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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: April 20, 2018
MAHS Docket No.: 18-001306
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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, a telephone hearing was held on 3/14/18, from [REDACTED] Michigan. Petitioner was represented by attorney [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED] [REDACTED] [REDACTED] [REDACTED] ES and [REDACTED] [REDACTED] Supervisor appeared as witnesses.

ISSUE

Did the Department properly issue a 1/24/18 notice stating that the Medial Review Team (MRT) determined that Petitioner was no longer disabled pursuant to the review standard for the State Disability Assistance (SDA) program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner has been a recipient of the Medicaid (MA) and SDA program. Petitioner's MA was changed to the Healthy Michigan Plan when that plan was implemented in 2014.
2. On or about 1/1/14 Petitioner's MA and SDA were reviewed by the MRT.
3. On or about 7/3/14 the MRT denied Petitioner due to Petitioner's failure to file an appeal to the Social Security Administration (SSA) for a Supplemental Security Income (SSI) application. The Department issued notice of closure and Petitioner appealed.

4. On 10/21/14 Administrative Law Judge ██████ found that Petitioner had filed a timely appeal contrary to the MRT finding. ALJ ██████ reversed the Department and ordered the Department to send the case back to the MRT for a medical review of Petitioner's file. Ex A. 20-37.
5. Over 3 years later, on 1/19/18 MRT reviewed Petitioner's case and collected current medical documentation. MRT made a detailed and thorough analysis of the medical documentation documented at Ex A. 9-15. MRT found under the Current Medical Evaluation: "no significant medical improvement." Ex A.14. MRT found Petitioner's statements regarding the physical exam partially consistent, and the mental status exam to be fully consistent. Ex A.10. MRT found all of Petitioner's impairments to be severe. Ex A. 11.
6. On 1/19/18 Dr. ██████ ██████ ██████ and ██████ ██████ Ph.D. indicated on the MRT Decision page states that Petitioner meets the medical review of continuing eligibility for MA disabled pursuant to PA5, and that disability begin date is 7/31/17 with a medical review requested 1/1/20. Ex A.12.
7. Ex A.12 contains a denied check box for SDA, the only indication in the entire MRT review consisting of Ex A.6-15 that Petitioner did not meet the review criteria. The complete MRT narrative and analysis concluded that Petitioner meets continuing disability at review. See Ex A. 12. No evidence support improvement. In fact, MRT confirmed disability with the 1/1/20 review date.
8. On 1/24/18 the local office issued a notice to Petitioner that he was no longer eligible for continuing SDA based on the MRT decision.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

For the SDA program, the Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1.

As to the disability assessment, the State of Michigan follows the general guidelines with regards to the MA program to show SDA statutory disability with one major exception: duration for the SDA program is due to a disability which has lasted or can be expected to last for a continuous period of not less than 90 days. Unless otherwise noted below, the MA regulations, policy and law are followed.

Relevant federal guidelines provide in pertinent part:

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.

Federal regulations require that several considerations be analyzed in sequential order:

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.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required.

These steps are:

1. 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). Monthly income limit for 2017 presumptive SGA for non-blind individuals is \$1,170.00. If the applicant is not engaged SGA or presumptive SGA, the analysis continues to Step 2.

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).
3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends, and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application, Petitioner has the burden of proof:

...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).

Federal regulations are very specific regarding the type of medical evidence required to establish statutory disability. Statements alone made by the applicant and/or the applicant's physician are not sufficient. Rather, regulations require laboratory or clinical medical reports that corroborate an any applicant's or physicians' statements regarding disability. These regulations state in part:

...Medical reports should include:

Medical history;

- (2) Clinical findings (such as the results. of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms) ... 20 CFR 416.913(b).

...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).

...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 a 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 --

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).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927.

In this case, Petitioner did not suffer a loss of any benefits as Petitioner has been receiving HMP and filed a timely hearing request in the instant case which required the Department to reinstate his benefits pending the outcome of the administrative hearing.

Here, the issue is whether the Department properly issued a 1/24/18 notice stating that the Medial Review Team (MRT) determined that Petitioner was no longer disabled pursuant to the review standard for the State Disability Assistance (SDA) program. However, a review of the MRT decision shows that in fact, the MRT determined that Petitioner was entitled to continuing benefits. In addition, MRT made a detailed and thorough analysis of the medical documentation found at Ex A. 9-15. MRT found under the Current Medical Evaluation: "no significant medical improvement." Ex A.14. MRT found Petitioner's statements regarding the physical exam partially consistent, and the mental status exam to be fully consistent. Ex A.10. MRT found all of Petitioner's impairments to be severe. Ex A. 11. Moreover, the conclusion that Petitioner meets all the medical criteria for continuing MA means that Petitioner meets continuing eligibility for SDA. MRT specifically states "no significant medical improvement" Ex. A.14 and "BENEFITS CONTINUE." Ex. A.15. Thus, under 20 CFR 416.993 and .994, MRT concluded Petitioner eligible for continuing disability.

It is further noted that if an individual meets the MA criteria, that individual automatically meets the SDA disability criteria as the 90-day requirement is met as MA requires a 12-month requirement. In short, if SDA is approved MA may not meet duration. However, the opposite is not true where is MA is approved--SDA is met as the 90-day duration is absorbed into the 1 year.

In addition, there is no evidence to indicate that the SDA would be treated as a new application with a different burden of proof. Petitioner continued to receive benefits. But more importantly, MRT made no distinction, and failed to discuss in its analysis any reference to such being the case. Moreover, this ALJ finds that the medical evidence supports disability even is such were the case.

Finally, the MRT identified an onset date and, set up a review date of 1/1/2020.

Based on the record established in this matter, and the applicable law, the Department's notice of denial was incorrect.

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 eligible for continuing SDA.


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 THE ORDER WAS ISSUED:

1. Delete the proposed 1/24/18 closure action for the SDA program in accordance with this decision and order; and
2. Conduct any other review such as financial eligibility as required by the Department's policy and procedure; and
3. Schedule a review of benefits for one year from the month of this decision and order April 2019, in accordance with its policy and procure.

JS/nr


Janice Spodarek
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

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

Counsel for Petitioner

[REDACTED]

Petitioner

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