



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: August 29, 2017  
MAHS Docket No.: [REDACTED] 17-008572  
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. [REDACTED], Petitioner's mother, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] supervisor.

**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] the Medical Review Team (MRT) determined that Petitioner was not a disabled individual for purposes of SDA eligibility (see Exhibit 1, pp. 11-17), in part, based on a Disability Determination Explanation (Exhibit 1, pp. 18-29)

4. On [REDACTED] MDHHS terminated Petitioner's eligibility for SDA benefits, effective [REDACTED], and mailed a Notice of Case Action (Exhibit 1, pp. 5-9) informing Petitioner of the termination.
5. On [REDACTED] Petitioner requested a hearing disputing the termination of SDA benefits.
6. Petitioner has not medically improved since the original finding of disability.

### **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).

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.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 5-9). The written notice stated Petitioner was no longer eligible to receive SDA due to a determination that he was no longer disabled. Petitioner did not assert any other basis for receiving SDA benefits. Thus, the only issue to be determined is if MDHHS properly determined Petitioner to no longer be disabled.

In evaluating a claim for ongoing disability benefits, federal regulations require a sequential evaluation process be utilized (see 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).

If you became entitled to benefits because you were found to be disabled under a State plan, we will first evaluate your impairment(s) under the rules explained in paragraph (b) of this section. 20 CFR 416.994 (c). We will apply the same steps as described in paragraph (b) of this section to the last decision granting or affirming entitlement to benefits under the State plan. *Id.* If we are not able to find that your disability continues on the basis of these rules, we will then evaluate your impairment(s) under the appropriate State plan. *Id.* If we are not able to find that your disability continues under these State plan criteria, we will find that your disability ends. *Id.* Disability will be found to end the month the evidence shows that you are no longer disabled under the criteria in paragraph (b) of this section (or appropriate State plan criteria), subject to the rules set out in paragraph (b)(6) of this section. *Id.*

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 (see 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. This consideration requires a summary and analysis of presented medical documents and testimony.

Petitioner testified he has no physical impairments (other than those related to mental illness). Thus, the analysis will focus solely on Petitioner's alleged mental impairments.

Medical encounter notes (Exhibit 1, pp. 353-354) dated [REDACTED], were presented. Petitioner presented for medical clearance to drive. No physical complaints were noted. A mental status examination was normal.

Counselor encounter notes (Exhibit 1, pp. 350-353) dated [REDACTED], were presented. Petitioner reported that he lived with his parents his entire life except for a 4-month period. Petitioner also reported unspecified troubles during the 4-month period when he did not live with his parents. Petitioner reported gratitude for his parents for being able to tell him what was real and what was not. Recent suicidal thoughts were reported. Petitioner reported sleep of 6 hours/night and recurrent nightmares. Petitioner reported he was not on any medication. Coping strategies were discussed.

Counselor encounter notes (Exhibit 1, p. 350) dated [REDACTED], were presented. Petitioner requested documents to be completed to support obtaining a driver's license. Assessments included eurythmic mood, psychomotor restlessness, odd and eccentric speech with flight of ideas, normal affect, paranoid delusions, and racing thoughts. Coping strategies were discussed.

A mental status examination report (Exhibit 1, pp. 338-341) dated [REDACTED], was presented. The report was completed by a consultative psychiatrist. Petitioner reported a history of suicide attempts, hallucinations, and night terrors. Reported current symptoms included paranoia, sleep difficulty, poor appetite, anxiety, audio hallucinations, and irritability. Petitioner's weight was 152 pounds and his height was 6'0". Noted observations of Petitioner made by the consultative examiner included the following: good contact with reality, "extremely" nervous appearance with shaky hands, blunted affect, and adequate hygiene. A diagnosis of schizoaffective disorder was noted. Petitioner's prognosis was guarded. No statements of restriction or capabilities were provided.

Petitioner testified he was psychiatrically hospitalized three times from 2008-2012. In 2008, Petitioner testified he was hospitalized after someone told him to jump off a 3-story stairway; Petitioner's testimony implied that the voice he heard was a hallucination. Petitioner testified a second hospitalization occurred after he was found speaking gibberish. Petitioner testified a third hospitalization occurred after another suicide attempt via jump.

