[redacted]

Date Mailed: February 8, 2019
MAHS Docket No.: 18-012240
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 January 14, 2019 from Detroit, Michigan. Petitioner appeared for the hearing with his cousin, [redacted] and represented himself. The Department of Health and Human Services (Department) was represented by [redacted], Medical Contact Worker.

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 approved for SDA benefits based on a Hearing Decision issued on March 16, 2017 by Administrative Law Judge (ALJ) Alice Elkin. ALJ Elkin ordered that the Department review Petitioner's medical condition and ongoing eligibility for SDA benefits in September 2017. (Exhibit A, pp. 44-57)

2. In March 2018 the Disability Determination Service (DDS) initiated a review of Petitioner's ongoing SDA eligibility and on or around August 21, 2018 DDS found Petitioner not disabled for SDA purposes, as it determined that he has had medical improvements that are related to his ability to do work. (Exhibit A, pp. 7-13)

3. On August 28, 2018 the Department sent Petitioner a Notice of Case Action advising him that he is no longer eligible for SDA benefits based on the DDS finding that he is

not disabled. Petitioner's SDA case closed effective October 1, 2018. (Exhibit A, pp. 4-5)

4. On or around November 13, 2018 Petitioner requested a hearing disputing the Department's termination of his SDA benefits. (Exhibit A, pp. 2-3)

5. Petitioner was previously found disabled based on the following impairments: back and neck pain due to lumbar and cervical stenosis; left shoulder pain and numbness; sleep disorder; hypertension; personality disorder; and bipolar disorder/schizophrenia. Petitioner continues to allege that those impairments render him disabled.

6. As of the hearing date, Petitioner was [redacted] years old with a January 3, [redacted] date of birth. He was [redacted] and weighed [redacted] pounds. Petitioner received a GED and has reported past work history of employment as a machine operator, fast food cook, industrial factory worker, landscaper and drywall installer. Petitioner has not been employed since September 2012.

7. Petitioner has a 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).
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> **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).
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> **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).
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> **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).
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> **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 back and neck pain due to lumbar and cervical stenosis; left shoulder pain and numbness; sleep disorder; hypertension; depression; personality disorder; and bipolar disorder/schizophrenia. The medical evidence presented since the March 2017 Hearing Decision issued by ALJ Elkin finding Petitioner disabled was thoroughly reviewed and is briefly summarized below.

On August 3, 2018 Petitioner participated in a consultative adult mental status examination, during which he reported history of degenerative disc disease, chronic back pain, anxiety and depression as a result of a work-related injury seven years prior. Petitioner denied suicidal or homicidal ideations, denied psychosis or paranoia and has not been hospitalized psychiatrically. He did report receiving psychiatric treatment since 2009 and currently through [redacted] twice monthly for therapy and antidepressant medications. Petitioner reported that he has a caregiver that comes to his home twice a month and that he is involved with physical therapy twice weekly. He was observed to walk slowly with the assistance of a walking stick and complained of bad pain in his back. Petitioner did not seem to exaggerate or minimize his symptoms, had a constricted affect and a mood that was guarded, reserved and serious. The psychologist determined that Petitioner did not present with limitations that would interfere with his ability to follow simple two or three step directions or do work related activities at a sustained pace. He was diagnosed with depression, secondary to medical conditions and given a fair prognosis. (Exhibit A, pp. 121-124)

Records from Petitioner's mental health treatment at [redacted] were reviewed and show that on April 11, 2017 Petitioner underwent an Initial Psychiatric Evaluation, during which he reported hearing voices, feeling paranoid with persecutory ideations, feeling depressed and having rapid mood swings of happy and sad. Petitioner admits to getting easily agitated and hostile and reported poor impulse control. He reported past history of degenerative bone disease, herniated disc problems in the back, arthritis and hypertension. He was observed to walk with the assistance of a walking stick. The mental status exam showed: he was easily agitated, hostile, had poor impulse control, auditory hallucinations, paranoid persecutory ideations, delusions, depressed moods and mood swings, hyperactive and hyperverbal racing thoughts. Petitioner denied suicidal or homicidal ideations. He was diagnosed with schizoaffective disorder; bipolar affective disorder mixed with psychosis and history of marijuana abuse. Petitioner's GAF score was 50 and his treatment goals included improving his psychosis, depression, and mood swings. Petitioner's treatment continued through 2018. (Exhibit A, pp. 150-161)

