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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 20, 2017
MAHS Docket No.: 17-008520
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, an in-person hearing was held on September 13, 2017, from Taylor, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], medical contact worker.

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 June 9, 2017, the Medical Review Team (MRT) determined that Petitioner was not a disabled individual for purposes of SDA eligibility (see Exhibit A, pp. 3-9), in part, based on a Disability Determination Explanation (Exhibit A, pp. 10-26).
4. On June 17, 2016, MDHHS terminated Petitioner's eligibility for SDA benefits, effective July 2017, and mailed a Notice of Case Action informing Petitioner of the termination.

5. On July 28, 2017, Petitioner requested a hearing disputing the termination of SDA benefits (see Exhibit A, p. 453).
6. Petitioner has various mental health symptoms due to bipolar disorder which causes an extreme limitation in interacting with others.

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 A, pp. 449-452). 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.

Consideration was given to finding that Petitioner was not disabled based on a "final" determination (see BEM 260) of disability made by SSA in December 2016. Such a finding was rejected because medical evidence dated after the denial of disability by SSA was presented. The updated documents implied different and/or worsening impairments which would render the previous disability determination to be obsolete and not binding on MDHHS.

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

A Psychiatric Evaluation (Exhibit 1, pp. 8-12) dated [REDACTED], was presented. A Psychiatric Evaluation (Exhibit 1, pp. 14-18) dated [REDACTED], was presented. Ongoing mental health treatment for Petitioner was documented.

A Psychiatric Evaluation (Exhibit 1, pp. 19-24) dated [REDACTED], was presented. Petitioner reported ongoing symptoms of depression, worthlessness, hopelessness, anger management, irritability, social isolationism, flashbacks of past incidents, suicidal ideation, and excessive hand washing. Two suicide attempts (most recently in 2006) were noted. Mental exam assessments included intact memory, able concentration,

poor judgment, unremarkable thought content, obsessive thought process, delayed stream of mental activity, avoidance of eye contact, and flat affect. A primary diagnosis of bipolar disorder (type II) was noted. Other diagnoses included Post-traumatic stress disorder (PTSD), and obsessive-compulsive disorder (OCD). Petitioner's GAF was 45. Petitioner was assessed as easily overwhelmed by social situations. A poor prognosis was indicated. It was noted that Petitioner's continued attendance at therapy could justify a guarded prognosis in the future.

Portions of a psychiatric progress note (Exhibit 1, pp. 5-7) dated [REDACTED], were presented. Ongoing diagnoses of bipolar disorder (type II), PTSD, and mixed obsessional thoughts and acts were noted.

Petitioner presented a letter (Exhibit 1, pp. 1-2) dated [REDACTED], from a treating psychotherapist. The counselor stated Petitioner was an ongoing patient for [REDACTED] years. It was noted Petitioner had a "pervasive pattern of detachment from social relationships" and that he is easily overwhelmed. A history of dissociative episodes (caused by PTSD) in public and social situations was noted. As an example of Petitioner's anxiety, it was noted that Petitioner never learned to drive. A history of anorexia motivated by suicide and guilt was noted. Petitioner was noted to be "deeply affected" by praise or criticism. It was noted that topics in Petitioner's therapy included coping skills, anger management, emotional regulation, communication, and tolerance. Petitioner's prognosis was noted to be guarded. Petitioner's psychotherapist noted that though Petitioner has improved with counseling, his improvements do not outweigh his obstacle (specifically, trust and paranoia).

Petitioner testified he was last employed in 2007 at a retail store as a supervisor. Petitioner testified that he worked the night shift. Petitioner testified he was fired for creating a hostile work environment for other employees. Petitioner testified he was accused of being aloof and angry.

Petitioner testified he has tried to find employment but his retail job termination impaired his job candidacies. Petitioner testified if he gained employment today, then he would inevitably be fired for some social gaffe.

