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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 1, 2019
MOAHR Docket No.: 19-007725
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 September 4, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. Petitioner's mother, [REDACTED], also appeared at the hearing on behalf of Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

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. On the April 30, 2019 medical review, the Disability Determination Service (DDS) reviewed Petitioner's medical evidence and concluded that he was disabled and eligible for SDA benefits. DDS referred Petitioner's case for medical review for one month later on May 30, 2019. (Exhibit A, pp. 69-75.)
3. In connection with a May 2019 review, DDS determined on June 27, 2019 that Petitioner's condition had significantly improved and he was no longer disabled. (Exhibit A, pp. 18-24).

4. On July 10, 2019, the Department sent Petitioner a Notice of Case Action notifying him that his SDA case would close effective August 1, 2019 because, among other things, he was not disabled (Exhibit A, pp. 11-15).
5. On ██████ 2019, the Department received Petitioner's timely written Request for Hearing concerning the closure of his SDA case (Exhibit A, pp. 5-6).
6. Petitioner alleged disabling impairments due to complications from a stroke, including significant left arm and left leg tremors; weakness; and an inability to ambulate without assistance.
7. At the time of hearing, Petitioner was ██████ old with a ██████ birth date; he is ██████; and weighs about ██████.
8. Petitioner completed high school.
9. Petitioner has an employment history of work as a line leader for an automotive supplier.
10. Petitioner has a pending disability claim with the Social Security Administration (Exhibit B).

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).

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 July 23, 2019, Petitioner was seen at [REDACTED] for occupational therapy (OT). Petitioner was referred to OT for a decline with self-care tasks, following a hospitalization for a lumbar laminectomy. Petitioner's range of motion was noted to be impaired and limited. The Assessment Summary listed the following when denoting the risk factors:

Due to the documented physical impairments and associated functional deficits, the patient is at risk for: anxiety, compromised general health, decreased ability to return to prior living environment, decreased circulatory function, decrease in level of mobility, decreased participation with functional tasks, decreased skin integrity, depression, DVT, falls, further decline in function, increased dependency upon caregivers, increased pain, limited out-of-bed activity, muscle atrophy, pneumonia and pressure sores.

Further, the Evaluation Summary indicated that the assessment identified 5 or more deficits in areas of physical, cognitive, and psychosocial skills causing activity limitation or participation restrictions. (Exhibit 1, pp. 19-21).

On August 2, 2019, Petitioner was seen at [REDACTED] P.C. At the visit, Petitioner was concerned with regard to tremors in the left upper and left lower extremities. The examination revealed that Petitioner continued to have significant intention tremors in the left upper and lower extremities with fine movement. The diagnosis listed was left upper extremity and left lower extremity tremors with some degree of rigidity, ratchet-like in nature. (Exhibit 1, pp. 10-11)

In light of the medical evidence presented, listing 11.04 was considered and states as follows:

11.04 Vascular insult to the brain, characterized by A, B, or C:

A. Sensory or motor aphasia resulting in ineffective speech or communication (see 11.00E1) persisting for at least 3 consecutive months after the insult.

OR

B. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities, persisting for at least 3 consecutive months after the insult.

OR

C. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a) and in one of the following areas of mental functioning, both persisting for at least 3 consecutive months after the insult:

1. Understanding, remembering, or applying information (see 11.00G3b(i)); or
2. Interacting with others (see 11.00G3b(ii)); or
3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
4. Adapting or managing oneself (see 11.00G3b(iv))

In initially approving Petitioner for SDA benefits on April 30, 2019, DDS determined as follows:

CLAIMANT IS UNABLE TO SUSTAIN 8 HOUR WORK DAY 40 HOUR WEEK WORK AT THIS TIME. HE HAS TO HAVE ASSISTANCE WITH TRANSFER AND USES A WHEELCHAIR. HE HAS SUBSTANTIAL TREMORS IN LEFT LEG AND ARM.

CLAIMANT ALLOWED SDA BENEFITS DUE TO LESS THAN SEDENTARY ABILITY TO SUSTAIN AT THIS TIME. SSA WILL DETERMINE FINAL DECISION. (Exhibit A, p. 72).

In approving the SDA benefits, it appears that DDS reviewed medical records from May 2018 through April 2019. (Exhibit A, p. 71). In the June 2019 denial of benefits, DDS made the following determination:

CLAIMANT WAS GIVEN TEMPORARY DISABILITY WHILE RECOVERING FROM STROKE. CLAIMANT HAS SHOWN SIGNIFICANT MEDICAL IMPROVEMENT AND IS NO LONGER ELIGIBLE FOR SDA BENEFITS. DISREGARD RECENT PREVIOUS 49A WHICH WAS DONE IN ERROR. THE DECISION HAS BEEN REVERSED BY DDS... (Exhibit A, p. 23).

