



[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 8, 2019
MOAHR Docket No.: 19-001640
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 March 20, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. Petitioner's sister and Authorized Hearing Representative (AHR) appeared at the hearing with Petitioner's friend, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Manager.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. Correspondence from [REDACTED], [REDACTED], dated March 22, 2019 was received on April 9, 2019 and was marked into evidence as Exhibit 1. The record closed on April 22, 2019, and the matter is now before the undersigned for a final determination based on the evidence presented.

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.
2. In or around August 2018, Petitioner was approved for SDA benefits based on a Disability Determination Service (DDS) finding that at the time, he had recently been released from a nursing home due to his seizure disorder and needed time to become stabilized on his medication. Thus, DDS ordered that Petitioner's medical

history be reviewed in six months to monitor his expected improvement. (Exhibit A, pp. 222-228)

3. On or around February 6, 2019 the DDS found Petitioner not disabled for purposes of continued SDA benefits. DDS determined that Petitioner was capable of performing other work. (Exhibit A, pp. 4-10)
4. On February 13, 2019 the Department sent Petitioner a Notice of Case Action advising her that effective March 1, 2019 his SDA benefits would be terminated based on DDS' finding that he is not disabled. (Exhibit A, pp. 1-2)
5. On April 25, 2018 Petitioner requested a hearing disputing the Department's termination of her SDA benefits and the DDS finding that she was not disabled.
6. Petitioner alleged disabling impairments due to: memory loss; poor motor skills; slow speech; and slow processing.
7. As of the hearing date, Petitioner was [REDACTED] years old with a September 17, [REDACTED] date of birth. He was [REDACTED] and weighed [REDACTED] pounds. Petitioner has a high school education and has reported employment history of work as a packer and a press operator. Petitioner has not been employed since April 2018.
8. Petitioner has a 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 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).

As a condition of ongoing SDA eligibility, a client must apply for benefits with the Social Security Administration and timely appeal any SSA denial. BEM 271 (January 2016), pp. 1, 7-9. When SSA determines that a disability does not exist and the SSA decision is final, the SDA case must be processed for closure. BEM 271, p. 9. An SSA decision is final when (i) it was made after January 1, 1990; (ii) no further appeals may be made at SSA; (iii) the client failed to file an appeal at any step with SSA's 60-day limit; and (iv) the client is not claiming a totally different disabling condition than the condition SSA based its determination on or an additional impairment, change or deterioration in her condition that SSA has reviewed and not made a determination on yet. BEM 271, p. 9.

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, the eight-step evaluation is applied to determine whether he 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.

In the present case, Petitioner alleged continued disability due to the residual effects of his seizure disorder. Petitioner presented limited medical evidence since the August 23, 2018 DDS decision finding Petitioner disabled. The medical evidence was reviewed and is briefly summarized below.

On January 25, 2019, Petitioner was seen at [REDACTED] for a medical consultation. Petitioner's most recent seizure was in May 2018 due to not being on his medication. Since then Petitioner has not had any further episodes. Petitioner was noted to be cooperative without speech limitation. Petitioner did not have any joint instability. Petitioner's grip strength was intact. Petitioner's dexterity was within normal limits. Petitioner did not have any difficulty getting on and off the examination table. Petitioner did not experience any difficulty heel to toe walking or squatting. Petitioner's range of motion for his joints were within normal limits. Petitioner's motor strength/function was within normal limits. Petitioner's sensory was intact. There were no spasms noted. Petitioner had an unremarkable neurological examination. Petitioner had a normal gait without use of an assistive device. Petitioner was noted to have good results with anti-seizure regime. (Exhibit A, pp. 77).

Based on the medical evidence presented, listings 11.02 (epilepsy) was considered. 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. Therefore, 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 DDS decision issued in August 2018 which found that because Petitioner had been recently released from a nursing home and because he experienced balance and memory loss issues, he was unable to perform sustained activities for an 8 hour work day and thus, was considered disabled at that time.

As referenced above, the medical evidence presented with the current review showed no speech limitations; no joint instability; no difficulty with walking or squatting; and his strength/functions were in within normal limits. Further, Petitioner has not experienced any seizures since May 2018.

As such, the evidence presented in connection with the current review does show a medical improvement in Petitioner's condition from that presented in the DDS decision issued in August 2018, which is the most recent favorable decision finding Petitioner disabled. Because there is medical improvement, the analysis proceeds to Step 3.

Step Three

If there has been medical improvement, it must be determined whether there is 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).

In this case, Petitioner is alleging a disability due to nonexertional limitations. At the hearing, Petitioner testified that his short-term memory is impaired. Petitioner's sister testified that Petitioner is unable to complete tasks on a consistent basis. Petitioner is able to follow simple instructions.

Petitioner was previously found to have met a listing due to the severity of his condition at the time. However, based on a review of the entire record, it is found that since that time, there has been an improvement in Petitioner's RFC given that he has not had any reoccurring seizures and he currently maintains the ability to perform light work. Because Petitioner's medical improvement is related to his ability to do work, the analysis proceeds to Step 5.

Step 5

Where medical improvement is shown to be related to an individual's ability to do work, **all** the individual's current impairments in combination are considered to determine whether they are severe in light of 20 CFR 416.921. An individual's impairments are not severe only if, when considered in combination, they do not have more than a minimal

effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The evidence presented was insufficient to establish that Petitioner's impairments have more than a minimal effect on his ability to perform basic work activities. Specifically, Petitioner has not had any emergency room visits since May 2018. Although Petitioner alleged memory issues, there was no objective medical evidence to support this finding. The January 2019 medical evaluation found some residual function limitations due to Petitioner's seizure disorder but further found that Petitioner did not have any issues with walking or getting on or off the examination table. Additionally, there was no objective evidence presented to show that Petitioner continues to have balance issues. Petitioner's neurological examination was unremarkable.

Petitioner lives alone and is able to squat, bend at the waist, stand, reach, walk, sit, kneel, climb stairs and use his hands. Petitioner has not alleged any mental disorders. Accordingly, because the medical evidence presented demonstrated that all Petitioner's current impairments in combination do not significantly limit his physical or mental abilities to do basic work activities, these impairments are not to be considered severe in nature and the individual will no longer be considered to be disabled, and the analysis ends.

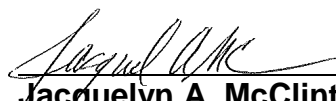
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that Petitioner does not have a continuing disability for purposes of the SDA benefit program and the Department acted in accordance with Department policy when it closed her SDA case.

DECISION AND ORDER

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 not disabled for purposes of the SDA benefit program.

Accordingly, the Department's determination is **AFFIRMED**.

JAM/tlf



Jacquelyn A. McClinton
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

Via Email:

[REDACTED]

Authorized Hearing Rep.
- Via First-Class Mail:

[REDACTED]