Petitioner testified he has attended psychiatric appointments since he was 15-years-old. Petitioner testified he recently lost his treating psychiatrist due to funding problems with the treating agency. Petitioner testified the only medication he currently takes is Abilify.

Petitioner reported zero work history. When asked of the prospect of employment, Petitioner thought that work would be unsafe for him. Petitioner testified he did work, it would have to be for a boss he could trust. Petitioner also expressed concern that

employment would exacerbate his symptoms because his symptoms worsen when he is upset. Petitioner's mother testified that Petitioner can complete some tasks, but only for short periods.

Petitioner testified that current mental health symptoms include compromised senses and hearing voices that sound like white noise. Petitioner testified he needs reminders from his family to take his medication.

A listing for psychotic disorders (Listing 12.03) was considered based on a diagnosis of schizoaffective disorder. The listing was rejected due to a failure to establish an extreme restriction or multiple marked restrictions to understanding or applying information, interacting with others, concentration or persistence, and/or adaptation. It was also not established that Petitioner had minimal capacity to adapt to changes in environment or to demands that are not already part of daily life.

Presented medical evidence was exceptionally sparse. It is insufficient to make inferences that Petitioner has listing-related impairments to a degree of "marked" or "extreme."

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 (see 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).

Hospital documents (Exhibit 1, pp. 355-358) dated [REDACTED], were presented. Petitioner presented after a recommendation from his counselor. Petitioner reported mental health symptoms of sleep disturbance, anger outbursts, nervousness, racing thoughts, difficulty concentrating, audio hallucinations, and paranoia. Mental health assessments included good insight, good judgment, intact memory, and logical thought process. Drug abuse history was reported; Petitioner reported being sober for a year. Diagnoses included bipolar disorder (schizoaffective type) and history of opiate and marijuana abuse. Petitioner's GAF was 54-55. Latuda was prescribed to stabilize mood. Trazadone was prescribed for sleep.

A mental status examination report (Exhibit 1, pp. 359-363) dated [REDACTED] was presented. The report was completed by a consultative limited-licensed psychologist and cosigned by a licensed psychologist. Petitioner reported a history of suicide attempts, hallucinations, heroin abuse, and night terrors. Difficulty with authority figures was reported. Petitioner reported that his thoughts were like currency and people were trying to steal them. Petitioner also reported that he does not want to build a life or structure because it would eventually fail him. The examiner found that

Petitioner would be unlikely to appropriately interact with others in a work setting due to delusions. A guarded prognosis was indicated.

MDHHS presented a Medical- Social Eligibility Certification (Exhibit 1, pp. 31-38) dated [REDACTED] [REDACTED] [REDACTED]. The document was signed by a consultant psychologist. The psychologist found no medical improvement. The only document cited was a consultative mental examination report from [REDACTED].

A mental status examination report (Exhibit 1, pp. 93-96) dated [REDACTED], was presented. The report was noted as completed by a consultative licensed psychologist. Noted observations of Petitioner made by the consultative examiner include the following: limited insight, limited judgment, skewed perception when stressed, flat affect, and sad mood. The examiner concluded Petitioner's mood issues caused significant impairment in occupational and other areas of function. The pressures of employment were suspected to likely cause decompensation, particularly without support, mental health services, and instruction. A guarded prognosis was noted.

The [REDACTED] consultative examination reports are not very different. In both reports, Petitioner complained of various schizoaffective disorder symptoms, including severe symptoms such as hallucinations and abnormal psychomotor activity. Both examiners found a guarded prognosis.

The [REDACTED] examiner happened to not provide any statements of capabilities or restriction, but that does not justify an inference that Petitioner has medically improved. The few counseling records from [REDACTED] that were also presented also were not particularly indicative of medical improvement.

It is MDHHS's burden to establish medical improvement for redeterminations. Presented evidence was not indicative that Petitioner medically improved since MDHHS last found Petitioner to be disabled. It is found MDHHS failed to establish medical improvement. Accordingly, the analysis proceeds directly 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 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 [REDACTED], subject to the finding that Petitioner is a disabled individual;
- (2) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (3) schedule a review of benefits in no less than twelve months from the date of this administrative decision, if Petitioner is found eligible for ongoing SDA 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]  
[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]