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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 15, 2019
MOAHR Docket No.: 19-005132
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 19, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor and [REDACTED], Eligibility Specialist.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. The record was extended in order for the Department to submit to the undersigned Administrative Law Judge (ALJ) the medical evidence and records reviewed and relied upon by the Disability Determination Service (DDS) in issuing its March 2019 disability determination, as the hearing packet presented for the hearing (Exhibit A) included only medical evidence associated with the October 2014 and February 2017 administrative hearings referenced below.

The Medical – Social Eligibility Certification (DHS-49-A) completed by the DDS and the Case Development Sheet included with the Department's Exhibit A references medical records reviewed by DDS from 2017 and 2018. In response to the Interim Order, the Department failed to submit the complete medical packet and instead submitted only records from [REDACTED], despite the DDS having received and reviewed at least 87 additional pages from Family Health Care which were not submitted to the undersigned ALJ. The additional records received from [REDACTED] [REDACTED] [REDACTED] were marked and admitted into evidence as Exhibit B. The record closed on July 19, 2019 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 initially approved for SDA benefits based on a Hearing Decision and Order issued on October 28, 2014 by ALJ Susanne Harris, which found that Petitioner's impairments including type II diabetes, neuropathy, hepatitis C, h-pylori, depression, non-proliferative diabetic retinopathy, diabetic macular edema and cataracts render him unable to engage in a full range of sedentary work activities on a regular and continuing basis, and thus, he did not have the residual functional capacity for substantial gainful activity (SGA). ALJ Harris ordered that the Department review Petitioner's continued eligibility for SDA benefits in June 2016. (Exhibit A, pp. 47-54)
2. The DDS initiated a review of Petitioner's ongoing SDA eligibility and on October 31, 2016, issued a decision finding that Petitioner was no longer disabled. The Department initiated the closure of his SDA case, which Petitioner requested a hearing to dispute. (Exhibit A, pp. 27-33)
3. Following a hearing held on January 31, 2017, ALJ Vicki Armstrong issued a Hearing Decision and Order on February 21, 2017 finding that, Petitioner continued to suffer from and receive treatment for impairments which included neuropathy, type II diabetes – insulin-dependent, hepatitis C, h-pylori, diabetic retinopathy, bilateral leg and arm pain, low back pain, muscle spasms, and reactive airway disease. (See Hearing Decision, Docket No. 16-019322)
 - a. ALJ Armstrong concluded that the Department had not met its burden of proof, as there was no evidence to indicate that Petitioner's medical condition has improved or that any improvement relates to his ability to do basic work activities. It was noted that the Department provided no objective medical evidence from qualified medical sources that show Petitioner is currently capable of doing basic work activities. It was ordered that Petitioner's SDA case be reinstated and that his SDA eligibility be redetermined in February 2018. (See Hearing Decision, Docket No. 16-019322)
4. In February 2018 the Department and DDS initiated a review of Petitioner's continued eligibility for SDA benefits. (Exhibit A, pp. 7-22)
5. On or around March 20, 2019, the DDS found Petitioner not disabled for purposes of continued SDA benefits. DDS determined that there has been medical

improvement and found that Petitioner was capable of performing light work. (Exhibit A, pp. 7-22)

6. On May 6, 2019, the Department sent Petitioner a Benefit Notice advising him that effective April 30, 2019, his SDA benefits ended based on DDS' finding that he is not disabled. It is noted that the Department did not provide Petitioner with timely notice of the case closure. (Exhibit A, pp. 2-3)
7. On May 29, 2019, Petitioner requested a hearing disputing the Department's termination of his SDA benefits and the DDS finding that he was not disabled. (Exhibit A, p. 4)
8. Petitioner alleged continuing disabling impairments due to diabetes, diabetic neuropathy, diabetic retinopathy in both eyes, ulcers, hepatitis C, h-pylori, back pain, depression and anxiety.
9. As of the hearing date, Petitioner was [REDACTED] years old with a [REDACTED] 1968 date of birth. He was [REDACTED]" and weighed [REDACTED] pounds. Petitioner has a high school education and reported past work history of employment as a cook at a restaurant and a lumber cutter at a sawmill. Petitioner has not been employed since 2013.
10. Petitioner has a pending disability claim with the Social Security Administration (SSA).

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 diabetes, diabetic neuropathy, diabetic retinopathy in both eyes, ulcers, hepatitis C, h-pylori, back pain, depression and anxiety.

The medical evidence presented in response to the Interim Order and since the February 2017 Hearing Decision issued by ALJ Armstrong finding Petitioner disabled was thoroughly reviewed. (Exhibit A; Exhibit B). It is noted that the Department failed to submit the complete medical packet as referenced in the March 2019 DDS disability determination. The Department only submitted records from [REDACTED], specifically records documenting April 6, 2018 and November 28, 2017 visits to the emergency department. (Exhibit B)

On April 6, 2018, Petitioner presented to the emergency room with multiple episodes of nausea, vomiting, and diarrhea which started one week prior. Records indicate that Petitioner's medical history included type I and type II diabetes, hypertension, hepatitis C, and neuropathy. Additional history of knee surgery and back pain were referenced, as was Petitioner's daily use of insulin for diabetes treatment. Petitioner's physical examination was normal, as were x-ray images of the chest. Imaging of his abdomen revealed mild ileus but no obstructions. Petitioner was treated and discharged. On November 28, 2017, Petitioner was discharged from the emergency department after receiving treatment for a skin abscess. (Exhibit B).

Upon review, 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. Thus, a disability is not continuing under Step 1 of the analysis, and the analysis proceeds to Step 2.

Step Two

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 the Hearing Decision issued on February 21, 2017 by ALJ Armstrong which relied on the Medical Examination Report completed by Petitioner's treating primary care physician (PCP), as well as follow-up and progress notes from his continued treatment with his PCP. ALJ Armstrong concluded that the Department failed to establish that Petitioner's medical condition had improved.

As referenced above, the Department failed to submit the complete medical record relied upon by DDS in issuing its March 2019 disability decision. Therefore, the evidence presented in connection with the current review does not show a decrease in the medical severity or an otherwise medical improvement in Petitioner's condition from that presented in the February 2017 Hearing Decision, which is the most recent favorable decision finding Petitioner disabled. Because there is no medical improvement, the analysis proceeds to Step 4.

Step Four

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 the February 2017 Hearing Decision to the time of the current medical review, one 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** 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, 2019;
2. Issue supplements to Petitioner for any lost SDA benefits that he was entitled to receive from May 1, 2019, 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 February 2020 in accordance with Department policy.

ZB/tlf



Zainab A. Baydoun
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

Petitioner – Via First-Class Mail:

