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GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: November 20, 2017  
MAHS Docket No.: 17-006926  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Carmen G. Fahie

**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. After due notice, an in-person hearing was held on July 18, 2017, from Standish, Michigan. The Petitioner was represented by herself and her husband, [REDACTED]. The Department of Health and Human Services was represented by [REDACTED] Eligibility Specialist. The record was left open for additional medical records, which was received on September 8, 2017 and the record was closed.

**ISSUE**

Whether the Department properly determined that Petitioner was not disabled for purposes of continued State Disability Assistance (SDA) benefit programs?

**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 approved for SDA by Administrative Law Judge, Susanne E. Harris on March 2, 2016, with a medical review in February 2017 due to listing 1.04 or its equivalent.
2. On April 5 2017, the MRT denied the Petitioner's medical review for SDA stating that the Petitioner had medical improvement for CDR 20 CFR 416.994.
3. On May 1, 2017, the Department Caseworker sent the Petitioner a notice that she was denied for SDA because she had had medical improvement.
4. On May 19, 2017, the Department received a hearing request from the Petitioner, contesting the Department's negative action.

5. The Petitioner is a [REDACTED] year-old woman whose date of birth is [REDACTED]. The Petitioner is 5' 6" tall and weighs 246 pounds. She has completed the 10<sup>th</sup> grade of high school. The Petitioner can read and write some and perform basic math except for multiplication and division. She was special education in all her classes in high school. The Petitioner was last employed as a part time cashier in 2013 at medium/heavy level. She last worked full time as a cashier in 2006. The Petitioner has also been employed at a housekeeper at the light/medium level.
6. The Petitioner's alleged impairments are back surgery in December 2015, walks with a cane, depression, COPD, sleep apnea, gall bladder removal in July 2016, nerve damage, carpal tunnel syndrome in the left hand, and right hand carpal tunnel surgery in February 2017.
7. The Petitioner is scheduled for surgery on her back on September 12, 2017 due to spondylolistheses and lumbar radiculopathy. She is to undergo a lumbar decompression and fusion. Petitioner Exhibit 1, A-C.

### **CONCLUSIONS OF LAW**

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.

The Department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

#### **DISABILITY – SDA**

#### **DEPARTMENT POLICY**

#### **SDA**

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

**Note:** There is no disability requirement for AMP. BEM 261, p. 1.

#### **DISABILITY**

A person is disabled for SDA purposes if he:

- . 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.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1.

### **Other Benefits or Services**

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
  - .. a DE/MRT/SRT determination, or
  - .. a hearing decision, or
  - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
  
- . Special education services from the local intermediate school district. To qualify, the person may be:
  - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
  
  - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
  
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit BEM, Item 261, pp. 1-2.

"Disability" is:

The inability to do any substantial gainful activity 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.

We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled

regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

[The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

Medical reports should include --

Medical history.

Clinical findings (such as the results of physical or mental status examinations);

Laboratory findings (such as blood pressure, X-rays);

Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

In general, Petitioner has the responsibility to prove that he/she is disabled. Petitioner's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the petitioner has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a

determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be “disabled” for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual’s disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual’s ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

#### Step 1

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the Petitioner is not engaged in substantial gainful activity and has not worked since 2006. Therefore, the Petitioner is not disqualified from receiving disability at Step 1.

#### Step 2

In the second step of the sequential consideration 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. This Administrative Law Judge finds that the Petitioner’s medical record will not support a finding that Petitioner’s impairment(s) is a “listed impairment” or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the Petitioner’s impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the Petitioner is disqualified from receiving disability at Step 2.

#### Step 3

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the Petitioner was disabled or continues 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 Petitioner’s impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the Petitioner’s ability to do work). If

there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

The Petitioner is scheduled for surgery on her back on September 12, 2017 due to spondylolistheses and lumbar radiculopathy. She is to undergo a lumbar decompression and fusion. Petitioner Exhibit 1, A-C.

