



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 8, 2018
MAHS Docket No.: 17-014379
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 11, 2017, from Lansing, Michigan. Petitioner personally appeared and testified. [REDACTED], Petitioner's Nurse Care Manager, also appeared and testified on Petitioner's behalf.

Department of Health and Human Services (Department) was represented by Hearing Facilitator, Amber Gibson. Ms. Gibson testified on behalf of the Department. The Department submitted 238 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was a SDA recipient at all times pertinent to this hearing.
2. On September 18, 2009, Petitioner was initially approved for SDA by the Medical Review Team.
3. Petitioner's SDA benefits were scheduled for review in February of 2017.
4. On February 4, 2017, Petitioner submitted her Redetermination.

5. On May 17, 2017, Petitioner presented to the Brain Tumor Clinic at the University of [REDACTED] for tumor surveillance. She reported problems with headaches, recurrent ear impactions, and her equilibrium was off. Her Magnetic Resonance Imaging (MRI) was reviewed and compared to the MRI from April of 2016. The lesion was stable, compared to 2016. [Dept. Exh. 218-219].
6. On May 24, 2017, the Department received information from the Social Security Administration, dated May 23, 2017, indicating that Petitioner is entitled to Supplemental Security Income as a disabled individual. [Dept. Exh. 12-13].
7. On September 19, 2017, the Medical Review Team (MRT) indicated that according to Petitioner's care manager, Petitioner has cognitive impairments related to three brain tumors. [Dept. Exh. 17].
8. On September 19, 2017, the MRT denied Petitioner's Redetermination indicating that Petitioner is capable of other work. [Dept. Exh. 15-21].
9. On October 23, 2017, Petitioner submitted a Request for Hearing. [Dept. Exh. 1-2].
10. Petitioner's disabling impairments include a history of astrocytoma of the brain stem with resection and radiation in 1977, and resection again in 1984 and 1991, followed by stereotactic radiation on October 17, 2012; headaches; recurrent ear impactions; acute bronchitis; acute maxillary sinusitis; acute urinary tract infections; benign familial tremor; benign paroxysmal positional vertigo; chronic fatigue syndrome; chronic neck pain; chronic obstructive pulmonary disease (COPD) with acute exacerbation; generalized anxiety disorder; hyperlipidemia; insomnia; major depression, recurrent; meningioma; restless leg syndrome; sebaceous hyperplasia; and seizure disorder.
11. Petitioner is a 54-year-old woman, born on March 19, 1963. Petitioner is 5'7" and weighs 167 pounds. Petitioner has a high school education. Petitioner last worked in 2004 as a cosmetologist.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department

of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits; the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease, and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first question asks:

- (i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Petitioner is not disqualified from this step because she has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Petitioner has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CF 416.994(b)(5)(ii).

The next step asks the question if there has been medical improvement.

Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the

most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s). 20 CFR 416.994(b)(1)(i).

If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

Pursuant to federal regulations, at medical review, the Department has the burden of not only proving Petitioner's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The Department has the burden of establishing that Petitioner is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

In this case, Petitioner underwent an annual evaluation for tumor surveillance on behalf the Brain Tumor Clinic at the University of Michigan Department of Neurosurgery on May 17, 2017. Her MRI was reviewed and compared to the MRI from April 2016. The lesion was stable, compared to 2016. [Dept. Exh. 218-219]. The evaluation does not indicate a decrease in medical severity based on improvement of Petitioner's symptoms.

In this case, the Department has not met its burden of proof. The Department has provided no evidence that indicates Petitioner's condition has improved, or that the alleged improvement relates to her ability to do basic work activities. The Department provided no objective medical evidence from qualified medical sources that show Petitioner is currently capable of doing basic work activities. Accordingly, the Department's SDA eligibility determination cannot be upheld at this time.

DECISION AND ORDER

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 OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall process Petitioner's February 4, 2017, SDA redetermination, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in January of 2019, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.

VLA/bb



Vicki Armstrong
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) 335-6088; 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

Amber Gibson
5303 South Cedar
PO BOX 30088
Lansing, MI 48911

Ingham County, DHHS

BSC2 via electronic mail

M. Best via electronic mail

EQADHS via electronic mail

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]