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GOVERNOR

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

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DIRECTOR

[REDACTED]
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[REDACTED], MI [REDACTED]

Date Mailed: January 3, 2019
MOAHR Docket No.: 19-011856
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 December 4, 2019, from Lansing, Michigan. The Petitioner was represented by his grandmother, [REDACTED]. Petitioner also appeared and testified. The Department of Health and Human Services (Department) was represented by Rosalyn Boyle, AP Supervisor. Department Exhibit 1, pp. 1-332 was received and admitted.

ISSUE

Did the Department properly determine that Petitioner was no longer disabled for purposes of the State Disability Assistance (SDA) benefit program?

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 receiving SDA.
2. Petitioner submitted medical documents as part of a redetermination review.
3. On October 2, 2019, the Medical Review Team determined that Petitioner was no longer disabled.
4. On October 7, 2019, Notice of Case Action was sent to Petitioner, informing him that his SDA benefits would close effective November 1, 2019.
5. Petitioner filed a request for hearing on October 15, 2019, regarding the SDA closure.

6. A telephone hearing was held on December 5, 2019.
7. Petitioner is 5' 6" tall and weighs 175 pounds.
8. Petitioner is 22 years old.
9. Petitioner's impairments have been medically diagnosed as migraine headaches, back pain, sciatica and depression.
10. Petitioner has the following symptoms: pain, fatigue, headaches, and panic attacks.
11. Petitioner completed 11th grade.
12. Petitioner is able to read and write and perform basic math skills.
13. Petitioner is not working. Petitioner never worked full time.
14. Petitioner lives with his grandparents.
15. Petitioner testified that he cannot perform some household chores.
16. Petitioner takes no prescribed medications but previously, was taking Trintellix.
17. Petitioner testified to the following physical limitations:
 - i. Sitting: 60 minutes
 - ii. Standing: 20 minutes
 - iii. Walking: 1/2 block
 - iv. Bend/stoop: some difficulty
 - v. Lifting: 5-10 lbs.
 - vi. Grip/grasp: some difficulty
18. In a consultative physical examination report completed on April 13, 2018, the consulting physician provided the following SUMMARY: "The Petitioner is a 20-year-old Caucasian male whose extremities have normal function, strength and range of motion. In the lower extremities, the Petitioner has some mild weakness in the right leg and some limitation in lumbar spine motion, and difficulty with orthopedic maneuvers such as squatting and bending. The Petitioner's ability to perform work-related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying and traveling as well as pushing and pulling heavy objects is at least mildly impaired due to the objective findings described above." (Ex. 1, p. 174)
19. In a psychological evaluation, completed on April 25, 2014, Petitioner was found to have diagnoses of somatic symptom disorder, persistent depressive

disorder, and generalized anxiety disorder. Petitioner was found to have a Global Assessment of Functioning score of 55-60.

20. In IQ testing completed in March 2010, Petitioner was found to have a full-scale IQ score of 99. (Ex. 1, p.3)

21. An MRI of Petitioner's lumbar spine, completed in June 2011, showed the following under IMPRESSION: "1. Limited evaluation of the distal thoracic and proximal lumbar spine secondary to susceptibility artifact of spinal rods and transpedicular screw. 2. No obvious evidence of tethered cord or abnormal T2 signal within the conus medullaris. 3. Visualized neural foramina appear unremarkable." (Ex. 1, p.186)

22. Petitioner testified that he experiences pain at a high level of 8-9 on an everyday basis, with some pain always present, at a low level of 5.

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 person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical, or mental, disability has the burden to establish it 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician, or mental health professional, that an individual is disabled or blind, absent supporting medical evidence is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered, including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c) (3). The applicant's pain must be assessed to determine the extent of his, or her, functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c) (2).

Once an individual has been found disabled for purposes of SDA benefits, continued entitlement is periodically reviewed in order to make a current determination, or decision, as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. In evaluating a claim for ongoing SDA benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b) (5). The review may cease and benefits continue if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the Department will develop, along with the Petitioner's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The Department may order a consultative examination to determine whether, or not, the disability continues. 20 CFR 416.993(c).

