



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: July 11, 2018  
MAHS Docket No.: 18-004613  
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 July 5, 2018 from Detroit, Michigan. The Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

**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. On or around March 3, 2017 Petitioner submitted an application for cash assistance on the basis of a disability. The Disability Determination Service (DDS) found Petitioner disabled for SDA purposes and ordered that her continued eligibility be reviewed in November 2017.
2. In November 2017 the DDS initiated a review of Petitioner's continued SDA eligibility.
3. In or around January 2018, Petitioner moved from [REDACTED] to [REDACTED] and began residing in a domestic violence shelter.
4. On February 13, 2018 Petitioner submitted a completed Redetermination for her Medicaid and cash assistance cases, on which she reported a new mailing

address and informed the Department of her domestic violence situation. (Exhibit A, pp. 1-8)

5. On an unverified date, Petitioner was scheduled to appear for a consultative mental examination. Petitioner did not appear for the consultative examination.
6. On or around March 22, 2018 the DDS found Petitioner not disabled for purposes of continued SDA eligibility. The DDS determined that there was insufficient evidence to assess whether or not there has been a significant medical improvement, as Petitioner did not cooperate because she failed to attend the consultative exam. (Exhibit A, pp. 12, 17)
7. On or around March 27, 2018 the Department notified Petitioner that effective May 1, 2018, her SDA case would be closed based on DDS' findings. (Exhibit A, pp. 22-25)
8. Information contained in the Case Development Sheet suggests that the consultative examination appointments were possibly scheduled after February 13, 2018. (Exhibit A, pp. 18-21)
9. The appointment notices were not presented for review. Therefore, it was unknown when the consultative examination appointment notices were sent or whether the notices were sent to Petitioner's updated mailing address.
10. On May 2, 2018 Petitioner requested a hearing disputing the Department's closure of her SDA case.
11. Petitioner's hearing request indicates she also disputed the closure of her Family Independence Program (FIP) case. Petitioner confirmed that she checked the FIP box by mistake and there was no issue regarding the FIP. Petitioner agreed to the dismissal of her hearing request with respect to the FIP.

### **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, there was no evidence presented that Petitioner has 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).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913.

The DDS develops and reviews medical evidence for disability and either certifies or denies a client's medical eligibility for SDA assistance. BEM 261, p. 4; BAM 815 (January 2017), p. 1. At application or medical review, if requested mandatory forms are not returned, the DDS cannot make a determination on the severity of the disability and the application will be denied or the approved program will be placed into negative action and set for case closure. BAM 815, p. 2. A client may be required to attend one or more consultative examinations: if attempts to obtain evidence from a client's own medical sources are unsuccessful; to resolve an inconsistency in the evidence; or when the evidence as a whole is insufficient to allow a determination or decision on a client's claim. Generally, a consultative examination will not be requested until reasonable efforts have been made to obtain evidence from a client's own medical sources. 20 CFR 404.1512(b)(2); 20 CFR 404.1517; 20 CFR 404.1519a (a), (b); 20 CFR 416.912 (b)(2). Additionally, a failure to attend or participate in a consultative examination without good cause or reason may result in a finding of not disabled based on the failure to appear or cooperate. 20 CFR 416.918 (a), (b). Examples of good reasons for a failure to appear are found in 20 CFR 416.918 (b) and include not receiving timely notice of the scheduled examination or receiving no notice at all.

In the present case, Petitioner had been previously approved for SDA benefits based on DDS' finding that she was disabled. Petitioner's ongoing SDA eligibility was set for review in November 2017 and she was scheduled to attend a consultative adult mental status evaluation, as updated medical information was needed to make an assessment of whether or not there was significant medical improvement. Although the exact dates of Petitioner's appointments were unknown/unverified as the appointment notices were not presented for review, the Department asserted that Petitioner failed to attend two different consultative mental status evaluation appointments. DDS concluded that because Petitioner failed to cooperate by not attending the scheduled appointments, there was insufficient evidence to make a current medical assessment. Thus, DDS determined that Petitioner's disability stopped and the Department sent Petitioner a Notice of Case Action advising her that her SDA case will be closed effective May 1, 2018.

At the hearing, Petitioner testified that she was previously living in and receiving mail in [REDACTED] but was involved in/the victim of a domestic violence situation. Petitioner stated that she moved to [REDACTED] in January 2018 and the

Department confirmed that Petitioner completed a Redetermination on February 13, 2018, reporting her new mailing address at a domestic violence shelter. (Exhibit A, pp. 1-8). Petitioner testified that she did not receive the appointment notices or any communication regarding the mental status evaluations. Petitioner stated that she did not have a telephone after moving from [REDACTED]. Because the appointment notices were not presented for review and the Case Development Sheet presented contained insufficient details/information, the Department could not establish Petitioner received timely notice of the scheduled consultative examinations. Petitioner established that she had a good cause reason for failing to attend the scheduled mental evaluation.

As such, upon review, 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 that the Department did not properly close Petitioner's SDA case effective May 1, 2018, as it was not established that Petitioner failed to cooperate by not attending the consultative exam.

### **DECISION AND ORDER**

Accordingly, the hearing request with respect to FIP is **DISMISSED** and the Department's SDA 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 May 1, 2018;
2. Initiate a review of Petitioner's ongoing/continued SDA eligibility in accordance with Department policy;
3. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified; and
4. Review Petitioner's continued eligibility in January 2019.

ZB/tlf



---

**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]

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

[REDACTED]