Clinic Notes from Petitioner's August 2017 and February 2018 visits with the [redacted] show that he presented for follow-up of neck and low back pain. February 2018 records indicate that Petitioner was given an epidural injection in the cervical spine in November 2017 which did not provide significant relief. He reported ongoing pain in the neck that radiated to both shoulders which has limited his motion. Examination of the cervical spine showed tenderness to palpation of the bilateral cervical paraspinal muscles as well as the trapezius muscles. There was also

tenderness to palpation overlying the left periscapular muscles including the trapezius, serratus, and rhomboids as well as tenderness of the distal cervical spinous processes from C5-C7. Petitioner's range of motion was limited and his Spurling test was positive for pain bilaterally without radicular symptoms. There was decreased sensation to light touch of left upper extremity involving C5 and C6 dermatomes. Petitioner was assessed has having cervical herniated disc, cervical disc disease, and stenosis of the cervical spine.

> The doctor reviewed the results of Petitioner's lumbar spine MRI and noted that results showed: central and left central disc protrusion at L5-S1 contacting L5 nerve roots more pronounced on the left with bilateral moderate to severe neural foraminal stenosis; disc bulge at L4-L5 with mild facet arthropathy and mild bilateral neural foraminal stenosis. MRI of the cervical spine showed: congenitally narrow spine canal; compression of the left side of the spinal cord by a left paracentral disc osteophyte complex at C5-6; mild spondylotic changes at C2-3, C3-4, C4-5, and C6-7 without cord compression; and moderate stenosis of the left C6-7 neural foramen, mild stenosis of the right C-6-7, left C5-6, and bilateral C4-5, C3-4, and C2-3 neural foramina.

The doctor concluded that Petitioner had evidence of significant cord compression/stenosis starting at C5-6 and spanning all the way distally to C6-7. Evidence of spondylitic changes were noted throughout the cervical spine. Because Petitioner had participated in physical therapy and epidural injections without relief, the doctor was referring Petitioner to spine surgery for evaluation. (Exhibit A, pp. 140-145)

An August 9, 2017 x-ray of Petitioner's left shoulder showed mild degenerative changes of the glenohumeral joint with possible small interarticular loose body. An August 9, 2017 x-ray of Petitioner's cervical spine showed loss of cervical lordosis. (Exhibit A, pp. 213-216)

Results of an October 14, 2017 MRI of Petitioner's cervical spine showed: MRI of the cervical spine showed: congenitally narrow spine canal; compression of the left side of the spinal cord by a left paracentral disc osteophyte complex at C5-6; mild spondylotic changes at C2-3, C3-4, C4-5, and C6-7 without cord compression; and moderate stenosis of the left C6-7 neural foramen, mild stenosis of the right C-6-7, left C5-6, and bilateral C4-5, C3-4, and C2-3 neural foramina. (Exhibit A, pp. 221-222)

An MRI of Petitioner's lumbar spine performed on January 17, 2018 showed: central and left central disc protrusion at L5-S1 contacting L5 nerve roots more pronounced on the left with bilateral moderate to severe neural foraminal stenosis; disc bulge at L4-L5 with mild facet arthropathy and mild bilateral neural foraminal stenosis. (Exhibit A, pp. 205-206)

Records from Petitioner's 2017-2018 visits with his primary care physician [redacted] show that he continued to receive treatment for his conditions including chronic neck and back pain with radiculopathy, left shoulder pain, hypertension, bipolar disorder.

