



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 22, 2018
MAHS Docket No.: 18-004114
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 May 30, 2018, from Lansing, Michigan. Petitioner personally appeared and testified. Petitioner submitted two exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist Kimberly Williams. Ms. Williams testified on behalf of the Department. The Department submitted 688 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program based upon medical improvement?

FINDINGS OF FACT

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

1. Petitioner was receiving SDA at all times pertinent to this case.
2. Petitioner filed a Redetermination for SDA benefits alleging continuing disability.
3. The Medical Review Team (MRT) denied Petitioner's continuing SDA benefits. [Dept Exh. 44-50].

4. Petitioner is diagnosed with posttraumatic stress disorder, major depressive disorder, anxiety, severe carpal tunnel syndrome, asthma, chronic pain, radiculopathy, sacroiliitis, lumbar herniated disc, left foot pain, coccygeal fracture, sacral insufficiency fracture, bilateral lower extremity numbness, possible sciatic nerve injury, arthropathy of cervical and lumbar facet joints, myalgia-myofascial pain, temporomandibular joint pain (TMJ), and hypertrophy of nasal turbinates.
5. On February 19, 2017, Petitioner was evaluated for rehabilitation status post motor vehicle accident. Petitioner was diagnosed with a fractured sternum, fractured ribs, right orbital fracture, right ankle fracture, sacral fracture, pelvic fracture, liver laceration, and a delayed union ankle fracture. Petitioner required the walking boot and scooter, or the wheelchair. Petitioner could not stand or place full weight bearing on the injured extremity. Petitioner had significant pain with full weight bearing and palpitation. She was ordered a bone stimulator which had been delivered and placed on Petitioner. She was also continuing to attend psychotherapy. Petitioner reported significant depression and frustration with life style changes as a result of the accident. She was also being treated by a psychiatrist and was scheduled to see a neuropsychologist for testing. [Dept. Exh. 9].
6. On August 10, 2017, Petitioner underwent a Comprehensive Functional Assessment. Petitioner required 100% direct assistance for grooming, cooking and community mobility. Petitioner had medical transport. Petitioner was able to shower using a shower chair and rails for balance. Petitioner required bars and a raised toilet seat for toileting. Petitioner needed direct assistance 25% - 75% of the time to complete dressing of her upper and lower extremities. Petitioner required cueing for night time medications. [Dept. Exh. 367-380].
7. On November 21, 2017, Petitioner was evaluated by an ENT specialist. Petitioner reported being in a motor vehicle accident on February 19, 2017. As a result of the accident, she received stitches to right frontal; had pain right frontal/posterior; a dental procedure; pain in back of mouth and facial pain, right sided facial pain and right posterior head pain. She was treated with Neurontin without improvement. She also had an orbital right wall fracture and saw ophthalmology and has had double vision since the accident. She was diagnosed with a blow-out fracture of orbit, temporomandibular joint pain (TMJ) -dysfunction syndrome, hypertrophy of nasal turbinates and atypical facial pain. [Dept. Exh. 283-284, 286].
8. On November 30, 2017, a CT maxillofacial revealed a chronic appearing depressed fracture involving the posterior aspect of the right lamina papyracea and posterior floor of the orbit. There was also nasal septal deviation to the right with a nasal septal spur. [Dept. Exh. 287].
9. On December 20, 2017, Petitioner underwent a mental status evaluation on behalf of the Department. Petitioner presented as anxious and depressed and moderately dysphoric. The psychologist observed Petitioner's gait was slow. Petitioner did not appear to be exaggerating symptoms. During the exam, Petitioner had mild to

moderate blocks in concentration, attention or focus. Petitioner was diagnosed with major depressive disorder, recurrent, mild to moderate without psychotic feature and posttraumatic stress disorder. Her prognosis was guarded. The psychologist opined that Petitioner's ability to understand, retain, and execute basic routine tasks as well as to appropriately interact with the general public or respond to supervision is moderately limited at this time. [Dept. Exh. 273-276].

10. On February 1, 2018, Petitioner's pain management physician completed a Disability Certificate on behalf of Petitioner. Petitioner's physician indicated Petitioner had been on work disability from February 1, 2018, through March 1, 2018. The physician indicated Petitioner required housework or replacement services, attendant care, and assistance driving as Petitioner was unable to drive. Petitioner was diagnosed with lower back sprain/strain, lumbar radiculopathy, cervical sprain/strain, sternal fracture, ankle fracture, TMJ and headaches/dizziness/blurry vision/insomnia. [Dept. Exh. 8].
11. On March 1, 2018, Petitioner's physician extended Petitioner's disability certificate from March 1, 2018, through April 1, 2018. [Dept. Exh. 7].
12. On March 19, 2018, Petitioner's physician extended Petitioner's disability from April 1, 2018, through May 1, 2018. [Dept. Exh. 6].
13. On May 25, 2018, Petitioner's pain management physician completed a Disability Certificate on behalf of Petitioner. Petitioner's physician indicated Petitioner had been on work disability from May 1, 2018, through July 1, 2018. The physician indicated Petitioner required housework or replacement services, attendant care, and assistance driving as Petitioner was unable to drive. Petitioner was diagnosed with lower back sprain/strain, cervical sprain/strain and headaches. Petitioner was also prescribed physical therapy three times a week for four weeks for low back sprain/strain, lumber herniated disc, cervical sprain/strain, TMJ, headaches and wrist pain. [Petitioner Exh. 1-2].
14. On April 2, 2018, the Department mailed Petitioner a Notice of Case Action, informing Petitioner the SDA benefits would close effective June 1, 2018.
15. On April 13, 2018, Petitioner submitted a Request for Hearing to the Department contesting the Department's denial.

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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits, the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way,

and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first question asks:

- (i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Petitioner is not disqualified from this step because she has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Petitioner has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CF 416.994(b)(5)(ii).

The next step asks the question if there has been medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s). 20 CFR 416.994(b)(1)(i).

If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

In this case, Petitioner underwent a mental status evaluation on behalf of the Department on December 20, 2018. The evaluation does not indicate a decrease in medical severity based on improvement of Petitioner's symptoms. The psychologist opined that Petitioner's ability to understand, retain, and execute basic routine tasks as well as to appropriately interact with the general public or respond to supervision is moderately limited at this time and her prognosis is guarded.

Further, Petitioner began physical therapy in April of 2017. As of May 25, 2018, her physician has Petitioner off work based on disability through July 30, 2018.

As a result, the Department has not met its burden of proof. The Department has provided no evidence that indicates Petitioner's medical condition has improved or that any improvement relates to her ability to do basic work activities. The agency provided no objective medical evidence from qualified medical sources that show Petitioner is currently capable of doing basic work activities. Accordingly, the agency's SDA eligibility determination cannot be upheld at this time.

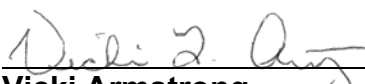
DECISION AND ORDER

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. Reinstate Petitioner's SDA back to the date of denial and issue any retroactive SDA benefits she may otherwise be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. Redetermine Petitioner's SDA eligibility in June 2019.

VLA/hb



Vicki Armstrong
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) 763-0155; 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

Clarence Collins
12140 Joseph Campau
Hamtramck, MI 48212

Wayne County (District 55), DHHS

BSC4 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]