



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: February 5, 2019
MAHS Docket No.: 18-006534
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 August 13, 2018, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Krista Hainey, Family Independence Manager.

An Interim Order was issued requesting additional evidence to be obtained by the Department which was not received. The Record closed on September 12, 2018, and the matter is ready for decision.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

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 an ongoing recipient of SDA benefits.
2. In a November 2017 medical review, the Disability Determination Service (DDS) reviewed Petitioner's medical evidence and concluded that she did not continue to be disabled and eligible for SDA benefits. DDS referred Petitioner's case for medical review. (Exhibit 3, pp. 1-22.)

3. In connection with a November 2017 review, DDS determined on June 7, 2018, that Petitioner's condition had significantly improved, that she had a residual functional capacity to perform other work and found the Petitioner not disabled and capable of sedentary work, and substantial gainful activity. DDS concluded that Petitioner was no longer disabled (Exhibit 3, pp. 1-7).
4. On June 13, 2018, the Department sent Petitioner a Notice of Case Action notifying her that her SDA case would close effective September 1, 2018, because, among other things, she was not disabled (Exhibit 4, pp. 1-2).
5. On June 21, 2018, the Department received Petitioner's timely written request for hearing concerning the closure of her SDA case.
6. Petitioner alleged disabling impairment due to fibromyalgia, migraines, irritable bowel syndrome, and arthritis of the knees, and uses a scooter to get around due to chronic pain and difficulty walking longer distances. Petitioner also alleges mental impairment due to anxiety with panic attacks with poor memory and concentration with minimal social interactions as well as depression due to pain from fibromyalgia.
7. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED], birth date and was less than one month from attaining [REDACTED] years of age; she is [REDACTED]" in height and weighs about [REDACTED] pounds.
8. Petitioner completed high school and has an associate's degree in accounting.
9. Petitioner has an employment history of work for the social security administration as a service representative answering phone calls and assisting customers in person. Petitioner last worked in 2007.
10. Petitioner has a claim 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 1

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.

The medical record presented was reviewed and is briefly summarized below.

The Petitioner's current treating doctor for her fibromyalgia completed a Medical Needs Form DHS-54 E signed on [REDACTED] 2018. The diagnosis was fibromyalgia, chronic musculoskeletal pain syndrome, chronic fatigue syndrome and hypothyroidism. The doctor opined that the Petitioner could not work at her usual occupation, and could not work at any job. The following limitations, which were certified by the doctor as expected to last more than 90 days, included: lifting less than 10 pounds, and occasionally 10 pounds (1/3 of an 8-hour day, and never 25 or 50 pounds; the Petitioner could stand and/or walk less than 2 hours in an 8-hour workday and sit less than 6 hours in an 8-hour workday. The Doctor further certified that a person was required 2 to 8 hours on average to assist the Petitioner with bathing, dressing, grooming, mobility, meal preparation, shopping, laundry and housework. (Exhibit B.)

The Petitioner was seen on [REDACTED] 2018, for endometrial thickening discovered by an ultrasound, which was biopsied, which resulted in an endometrium biopsy, noting early secretory endometrium.

In addition, Petitioner was seen and treated for a lesion of the hard palate described with extensive inflammation and ulceration on [REDACTED] 2017. The lesion was biopsied and resolved itself after several weeks of healing with final report of healing in [REDACTED] 2017.

In addition, the Petitioner's doctor also evaluated Petitioner for a scooter on [REDACTED] 2018, to assist her with walking, which the doctor found medically necessary due to Petitioner's reporting that she struggles to walk longer distances, gets tired easily and has to rest as well as a reported tendency to fall a lot with longer walking. Notes also indicated hand tremors and reference to a neurology referral. After prolonged walking, the patient noted she would be increasingly sore for 2 to 3 days. Patient also struggles with climbing more than 2 to 3 steps. Canes and walkers were ruled out as they would be unable to support the patient in all situations, and walkers

would be difficult to use and cumbersome. In addition, canes, walkers and wheelchairs would be difficult to use due to upper extremity strength being decreased and paresthesia's. In addition, patient would not be a great candidate for canes or walkers due to having erratic and spastic movements of arms and lest that sometimes she cannot control. The doctor found the Petitioner was physically limited by fibromyalgia, severe in her case, and subsequent impacts on joint and muscle pain and stiffness and her fatigue which worsen when she is more active. Patient struggles currently in the home with getting around or when she needs to be on her feet longer, and cannot stand for long periods to cook or do dishes, moving from room to room and getting through her daily routine to get dressed or bathe. The doctor examined Petitioner and found that muscle strength and range of motion in both hips was abnormal and diminished, and that her gait was antalgic with limping on the right and walks slow and stiff which he characterized as abnormal. The evaluation diagnosis was fibromyalgia and restless leg syndrome, risk for falls with chronic musculoskeletal pain.

At an exam with her current doctor on [REDACTED] 2017, notes indicate that she continues to treat with her psychiatrist and therapist and is prescribed Wellbutrin, Viibryd, Effexor for anxiety and major depressive disorder and Amitriptyline for insomnia. Additionally, the doctor diagnosed hypothyroidism; and her medication was increased four weeks prior. The doctor also added a muscle relaxer and kept patient on Lyrica.

The Petitioner was seen regarding fibromyalgia and depression, and her medications were increased. Depression was noted as moderate, and diagnosis was recurrent major depressive disorder.