Notes indicate that he was observed to walk with an unsteady gait. (Exhibit A, pp. 192-212, 223-261)

Petitioner presented a packet of documents consisting of 80 pages that were marked and admitted into the record as Exhibit 1. Petitioner presented to the emergency department at [redacted] on November 18, 2018 with complaints of pain. Records indicate that Petitioner was diagnosed with spinal stenosis with cervical and lumbar radicular symptoms, as well as increasing pain to the shoulders, all of which resulted from a work-related injury. Also noted was Petitioner's degenerative disc disease with stenosis and polyneuropathy based on prior EMG results. Petitioner was referred to the pain clinic and the department of neurosurgery for additional evaluation. Petitioner presented a July 21, 2017 Adult Home Help Services Approval Notice showing that he was approved for adult services to assist with his daily living activities and household chores, shopping, and meal preparation. Petitioner also presented records from his visits and treatment at [redacted] showing that in May 2018 he underwent a lumbar epidural steroid injection and in June 2018 and July 2017 received a suprascapular nerve injection on the left side to treat his suprascapular neuralgia. He also presented records from his physical therapy treatment with [redacted]. (Exhibit 1)

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint(s) due to any cause), 1.04 (disorders of the spine), 12.03 (schizophrenia spectrum and other psychotic disorders), 12.04 (depressive, bipolar and related disorders), and 12.08 (personality and impulse-control disorders) were considered. 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 March 16, 2017 by ALJ Elkin which found that with respect to Petitioner's

exertional limitations, he maintained the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a), but that the occupational base of sedentary jobs is eroded by Petitioner's significant limitations to walking and standing, as well as limitations to the use of his left arm and hand to grasp, reach, push/pull and his left leg to operate foot controls. ALJ Elkin further found that with respect to his nonexertional limitations due to his mental conditions, Petitioner had mild limitations on activities of daily living; moderate limitations on social functioning; and moderate limitations on concentration, persistence or pace.

As referenced above, the medical evidence presented with the current review showed that Petitioner continued to receive treatment for the conditions that rendered him disabled in ALJ Elkin's Hearing Decision. Petitioner's cervical and lumbar spine MRI results show among other things, a cervical congenitally narrow spine canal, compression of the spinal cord at the C5-6 level, moderate stenosis at multiple levels of the cervical spine, as well as central disc protrusions at the L5-S1 which contact the nerve roots, and with bilateral moderate to severe neural foraminal stenosis. At the hearing, Petitioner testified that he continues to suffer pain from a torn rotator cuff and stenosis in his neck and back. He stated that he can walk ½ block but requires the use of a cane to assist with ambulation and that he can walk for only five to ten minutes. He reported that he can sit for only 20 minutes and can lift five pounds or only a gallon of milk. He cannot bend or climb stairs. Petitioner testified and provided documentation showing that he has a chore/care provider who does all of his laundry, shopping, cooking, cleaning and transportation. Petitioner stated that he requires assistance with shaving but can bathe himself. The Department representative present in the hearing room noted that throughout the duration of the hearing, Petitioner appeared to be in a lot of pain. Petitioner reported that he continues to suffer from anxiety attacks which include symptoms of sweating, worry, and blackouts. He stated that he has difficulty with concentration and memory and requires assistance from his therapist, so he can understand how to do things. It was noted during the hearing that Petitioner appeared to have difficulty answering the Administrative Law Judge's questions. Petitioner reported that he suffers from crying spells and anger and further reported that he has visual hallucinations and often sees and speaks to his deceased mother.

Upon review, with respect to Petitioner's limitations and impairments, the evidence presented in connection with the current review does not show a medical improvement in Petitioner's condition from that presented in the March 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 March 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 October 1, 2018;

2. Issue supplements to Petitioner for any lost SDA benefits that he was entitled to receive from October 1, 2018, 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 July 2019 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 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

Via Email: [redacted]

Petitioner – Via First-Class Mail: [redacted]