



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 8, 2019
MAHS Docket No.: 18-012419
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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; and 45 CFR 205.10. After due notice, a telephone hearing was held on January 3, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED] [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 an ongoing recipient of SDA benefits based on a Hearing Decision issued August 4, 2017 by Administrative Law Judge (ALJ) McClinton finding that Petitioner was disabled. The August 4, 2017 Decision and Order required that the Department review Petitioner's medical condition and ongoing eligible for SDA in February 2018 (Exhibit A, pp. 52-62).
2. In connection with a February 2018 review, DDS/MRT determined on August 28, 2018 that Petitioner's impairment did not prevent employment for 90 days or more and denied continuing eligibility for disability. (Exhibit A, pp. 10-16).
3. On October 11, 2018, the Department sent Petitioner a Notice of Case Action notifying her that her SDA case would close effective October 1, 2018 because, among other things, she was not disabled (Exhibit A, pp. 6-7).

4. On October 11, 2018, the Department received Petitioner's timely written request for hearing disputing the closure of her SDA case (Exhibit A, p. 8).
5. Petitioner alleged disabling impairment due to headaches, bipolar depression, anxiety, insomnia, and a ventricular shunt in head.
6. At the time of hearing, Petitioner was [REDACTED] with a [REDACTED] birth date; she is [REDACTED] in height and weighs about [REDACTED].
7. Petitioner completed the 11th grade and obtained a GED.
8. Petitioner has an employment history of work as a cashier.
9. 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 (April 2017), 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 she

became eligible for SDA. Therefore, her 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.

The medical record presented was reviewed and is briefly summarized below:

On [REDACTED] [REDACTED] 2017, Petitioner was seen for a chief complaint of headaches and shoulder pain. Petitioner indicated that the episode began seven days prior to the visit and had been increasingly becoming worse. It was noted that Petitioner's shoulder pain was getting worse. There was discussion regarding Petitioner doing injections too frequently. The plan was to resume injection in February 2018. The plan also included increasing Petitioner's Percocet, Flexeril, naproxen, and medical marijuana for chronic pain. (Exhibit A, pp. 137-143).

On [REDACTED] [REDACTED] 2018, Petitioner was seen at [REDACTED] or psychiatric care. Petitioner worries frequently about the future of her three children. Petitioner was instructed to continue on her current medication. (Exhibit A, pp. 133-136).

On [REDACTED] [REDACTED] 2018, Petitioner was seen with the chief complaint a headache and shoulder pain. Petitioner's headaches were noted to be a chronic problem with the current episode beginning more than one year ago. The problem was noted as occurring constantly and unchanged. Petitioner's shoulder pain was also noted to be chronic with the current episode beginning 3 to 6 months prior. Associated symptoms with Petitioner's shoulder pain included decreased motion; pain with lifting; stiffness; and catching. (Exhibit A, pp. 147-150).

On [REDACTED] [REDACTED] 2018, Petitioner was seen with a chief complaint of shoulder pain and headaches. Petitioner indicated that the pain was severe and aggravated by activity. Petitioner was noted to have decreased range of motion in her left shoulder. The plan included a referral to orthopedics and a referral to neurology to further evaluate chronic headaches. (Exhibit A, pp. 220-224).

On [REDACTED] [REDACTED] 2018, Petitioner was seen with a chief complaint of headaches. Petitioner listed her pain severity as 10/10. Petitioner was referred to pain management. Petitioner also received an injection in her shoulder. (Exhibit A, pp. 225-230).

On [REDACTED] [REDACTED] 2018, Petitioner was seen for an independent medical examination. The chief complaints noted were bipolar, depression, anxiety, insomnia, and ventricular shunt in head. Relating to the functional assessment, there were no recommended limitations regarding the number of hours that Petitioner was able to sit, stand or walk. There were no weight-bearing restrictions. There were no limitations recommended associated with bending, stooping, squatting, crouching, and/or crawling. There were no recommended manipulative limitations such as reaching, pushing, pulling, handling, grasping, fingering, and/or feeling. There were no visual, cumulative, or other workplace environmental limitations recommended. (Exhibit A, pp. 123-128).

On [REDACTED] [REDACTED] 2018, Petitioner was seen for a consultative mental status examination. The medical source statement indicated that there were limitations noted in the areas of focus and concentration. Petitioner's ability to understand, retain, and execute basic routines was seen as moderately limited. Petitioner's ability to appropriately interact with

the general public or respond to supervision was seen as moderately limited. (Exhibit A, pp. 118-120).

On [REDACTED] [REDACTED] 2018, Petitioner was seen with a chief complaint of a headache. It was noted that Petitioner's headache pain was reduced to a manageable level although it was still present on Percocet. (Exhibit A, pp. 230-236).

On [REDACTED] [REDACTED] 2018, Petitioner was seen with a chief complaint of a headache. Petitioner described the pain as aching and pulsating. It was noted that Petitioner's pain had been worse and may be due to sinusitis. (Exhibit A, 237-244).

Based on the medical evidence presented in this case, listings 2.02 (loss of central visual acuity) and 12.04 (depressive, bipolar and related disorders) were considered. Because 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, 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 found that she had additional limitations to her non-exertional RFC that result in an inability to do sustained work because of headaches and loss of vision. The evidence presented in connection with the February 2018 review does not show any medical improvement in Petitioner's condition from that presented in the August 4, 2017 Hearing Decision, 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 August 4, 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

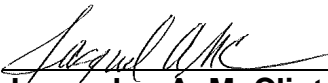
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Petitioner has a continuing disability for purposes of the SDA benefit program. Therefore, Petitioner's SDA eligibility continues and the Department did not act in accordance with Department policy when it closed her 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 she 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.

JAM/tlf



Jacquelyn A. McClinton
Administrative Law Judge
for Farah Hanley, Acting 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:

MDHHS-Wayne-15-Hearings
BSC4 Hearing Decisions
Policy-FIP-SDA-RAP
MAHS

Petitioner – Via First-Class Mail:

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