



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: June 8, 2018  
MAHS Docket No.: 18-002439  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

**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 April 12, 2018 from Lansing, Michigan. Petitioner appeared for the hearing with her significant other [REDACTED] and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Medical Contact Worker.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. There were no additional records received. The record closed on May 14, 2018 and the matter is now before the undersigned for a final determination on the evidence presented.

**ISSUE**

Did the Department properly determine that Petitioner was not disabled for purposes of continued State Disability Assistance (SDA) benefit program eligibility?

**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 approved for SDA benefits based on a Hearing Decision and Order issued on July 16, 2014 by Administrative Law Judge (ALJ) Susan Burke. ALJ Burke found that Petitioner's mental impairments met or were the equivalent to listing 12.04. ALJ Burke ordered that the Department review Petitioner's continued eligibility for SDA benefits in September 2015. (Exhibit A, pp. 26-35)

2. On or around December 15, 2017 the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. (Exhibit A, pp. 6-10)
3. On January 24, 2018 the Department sent Petitioner a Benefit Notice advising her that she is no longer eligible for SDA benefits based on the DDS finding that she is not disabled. Petitioner's SDA case closed effective March 1, 2018. (Exhibit A, pp. 3-4)
4. On or around January 26, 2018 Petitioner requested a hearing disputing the Department's termination of her SDA benefits.
5. Petitioner alleged disabling impairments due to arthritis, bipolar disorder, post-traumatic stress disorder (PTSD), anxiety, and manic depression.
6. As of the hearing date, Petitioner was ■ years old with a ■ date of birth. She was ■ and weighed ■ pounds. Petitioner has a high school education and reported not having any gainful past employment history in the 15 years prior to the review.
7. Petitioner has a pending disability claim with the Social Security Administration.

### **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 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 disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment lasting, or expected to last, at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Once an individual has been found disabled, continued entitlement to benefits based on a disability is periodically reviewed in accordance with the medical improvement review standard in order to make a current determination or decision as to whether disability

remains. 20 CFR 416.993(a); 20 CFR 416.994(a). If the individual is not engaged in substantial gainful activity (SGA), the trier of fact must apply an eight-step sequential evaluation in evaluating whether an individual's disability continues. 20 CFR 416.994. The review may cease and benefits may be continued at any point if there is sufficient evidence to find that the individual is still unable to engage in SGA. 20 CFR 416.994(b)(5).

In this case, Petitioner has not engaged in SGA at any time since she became eligible for SDA. Therefore, her disability must be assessed to determine whether it continues.

An eight-step evaluation is applied to determine whether an individual has a continuing disability:

**Step 1.** If the individual has an impairment or combination of impairments which meets or equals the severity of an impairment listed in 20 CFR Appendix 1 of subpart P of part 404, the disability will be found to continue. 20 CFR 416.994(b)(5)(i).

**Step 2.** If a listing is not met or equaled, it must be determined whether there has been medical improvement as defined in paragraph (b)(1)(i) of 20 CFR 416.994 and shown by a decrease in medical severity. If there has been a decrease in medical severity, Step 3 is considered. If there has been no decrease in medical severity, there has been no medical improvement unless an exception in Step 4 applies. 20 CFR 416.994(b)(5)(ii).

**Step 3.** If there has been medical improvement, it must be determined whether this improvement is related to the individual's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv); *i.e.*, there was an increase in the individual's residual functional capacity (RFC) based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to the individual's ability to do work, the analysis proceeds to Step 4. If medical improvement *is* related to the individual's ability to do work, the analysis proceeds to Step 5. 20 CFR 416.994(b)(5)(iii).

**Step 4.** If it was found at Step 2 that there was no medical improvement or at Step 3 that the medical improvement is not related to the individual's ability to work, the exceptions in 20 CFR 416.994(b)(3) and (b)(4) are considered. If none of them apply, the disability will be found to continue. If an exception from the first group of exceptions to medical improvement applies, the analysis proceeds to Step 5. If an exception from the second group of exceptions to medical improvement applies, the disability is found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(iv).

**Step 5.** If medical improvement is shown to be related to an individual's ability to do work or if one of the first group of exceptions to medical improvement applies, **all** the individual's current impairments in combination are considered to determine whether they are severe in light of 20 CFR 416.921. This determination considers all the individual's current impairments and the impact of the combination of these impairments on the individual's ability to function. If the RFC assessment in Step 3 shows significant limitation of the individual's ability to do basic work activities, the analysis proceeds to Step 6. When the evidence shows that all the individual's current impairments in combination do not significantly limit the individual's physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature and the individual will no longer be considered to be disabled. 20 CFR 416.994(b)(5)(v).

**Step 6.** If the individual's impairment(s) is severe, the individual's current ability to do substantial gainful activity is assessed in accordance with 20 CFR 416.960; i.e., the individual's RFC based on all current impairments is assessed to determine whether the individual can still do work done in the past. If so, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

**Step 7.** If the individual is not able to do work done in the past, the individual's ability to do other work given the RFC assessment made under Step 6 and the individual's age, education, and past work experience is assessed (unless an exception in 20 CFR 416.994(b)(5)(viii) applies). If the individual can, the disability has ended. If the individual cannot, the disability continues. 20 CFR 416.994(b)(5)(vii).

**Step 8.** Step 8 may apply if the evidence in the individual's file is insufficient to make a finding under Step 6 about whether the individual can perform past relevant work. If the individual can adjust to other work based solely on age, education, and RFC, the individual is no longer disabled, and no finding about the individual's capacity to do past relevant work under Step 6 is required. If the individual may be unable to adjust to other work or if 20 CFR 416.962 may apply, the individual's claim is assessed under Step 6 to determine whether the individual can perform past relevant work. 20 CFR 416.994(b)(5)(viii).