This Administrative Law Judge finds that the Petitioner has not had medical improvement. She still has limitations with her back. As a result, she is having surgery on her back and will not be able to perform work in 90 days. At Step 3, this Administrative Law Judge finds that the Petitioner does not have medical improvement and her medical improvement is related to the Petitioner's ability to perform substantial gainful activity. As a result, the Petitioner is not able to perform work. Therefore, the Petitioner is not disqualified from receiving disability at Step 3.

#### Step 4

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to Petitioner's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has not been medical improvement where she can perform work.

At Step 4, the Petitioner testified that she does perform any of her daily living activities. The Petitioner testified that her condition has gotten worse because she has had an increase in pain and is scheduled for back surgery. She does have mental impairments where she is not taking medications, but not in therapy. The Petitioner does not smoke cigarettes since November 16, 2016, where before she smoked a pack a day. She does use illegal or illicit drugs of marijuana occasionally. She stopped drinking alcohol 8 years ago where before she drank occasionally. The Petitioner did not think that there was any work that she could perform.

This Administrative Law Judge finds that the Petitioner had not had medical improvement related to her ability to do work. The Petitioner is having back surgery and is not able to perform work. She does have physical limitations related to her back. Therefore, the Petitioner is not disqualified from receiving disability at Step 4 where the Petitioner cannot perform work. If there is a finding of medical improvement related to Petitioner's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

#### Step 5

*Medical improvement that is related to ability to do work.* Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1) of this section, of the impairment(s) present at the time of the most recent favorable medical decision *and* an increase in your functional capacity to do



basic work activities as discussed in paragraph (b)(4) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(5) of this section.

This Administrative Law Judge finds that the Petitioner has not had medical improvement as it relates to her back. She is scheduled for back surgery in September 2017.

#### Step 6

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the Petitioner's current impairment(s) is not severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a Petitioner's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds Petitioner cannot perform at work. See Steps 3 and 4. She is scheduled for surgery on her back in September 2017. She is physically limited because of her back. Therefore, the Petitioner is not disqualified from receiving disability at Step 6 where the Petitioner passes for severity.

#### Step 7

In the seventh step of the sequential evaluation, the trier of fact is to assess a Petitioner's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the Petitioner's current residual functional capacity based on all current impairments and consider whether the Petitioner can still do work she has done in the past.

At Step 7, the Petitioner was last employed as a part time cashier in 2013 at medium/heavy level. She last worked full time as a cashier in 2006. The Petitioner has also been employed at a housekeeper at the light/medium level. In this case, this Administrative Law Judge finds that Petitioner could not perform her previous work because of the physical exertion entailed to provide those duties. The Petitioner is not capable of performing past, relevant work. She is physically limited with her back. See Steps 3 and 4. She is scheduled for back surgery in September 2017. Therefore, the Petitioner is not disqualified from receiving disability at Step 7 where the Petitioner is not capable of performing her past, relevant work.

#### Step 8

The objective medical evidence on the record is insufficient that the Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him.

The Petitioner's testimony as to his limitation indicates his limitations are exertional and non-exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the Petitioner testified that she has depression. The Petitioner is taking medication, but not in therapy for her mental impairments. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the Petitioner can do any other work, given the Petitioner's residual function capacity and Petitioner's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon the Petitioner's vocational profile of a younger age individual, with a limited education, and a history of unskilled work, SDA is denied using Vocational Rule 201.18 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00.

This Administrative Law Judge finds that Petitioner does not have medical improvement in this case and the Department has not established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it proposed to close Petitioner's SDA case based upon medical improvement. Because the Petitioner does meet the disability criteria for SDA, she has not had medical improvement making her capable of performing work.

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 medical review of SDA benefit programs. She is scheduled to have back surgery in September 2017 with corresponding physical therapy and treatment limiting her ability to work until September 2018.

**DECISION AND ORDER**

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

The Department is ordered to begin doing 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 of initiating a redetermination of the Petitioner's eligibility for SDA retroactive to her SDA medical review case closure notice dated May 1, 2017, with a medical review required September 2018.

Based on policy, the Department should provide the Petitioner with written notification of the Department's revised eligibility determination and issue the Petitioner any retroactive benefits she may be eligible to receive, if any.



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Carmen G. Fahie  
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]