A review of the Evidence of Record (Exhibit A, p. 27) relating to records received since the initial approval revealed that the Disability Determination Service received records from the following sources:

- [REDACTED]
- Petitioner
- [REDACTED]
- [REDACTED]
- [REDACTED]

A review of the entire medical file provided by the Department reveals no medical records from the date of the May 2, 2019 approval through the date of the hearing. Further, under the Findings of Fact and Analysis of Evidence, the DDS failed to summarize any records after April 20, 2019 it relied on in making the finding that Petitioner has shown significant medical improvement. It should be noted that only one month passed from the Department's initial approval to its subsequent denial.

Petitioner suffered a stroke on March 25, 2018 while at work. Following his hospitalization, Petitioner participated in rehabilitation services. Since the time of his stroke, Petitioner has required the use of a wheelchair, as he is unable to ambulate effectively without the use of the wheelchair. Subsequent to his stroke, Petitioner underwent back surgery on July 18, 2019.

In an undated letter, ██████████ board certified neurologist, stated that Petitioner had surgery on July 18, 2019 on his back and was residing in the hospital as of the date of the letter. Petitioner was to follow up upon discharge from rehabilitation. It was ██████████ opinion that at the time he authored the letter, Petitioner was unable to work. (Exhibit A, p. 78). Also, in a letter dated July 22, 2019, ██████████ indicated that Petitioner had a surgical procedure on his back due to lumbar disc disease. Dr. Garcia indicated that Petitioner would need to be off from work for at least one-month post-surgery and would need further evaluation at that time. (Exhibit A, p. 79). Likewise, in a letter dated July 22, 2019, ██████████ indicated that Petitioner underwent surgery on July 18, 2019 and is unable to work at the time of the letter. It was ██████████ opinion that Petitioner would need at least three months or longer to recover. (Exhibit A, p. 80).

Petitioner appeared at the hearing in a wheelchair. Petitioner testified that he could not walk more than 20 to 50 feet without getting tired. Petitioner indicated that his muscles become weak while walking. Petitioner acknowledged that he could sit for a "couple of hours" but at that point, his legs begin to swell. Petitioner indicated that he could only reach with his right hand as he experiences severe tremors in his left hand.

Petitioner uses a walker to take minimal steps to the bathroom. He indicated that there are times when his mother has to assist him in the bathroom. Petitioner also indicated that he suffers from depression and anxiety and is currently treating with a therapist.

Petitioner testified at that hearing that he continues to have substantial tremors in his left leg and arm. During the hearing, Petitioner was observed to have at least two episodes of tremors. Petitioner attempted to pick up a bottle of water with his left arm during the hearing but was unable to drink any water because of the tremor he experienced in his left arm. Petitioner was seated in a wheelchair during the hearing. Petitioner brought his walker with him in an effort to show how difficult it is to walk with the assistive device. Petitioner did not complete the demonstration at the hearing. Petitioner's mother testified that she has to regularly transfer her son to and from his wheelchair.

The medical evidence, reviewed at the time of DDS' initial approval through July 2019 reveal that Petitioner has disorganization of motor function of both his left arm and left leg resulting in extreme limitation in the ability to stand up from a seated position, balance while standing or walking, or use his left arm and leg which has persisted for more than three consecutive months after his stroke on March 25, 2018.

Therefore, the medical evidence shows that Petitioner's impairment of his left arm and left leg as well as his inability to ambulate effectively meets or is equal in severity to the criteria in Appendix 1 of the Guidelines to be considered as disabled. Accordingly, Petitioner **is disabled**, and no further analysis is required.

DECISION AND ORDER

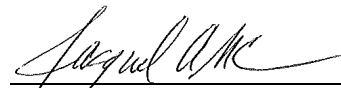
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Petitioner **has** continuing disability for purposes of the SDA benefit program. Therefore, Petitioner's SDA eligibility **continues**, and the Department **did not act** in accordance with Department policy 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 August 1, 2019;
2. Issue supplements to Petitioner for any lost SDA benefits that she was entitled to receive from August 1, 2019 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 May 1, 2020 in accordance with Department policy.

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:

MDHHS-StClair-Hearings
BSC2 Hearing Decisions
[REDACTED]
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Petitioner

- **Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]