### **Step One**

Step 1 in determining whether an individual's disability has ended 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 with no further analysis required.

In the present case, Petitioner alleged continued disability due to arthritis, bipolar disorder, post-traumatic stress disorder (PTSD), anxiety, and manic depression. The medical evidence presented since the July 2014 Hearing Decision issued by ALJ Burke, was thoroughly reviewed and is briefly summarized below.

On August 29, 2015 Petitioner participated in a consultative Mental Status Examination. Petitioner reported being hospitalized multiple times for long periods for psychiatric treatment as a child and throughout adulthood. She described a chaotic childhood and indicated she was raised in foster care and residential placements as her father was not involved and her mother was incarcerated. She admitted using crack cocaine episodically and indicated that she last used cocaine "last year." She reported that she was capable of managing her activities of daily living without assistance and can do household chores most of the time but occasionally needs help from a friend. It was noted that her affect was subdued and her mood depressed. She expressed low self-esteem and described feeling tired and frustrated. She reported a history of several suicide attempts including overdose of medication and cutting her wrists but denied current self-injurious, suicidal ideations or intent. She reported that her medications help her symptoms but make her extremely tired and it was noted that she fell asleep several times during the examination. Petitioner indicated that she has a long history of major mental illness which included symptoms of auditory hallucinations, paranoia, and delusional beliefs. It was noted that her psychomotor activity was normal, she was oriented to person place, date, and time, she was attentive and focused throughout the interview and had no difficulty concentrating. There was also no significant problem with immediate recall or with recent or remote memory. She was diagnosed with schizoaffective disorder bipolar type. The Medical Source Statement indicates: Petitioner demonstrated mild deficits in basic vocabulary, general information and abstract knowledge; her memory, judgment, and ability to perform simple mental calculations were within normal limits; she should be able to perform work that involves following simple verbal instructions with adequate supervision; however, her behavior reflects symptoms of a mood disorder that is not well controlled and her ability to work will be impacted by her ability to manage her symptoms and maintain sobriety. (Exhibit A, pp. 73-76)

Petitioner's 2015-2017 records from her treatment with [REDACTED] were presented for review. (Exhibit A, pp. 189-320, 360-587). In January 2016, it was noted that Petitioner has had several suicide attempts including wrist cutting, adult overdose of phenobarbital and intentional overdose of crack a few months prior. In March 2016 Petitioner had a GAF score of 50 and Psychiatric Progress Notes from July 2016 indicate that Petitioner reported symptoms of depression, mood swings and irritability. She was diagnosed with and receiving treatment for PTSD and mood disorder among other things. Notes indicate that Petitioner has symptoms of PTSD, as she has excessive reactions to interactions with men that result in violence as a result of her thinking that they are trying to harm her like her father did when he sexually assaulted her. This has caused her to attack at least three men. She has depressive episodes and anxious episodes as a result of PTSD and it was recommended that she remain in treatment, as she had the potential to overreact, and her condition would likely

quickly deteriorate. An assessment completed in July 2016 indicates that Petitioner has a history of childhood trauma including emotional and sexual abuse by her father at age 13 which resulted in her being taken away from her parents. Records indicate that Petitioner has problems with verbal and physical aggression, including slapping, kicking, or throwing things at her significant other. Primary Care Notes from December 28, 2016 indicate that Petitioner presented for a check-up, reporting that she was vaginally sexually assaulted by an unknown assailant 1.5 weeks ago. A Psychiatric Evaluation completed in January 2017 showed that Petitioner reported being assaulted a few weeks ago by a man who gave her a ride, beat her and raped her for hours. Records indicate that Petitioner continued to receive treatment for her mental health conditions and in March 2017 reported experiencing nightmares and flashbacks of both sexual and physical abuse. Psychiatric Progress Notes from August 2017 show that Petitioner suffers from major depressive disorder which was evident by depressed mood for the past year, loss of motivation, low energy, poor concentration, low appetite, and sleep disturbance. She has fleeting suicidal ideations as recent as two weeks ago. (Exhibit A, pp. 189-320, 360-587).

Based on the medical evidence presented in this case, listings 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders) and 12.15 (trauma and stressor related disorders) were considered. Contrary to the findings and conclusion of the August 2015 Mental Status Examination, upon review and as referenced above, Petitioner's mental health treatment records from 2015 to 2017 show that she continued to suffer from symptoms associated with her confirmed major depressive disorder and PTSD including history of impulsive, aggressive behavior and flashbacks of past physical, emotional and sexual abuse trauma.

Upon thorough review, while Petitioner's medical evidence does not show that each of her mental impairments meet an individual listing, when combined, the impairments are equal to the required level in severity to the criteria in Appendix 1 of the Guidelines to be considered as disabling without further consideration. Thus, Petitioner's disability is continuing at Step 1 and no further analysis is required.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Petitioner **has** a continuing disability for purposes of the SDA benefit program. Therefore, Petitioner's SDA eligibility **continues** and the Department **did not act** in accordance with Department policy when it closed her SDA case.

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 case effective March 1, 2018;
2. Issue supplements to Petitioner for any lost SDA benefits that she was entitled to receive from March 1, 2018, ongoing if otherwise eligible and qualified in accordance with Department policy;
3. Notify Petitioner of its decision in writing; and
4. Review Petitioner's continued SDA eligibility in November 2018 in accordance with Department policy.



ZB/tlf

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**Zainab A. Baydoun**  
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

**Via Email:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner – Via First-Class Mail:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]