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GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: September 26, 2018  
MAHS Docket No.: 18-004135  
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 June 28, 2018 from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist Manager.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. Petitioner submitted additional records which were received, marked and admitted into evidence as Exhibit 2 and Exhibit 3. The record closed on August 29, 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 11, 2016 by Administrative Law Judge (ALJ) Vicki Armstrong. ALJ Armstrong found that Petitioner's impairments met or were the equivalent to listing 1.04. ALJ Armstrong ordered that the Department review Petitioner's continued eligibility for SDA benefits in July 2017.

2. On or around March 27, 2018 the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program, as it determined that Petitioner has had medical improvement. (Exhibit A, pp. 2-8)
3. On April 9, 2018 the Department sent Petitioner a Notice of Case Action advising him that he is no longer eligible for SDA benefits based on the DDS finding that he is not disabled. Petitioner's SDA case closed effective May 1, 2018. (Exhibit A, pp. 553-556)
4. On or around April 25, 2018 Petitioner requested a hearing disputing the Department's termination of his SDA benefits.
5. Petitioner alleged continuing disabling impairments due to carpal tunnel syndrome, tendonitis, pinched nerve in neck, inability to move left arm and shoulder, back pain, traumatic brain injury (TBI) with cognitive impairments, post-traumatic stress disorder (PTSD), and depression.
6. As of the hearing date, Petitioner was [REDACTED] years old with a [REDACTED] date of birth. He was [REDACTED] and weighed [REDACTED] pounds. Petitioner has a high school education and reported past work history of employment as an iron worker with a construction union. Petitioner has not been employed since April 2015.
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 he became eligible for SDA. Therefore, his 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 carpal tunnel syndrome, tendonitis, pinched nerve in neck, inability to move left arm and shoulder, back pain, traumatic brain injury (TBI) with cognitive impairments, post-traumatic stress disorder (PTSD), and depression. The medical evidence presented since the July 2016 Hearing Decision issued by ALJ Armstrong finding Petitioner disabled was thoroughly reviewed and is briefly summarized below.

A January 2017 MRI of Petitioner's cervical spine showed mild to moderate degenerative changes at C4-C5, C5-C6, C6-C7, with mild degenerative spinal stenosis and neural foraminal stenosis due to uncinate process hypertrophy. A January 2017 MRI of Petitioner's shoulder showed mild osteoarthritis in the AC joint and tendinosis of the supraspinatus tendon. (Exhibit A, pp. 57-59)

Records from Petitioner's treatment with [REDACTED] show that he continued to receive treatment for bicipital tendonitis, lumbar degenerative joint disease, pinched nerve in his neck, arthritis, and neck pain. In October 2017 Petitioner presented with complaints of chronic low back pain since 2001 and neck pain. Petitioner reported that his neck pain is sharp, stabbing, shooting, aching, spasm like and radiates to the left shoulder. Limited range of motion of the left shoulder was noted with limited overhead activities. Petitioner reported that his lumbar back pain is getting progressively worse. He reported that he has tried chiropractic treatment, spinal injections, and physical therapy and that the pain radiates down to his right hip. His exam showed: positive SLR test on the right and left; paresthesia and increased pain in the right and left L5 and S1; limited range of motion and strength for abduction and flexion were noted in the cervical spine with Tinel's and Phalen's testing positive; and there was loss of lumbar lordosis in the lumbar spine. Petitioner underwent left bicipital tendon injection and left cervical trigger point injection. He was placed on a weight lifting restriction. Records indicate that an October 2016 MRI of Petitioner's cervical spine showed among other things, bilateral nerve root neural foraminal narrowing at the C6 as well as disc herniation at C5-C6, and mild to moderate degenerative joint disease (DJD) changes. A 2016 MRI of the lumbar spine showed disc herniation without spinal stenosis at L5-S1, and mild DJD with facet arthropathy at L4-5. An MRI of Petitioner's right leg in 2017 showed a grade 1 muscle strain and EMG performed in 2016 showed bilateral radiculopathy at C4-C5. (Exhibit A, pp. 41-50)

A May 2017 CT of Petitioner's cervical spine showed: advanced degenerative disc space disease and severe facets hypertrophy, more pronounced at C4-C5 through C6-C7, mild narrowing at the central canal and moderate to severe bilateral foraminal stenosis at C5-C6 and C6-C7 level; and moderate bilateral foraminal stenosis at C4-C5 level. May 2017 EMG study showed an axonal demyelinating neuropathy with cervical radiculopathy, and carpal and cubital tunnel syndrome (CTS). Specific findings included: bilateral C6-C7 radiculopathy with denervation; bilateral CTS with median neuropathy

on both sides; and bilateral ulnar neuropathy. In 2017 Petitioner participated in physical therapy. (Exhibit A, pp. 51-55, 184-202)

A May 2018 MRI of Petitioner's lumbar spine showed: mild to moderate spinal stenosis at L4-5 level from circumferential disc bulge with superimposed central disc extrusion, facet degenerative changes and ligamentum flavum hypertrophy causing bilateral lateral recess narrowing, bilateral neural foraminal narrowing. It is noted that the disc extrusion is migrating 1.4 cm along the S1 vertebral body in the subligamentous zone. There was also a compression fracture deformity of L1 vertebral body with 3 mm posterior displacement into the spinal canal causing deformity of the thecal sac. (Exhibit 1).

June 2018 X-ray of Petitioner's pelvis and bilateral hips showed mild bilateral hip and lumbar degenerative changes. A June 6, 2018 planar bone scan found posterior facet degeneration, moderate compression deformity of L1, minor arthritic changes at the L5-S1 level and moderately prominent posterior facet changes near the thoracolumbar junction. An EMG study performed in 2018 showed: no response in the sensory nerves; decreased conduction velocity in the motor nerves; and decreases amplitude in the motor nerves, consistent with a moderate to severe bilateral lower limb peripheral motor sensory axonal polyneuropathy. (Exhibit 1; Exhibit 2; Exhibit 3)

Additional records from B [REDACTED], [REDACTED] (whom Petitioner saw for epidural injections in his cervical spine and left shoulder), [REDACTED] were presented, reviewed and show that Petitioner continued to receive treatment for his diagnosed conditions and impairments. (Exhibit A, pp. 60-183)

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint(s) due to any cause), 1.04 (disorders of the spine), 12.04 (depressive, bipolar and related disorders), and 12.15 (trauma and stressor related disorders) were considered. As referenced above, Petitioner's cervical and lumbar MRI results showed among other findings, moderate to severe spinal stenosis, and compression fracture deformity of L1 vertebrae which is supported by Petitioner's testimony that he has chronic back, neck and hip pain, requiring the use of a cane to assist with ambulation since 2014. The medical evidence presented continues to support ALJ Armstrong's prior finding that Petitioner's impairments meet or are the equivalent to the required level in severity to the criteria in Appendix 1 of the Guidelines to be considered as disabling without further consideration under listing 1.04. 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 his 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 May 1, 2018;
2. Issue supplements to Petitioner for any lost SDA benefits that he was entitled to receive from May 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 December 2018 in accordance with Department policy.

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]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

[REDACTED]  
[REDACTED]  
[REDACTED]