In light of the medical record presented and the medical evidence presented, listings 1.02 1.02 (major dysfunction of a joint), 12.04 (Depressive, bipolar and related disorders), 12.06 (anxiety-related disorders) and 9.00 Endocrine Disorders were considered.

The available medical evidence did not establish that Petitioner met any of the listings. In addition, no evidence was presented by the Department of the Petitioner 's current mental impairments and treatment; therefore, it could not be established that Petitioner's condition met a listing under 12.04 or 12.06.

Because the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration, a disability is not continuing under Step 1 of the analysis; and the analysis proceeds to Step 2.

Step 2

If the impairment(s) does not meet or equal a Listing under Step 1, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1). 20 CFR 416.994(b)(5)(ii). Medical improvement is defined as any

decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). For purposes of determining whether medical improvement has occurred, the current medical severity of the impairment(s) present at the time of the most recent favorable medical decision that found the individual disabled, or continued to be disabled, is compared to the medical severity of that impairment(s) at the time of the favorable decision. 20 CFR 416.994(b)(1)(vii). If there is medical improvement, the analysis proceeds to Step 3, and if there is no medical improvement, the analysis proceeds to Step 4. 20 CFR 416.994(b)(5)(ii).

The most recent favorable decision finding Petitioner disabled is a Hearing Decision dated August 2, 2016, issued by Administrative Law Judge Harris finding the Petitioner was disabled and reversed an MRT denial of April 7, 2016. (Exhibit 1.) The medical evidence relied upon at that point included the following: a medical packet for the November 10, 2015, application, and additional evidence submitted after the hearing not identified by page number. The Hearing Decision considered the following medical conditions including: fibromyalgia, major depressive disorder, memory problems, life-long migraine headaches, irritable bowel syndrome and insomnia. The psychiatric evidence for 2015 noted major depressive disorder recurrent in partial remission and bipolar spectrum disorder. Contributing factors included the loss of a child, loss of her son's father, multiple medical problems, and chronic pain. At that time, the GAF score was 48; and in June 2015 it was 46 and August 2015 45. There was no independent mental status examination of Petitioner obtained by the Department presented and the Department did not present any current medical treatment records.

The Hearing Decision also relied on a [REDACTED] 2015 assessment provided by a Dr. [REDACTED]. The assessment noted that the Petitioner exhibited pain at trigger points consistent with fibromyalgia and that she was seeing a psychiatrist for bipolar disorder. An assessment noted that Petitioner was not significantly limited with ability to handle, grasp, or finger, but was limited to reaching only occasionally and that pain and fatigue was noted as interfering with Petitioner's attention and concentration. At that time, he found Petitioner would be able to sit for six or more hours in a workday and stand or walk for more than six hours in a workday with an ability to lift or carry 10 pounds.

At the hearing conducted on August 13, 2018, the Petitioner testified that she can cook only occasionally due to her inability to stand and fatigue and currently has a scooter prescribed and approved by her doctor which she uses to get around her home and for shopping. She is assisted with household chores by her boyfriend and sleeps much of the day, does not drive due to jerkiness in her arms and legs, and also suffers from depression and anxiety when around groups of people, and thus, has limited social interaction. She continues to have migraines weekly and continues to have chronic muscle pain and fatigue. The Petitioner continues to have sleep problems. She can stand 5 to 10 minutes, sit 1 to 2 hours and usually lies on the couch or bed. Petitioner needs assistance washing and brushing her hair and cannot lift her arm up past

shoulder level. She requires assistance with climbing steps and can lift two to three pounds.

The evidence presented in connection with the November 2017 review including her current doctor's assessment does not show any medical improvement in Petitioner's condition from that presented in the most recent favorable decision finding Petitioner disabled. Because there is no medical improvement, the analysis proceeds to Step 4.

Step 4

When there is no medical improvement, Step 4 requires an assessment of whether one of the exceptions in 20 CFR 416.994(b)(3) or (b)(4) applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.*

The first group of exceptions to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) applies when any of the following exist:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that, based on new or improved diagnostic or evaluative techniques, the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision; or
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

In this case, the Department did not present any evidence establishing that, from the time Petitioner was last approved for SDA benefits in August 2016 based upon the Hearing Decision approving Petitioner, to the time of the current medical review, none of the above first set of exceptions to medical improvement applied to Petitioner's situation.

The second group of exceptions to medical improvement found in 20 CFR 416.994(b)(4) applies when any of the following exist:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate in providing requested medical documents or participating in requested examinations;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv). In this case, the Department has failed to establish that any of the listed exceptions in the second group of exceptions to medical improvement apply to Petitioner's case.

Because the evidence presented does not show a medical improvement and no exception under either group of exceptions at Step 4 applies, the disability is found to continue.

DECISION AND ORDER

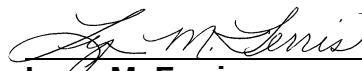
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Petitioner **has** continuing disability for purposes of the SDA benefit program. Therefore, Petitioner's SDA eligibility **continues** and the Department **did not act** in accordance with Department policy 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 September 1, 2017;
2. Issue supplements if any are due to Petitioner for any lost SDA benefits that she was entitled to receive from September 1, 2017 ongoing if otherwise eligible and if not otherwise already paid to Petitioner and which are qualified in accordance with Department policy;
3. Notify Petitioner of its decision in writing; and
4. Review Petitioner's continued SDA eligibility in February 2020 in accordance with Department policy.

LMF/jaf



Lynn M. Ferris

Administrative Law Judge
for Robert Gordon, 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

Cindy Tomczak
MDHHS-Berrien-Hearings

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

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