Petitioner testified he hadn't bathed in two weeks nor shaved in the last three weeks. Petitioner testified it takes him two-three weeks of planning to food shop. Petitioner testified his plans include what to say to people if they talk to him and what to do if he sees someone that he knows.

Petitioner testified he has never driven a car. Petitioner testimony indicated his lack of interest in driving related to watching his father engage in road rage incidents.

Petitioner testified he lives with his mother and sister. Petitioner testified he tries to help out by performing yard work. Petitioner testified he will wait until 10 p.m. to mow the lawn so as to avoid talking to neighbors.

Petitioner testified he is hardwired to be socially awkward. Petitioner testified that he has never had a friend in his life. Petitioner testified ongoing mental health symptoms include recurrent suicide ideation, social isolationism, and paranoid thoughts. Petitioner testified that he routinely perceives negativity and scrutiny from other people.

During the hearing, Petitioner was asked about physical problems. Petitioner testified he currently sees a hemotologist concerning his white blood cell count. Petitioner testimony conceded the problem does not impair his employment opportunities.

A primary diagnosis for bipolar disorder was verified. The SSA listing for bipolar disorders justifies a finding of disability based on the following:

12.04 Depressive, bipolar and related disorders (see 12.00B3), satisfied by A and B, or A and C:

A. Medical documentation of the requirements of paragraph 1 or 2:

1. Depressive disorder, characterized by five or more of the following:
 - a. Depressed mood;
 - b. Diminished interest in almost all activities;
 - c. Appetite disturbance with change in weight;
 - d. Sleep disturbance;
 - e. Observable psychomotor agitation or retardation;
 - f. Decreased energy;
 - g. Feelings of guilt or worthlessness;
 - h. Difficulty concentrating or thinking; or
 - i. Thoughts of death or suicide.
2. Bipolar disorder, characterized by three or more of the following:
 - a. Pressured speech;
 - b. Flight of ideas;
 - c. Inflated self-esteem;
 - d. Decreased need for sleep;
 - e. Distractibility;
 - f. Involvement in activities that have a high probability of painful consequences that are not recognized; or
 - g. Increase in goal-directed activity or psychomotor agitation.

AND

B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see 12.00F):

1. Understand, remember, or apply information (see 12.00E1).
2. Interact with others (see 12.00E2).
3. Concentrate, persist, or maintain pace (see 12.00E3).
4. Adapt or manage oneself (see 12.00E4).

OR

C. Your mental disorder in this listing category is “serious and persistent;” that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:

1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see 12.00G2b); and
2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see 12.00G2c).

Petitioner’s documented symptoms are more closely related to anxiety disorders than bipolar disorders. Though Petitioner’s anxiety may be understated in his diagnosis, ongoing symptoms of depressed mood, diminished interest in activities, feelings of worthlessness, concentration difficulty, and suicide ideation were documented.

It is found that Petitioner meets Part A of Listing 12.04. The degree and effects of Petitioner’s symptoms were documented by Petitioner’s psychotherapist.

A Mental Impairment Questionnaire (Exhibit 1, pp. 3-4) dated [REDACTED], was presented. The questionnaire was completed by Petitioner’s treating psychotherapist. Petitioner was assessed as likely to be absent from work more than four days per month. Petitioner’s psychological symptoms were deemed likely to interrupt tasks more than 20% of a workday. Petitioner was deemed capable of handling “minimal changes” only. Petitioner was stated to require more than 20% of a workday to deal with stress. Petitioner was deemed unable to accept instructions and criticism from a supervisor.

The assessment from Petitioner’s psychotherapist was reasonable and consistent with Petitioner’s testimony and presented treatment history. The assessments were consistent with an extreme impairment to social interactions. It is found that Petitioner meets Part B of the listing for affective disorders.

It is found that Petitioner established meeting Listing 12.04. Accordingly, Petitioner is disabled and 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 July 2017;
- (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/jaf



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]

Petitioner

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]