.994(b)(5)(iv). If medical improvement related to the ability to work has not occurred and no exception applies, then benefits will continue. CFR 416.994(b). Step 4 of the disability analysis lists two sets of exceptions.

The first group of exceptions allow a finding that a claimant is not disabled even when medical improvement had not occurred if it is established that the claimant can engage in substantial gainful activity. The exceptions are:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;

- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.
20 CFR 416.994(b)(1)(3)

The second group of exceptions also allow a finding that a claimant is not disabled when medical improvement has not occurred. The exceptions do not require a showing that a claimant can engage in substantial activity. The exceptions are:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.
20 CFR 416.994(b)(4)

There was no evidence that any of the above exceptions are applicable. It is found that Petitioner is still a disabled individual. Accordingly, it is found that MDHHS improperly terminated Petitioner's SDA eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly terminated Petitioner's eligibility for SDA benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's SDA eligibility, effective the month after Petitioner most recently received SDA benefits from between May 2016 to August 2016;
- (2) evaluate Petitioner's eligibility subject to the finding that Petitioner is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in no less than twelve months from the date of this administrative decision, if Petitioner is found eligible for future benefits.

The actions taken by MDHHS are **REVERSED**.

CG/hw



Christian Gardocki

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]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]