The first step in the analysis 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.

If the impairment(s) does not meet or equal a Listing, 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). If no medical improvement is found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b) (5) (iii).

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b) (5) (iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b) (5) (iii) (v). If severe, an

assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b) (5) (vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b) (5) (v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether, despite the limitations, an individual is able to perform other work. 20 CFR 416.994(b) (5) (vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) 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) are as follows:

- (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;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b) (4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (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). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Petitioner's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

In this case, the Petitioner's mental and physical issues are stable. Petitioner's impairments do not meet or equal a listing. In light of the foregoing, a determination of whether the Petitioner's condition has medically improved is necessary.

As noted above, the Petitioner was previously found disabled. In comparing those medical records to the recent evidence as detailed above, it is found that the Petitioner's condition has medically improved. Petitioner has lost weight and is no longer taking any medication. Accordingly, the Petitioner's disability must be further evaluated under the sequential analysis. 20 CFR 416.994(b) (1); 20 CFR 416.994(b) (5) (ii).

In the third step of the analysis, the trier of fact must determine if the Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Petitioner's medical record does not support a finding that the Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listing 1.04 and 12.04, 12.05, 12.06 and 12.07 were considered.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. A conclusory statement by a physician or mental health professional that an individual is disabled or blind, is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.927.

The fourth step of the analysis to be considered, is whether the Petitioner has the ability to perform work previously performed by the Petitioner within the past 15 years. The trier of fact must determine whether the impairment(s) presented, prevent the Petitioner from doing past relevant work. In the present case, the Petitioner has no history of past employment. This Administrative Law Judge will continue through step 5.

In the final step of the analysis, the trier of fact must determine if the Petitioner's impairment(s) prevent the Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner's:

1. Residual functional capacity, defined simply as: what can you still do despite your limitations? 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. The kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered, in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements, and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium, and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work: Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting, or carrying, articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met... 20 CFR 416.967(a).

Light work: Light work involves lifting no more than 20 pounds at a time with frequent lifting, or carrying, of objects weighing up to 10 pounds. Even though the weight lifted may be very little; a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work: Medium work involves lifting no more than 50 pounds at a time with frequent lifting, or carrying, of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work...20 CFR 416.967(c).

Heavy work: Heavy work involves lifting no more than 100 pounds at a time with frequent lifting, or carrying, of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work...20 CFR 416.967(d).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Petitioner makes it to the final step of the analysis, the Petitioner has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial evidence that the Petitioner has the residual function capacity for substantial gainful activity.

After careful review of Petitioner's extensive medical record, and the Administrative Law Judge's interaction with Petitioner at the hearing, this Administrative Law Judge finds that Petitioner would be able to perform work on the sedentary exertional level.

The Petitioner is a younger individual at age 22. 20 CFR 416.963. Petitioner has no previous work history. Federal Rule 20 CFR 404, Subpart P, Appendix 2 contains

specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table 1, Rule 201.18, the Petitioner is not disabled for the purposes of SDA. Petitioner's testimony regarding his ability to sit, stand, walk, and lift was not supported by substantial medical evidence. Petitioner is not receiving any mental health treatment. Petitioner's intellectual functioning is average. The Department has met its burden, proving that Petitioner has had medical improvement that would warrant a finding that Petitioner is no longer disabled.

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 Petitioner no longer disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.

AM/ml



Aaron McClintic
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

DHHS

Kara Gubancsik
30755 Montpelier Drive
Madison Heights, MI 48071

Oakland (District 2) County DHHS – Via
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BSC4 – Via Electronic Mail

L. Karadsheh – Via Electronic Mail

Petitioner

[REDACTED] – Via First Class Mail
[REDACTED]
MI [REDACTED]

Authorized Hearing Rep.

[REDACTED] – Via First Class Mail
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MI [REDACTED]