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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: October 1, 2018
MAHS Docket No.: 18-005457
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 July 23, 2018, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Michelle Morley, Assistance Payments Supervisor.

ISSUE

Whether the Department properly determined 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 an ongoing recipient of SDA benefits based on a Hearing Decision issued on October 30, 2014, by Administrative Law Judge (ALJ) Aaron McClintic, Reg. No. 14-009430, finding that Petitioner's condition placed her residual functional capacity at less than sedentary, and therefore, found Petitioner disabled pursuant to 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). ALJ Aaron McClintic ordered that the Department review Petitioner's medical condition and ongoing eligibility for SDA in October 2014.
2. In a May 15, 2018, medical review, the Disability Determination Service (DDS)/Medical Review Team (MRT) reviewed Petitioner's medical evidence and concluded that she did not continue to be disabled and eligible for SDA benefits. (Exhibit A, p. 15.)

3. In connection with a review, DDS/MRT determined on May 15, 2018, that Petitioner's condition had significantly improved, citing 20 CFR 416.994. DDS/MRT concluded that Petitioner was no longer disabled. (Exhibit A, pp. 17).
4. On May 17, 2018, the Department sent Petitioner a Notice of Case Action notifying her that her SDA case would close because, among other things, she was not disabled.
5. On [REDACTED] 2018, the Department received Petitioner's timely written request for hearing disputing the closure of her SDA case.
6. Petitioner alleged disabling impairment due to severe chronic back pain in her cervical and lumbar spine with radiating pain in her right hip and degenerative disk disease with nerve damage. The Petitioner also alleges mental impairment due to depression. Petitioner also alleged moderate to severe arthritis in her knees with a torn ACL of the left knee. The Petitioner also has alleged mild to moderate COPD. The Petitioner also alleges arthritis and pain in her left knee.
7. At the time of hearing, Petitioner was 53 years old with a [REDACTED] 1964, birth date; she is 5' 6" in height and weighs about 200 pounds.
8. Petitioner completed a GED (high school) and also earned a certificate as a Licensed Practical Nurse (LPN). The license has lapsed.
9. Petitioner has an employment history of work as a certified nursing assistant. She has not worked since 2012.
10. Petitioner has a claim 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 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 lasting, or expected to last, for 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).

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.

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.

An MRI of the lumbar spine was performed on [REDACTED] 2018, due to spinal stenosis indication based on complaints of severe low back pain with radicular symptoms down the right leg. Correlation was made to a prior examination from [REDACTED] 2016. The Findings indicated lumbar vertebral body height are normal. No acute compression fracture in the lumbar vertebra. Significant degenerative changes in lumbar disc at L1-L2 through L5-S1 levels with moderate degree of levorotocoliosis in the mid-lumbar spine. Degenerative broad-based disc bulge, endplate osteophytic spurs and hypertrophy of the facet joints causing central canal stenosis of the mild-to-moderate degree mainly at L3-L4 level. There is also mild to moderate acquired central canal stenosis at L2-L3 level secondary to broad-based disc bulge and in plate osteophytic spurs. Asymmetric broad-based right paracentral disc bulge at L1-L2 level effacing the thecal sac and impinging on the interspinal right L2 nerve root. At L4-L5 and L5-S1 level, asymmetric broad-based left posterior lateral disc bulge along with and plate osteophytic spurs and hypertrophy of the facet joints causing moderate to severe compromise of the left L4 and L5 neural foramina respectively. There is also moderate Sparta compromise of the bilateral L3 and moderate to severe spondylotic compromise of the L2 neural foramina somewhat more on the right secondary to posterior lateral disc bulge, endplate osteophytic spurs and hypertrophy of the facet joints.

The Impression was over all no significant intervertebral change compared to prior examination from [REDACTED], 2016. Significant degenerative disc space changes in lumbar disc and level rotocoliosis in the mid-lumbar spine similar to prior examination. Acquired central canal stenosis of mild to moderate degree at L2-L3 and L3-L1 level and variable degree of spondylotic foramina at each level in the lumbar spine as described above. At L1-L2 level there is minimal right paracentral disc herniation possibly impinging on the interspinal right L2 nerve root unchanged from prior examination.

In addition, the Petitioner had an MRI of the cervical spine on [REDACTED] 2017, based upon an indication of a prolapsed cervical intervertebral disc. The Impression for the MRI was disc osteophyte complexes, facet degenerative changes and uncovertebral degenerative changes at C5-C6 level causing severe bilateral neural foraminal narrowing. There was no evidence of significant spinal stenosis or abnormal signal or syrinx in the cervical cord.

The Petitioner was seen on [REDACTED] 2018, prior to the most recent MRI, which was ordered by a doctor of neural surgery who examined the Petitioner. At the time of the

exam, the Petitioner reported pain in her lower back radiating into her bilateral legs. Also, complaints of pain in the cervical and thoracic regions with pain into her bilateral shoulders. Pain was described as constant, sharp, heavy, burning and stabbing. Symptoms of Numbness were also present with pain at 8/10. Both PT and injections have failed to relieve her symptoms. The Impression by the examining doctor was spinal stenosis, lumbar region, with neurogenic claudication. The doctor also ordered another updated MRI of the lumbar spine due to increase in pain also noting Petitioner may need a lumbar laminectomy. (Exhibit B.)

An independent Medical Exam was conducted on [REDACTED], 2018. The examiner had no medical records for Petitioner and did not have the MRI of the Cervical Spine or the recent MRI of the lumbar spine reference above; thus, the conclusions reached by this examiner were not given significant weight.

In the prior determination by ALJ McClintic finding the Petitioner was disabled due to her residual functional capacity which was determined as less than sedentary, he relied in part on Petitioner's MRI from [REDACTED] 2010 citing the following findings from the MRI reviewed, Impression: 1) Moderate spondylotic degenerative disc disease in the lumbar spine, especially at L1-L2, L2-L3 disc levels, with extensive facet joint degenerative changes in the lumbar spine. There is acquired mild central canal stenosis at L2-L3 disc level; 2) There is a small broad-based right paracentral disc protrusion at L5-S1 disc level, extending only in the epidural fat, is coming close to the right interest spinal capital S1 nerve root. No significant central canal stenosis is seen at this level. Correlate with radicular symptoms and clinical symptomology.

A review of the [REDACTED] 2010 MRI which was utilized to place the Petitioner at less than sedentary, thus, disabling her, demonstrates that not only has Petitioner's lumbar spine condition worsened, no prior medical evidence of nerve root compression or impingement was demonstrated in the [REDACTED] 2010 MRI. The current MRI for [REDACTED] 2018, by comparison demonstrates significant lumbar spine deterioration at many levels and a nerve impingement.

A review of Listing 1.04 Disorders of the Spine was reviewed and based upon the medical evidence presented it is determined that Petitioner meets the medical equivalent of Listing 1.04 A, and thus, is determined to be disabled with no further analysis required.

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 disabled for purposes of the SDA benefit program.


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 THE ORDER WAS ISSUED:

1. Reinstate the Petitioner's SDA case as of the effective date of closure, June 1, 2018.
2. Issue supplements to Petitioner for any lost SDA benefits that she was entitled to receive from June 1, 2018, ongoing if otherwise eligible and qualified in accordance with Department policy.
3. Notify the Petitioner of its decision in writing.
4. Review Petitioner's continued SDA eligibility in October 2019 in accordance with Department policy.

LMF/jaf



Lynn M. Ferris

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

DHHS

Angela Neubecker
MDHHS-Ogemaw-Hearings

DHHS

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Petitioner

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