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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: November 1, 2019
MOAHR Docket No.: 19-008249
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 September 4, 2019, from Detroit, Michigan. Petitioner appeared for the hearing with his Case Manager, [REDACTED]. The Department of Health and Human Services (Department) was represented by Terri Chase and Tina Hausbeck, Eligibility Specialists.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. Petitioner submitted additional records which were received, marked and admitted into evidence as Exhibit 1. The record closed on October 4, 2019 and the matter is now before the undersigned for a final determination 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. In or around [REDACTED] 2018, Petitioner was approved for SDA benefits based on a Disability Determination Service (DDS) finding that at the time, his condition met or equaled a listing under 12.03 (schizophrenia spectrum and other psychotic disorders). (Exhibit A, pp. 39-45)

2. In [REDACTED] 2019 the Department and DDS initiated a review of Petitioner's continued eligibility for SDA benefits.
3. On or around [REDACTED] 2019, the DDS found Petitioner not disabled for purposes of continued SDA benefits. DDS determined that Petitioner failed to return completed forms, specifically activities of daily living and as a result, he failed to cooperate and thus, there was insufficient evidence to assess his continued disability. (Exhibit A, pp.12-38)
4. On [REDACTED] 2019, the Department sent Petitioner a Notice of Case Action advising him that effective August 1, 2019, his SDA benefits would be terminated based on DDS' finding. (Exhibit A, pp. 5-10)
5. On [REDACTED], Petitioner requested a hearing disputing the Department's termination of his SDA benefits and the DDS findings.
6. Although the Case Development Sheet refers to activities of daily living forms, it was unclear based on the evidence presented when the forms were sent to Petitioner to complete and the due date for the return, as none of the forms were presented during the hearing. Therefore, the Department did not establish that Petitioner failed to cooperate or that he was no longer disabled based on a failure to cooperate/insufficient evidence.
7. Petitioner alleged continuing disabling impairments due to post-traumatic stress disorder (PTSD), anxiety, photophobia, schizotypal personality disorder, hallucinations and schizophrenia. (Exhibit A, pp. 71-74)
8. As of the hearing date, Petitioner was 30 years old with a [REDACTED] 1989 date of birth. He was 5'11" and weighed [REDACTED]. Petitioner has a college education and has no reported history.
9. 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 (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).

At the hearing, the Department testified that the DDS concluded that Petitioner failed to cooperate with the review process by not completing and returning activities of daily living and work history forms, and thus, there was insufficient evidence to make a current medical assessment. Therefore, DDS determined that Petitioner's disability stopped, and the Department sent Petitioner the Notice of Case Action advising him that his SDA case will close effective August 1, 2019. However, the Department failed to sufficiently establish that Petitioner did not return forms required for a disability determination, as it was unclear based on the evidence presented when the forms were sent to Petitioner to complete, and the due date for their return. Thus, because the Department did not establish that Petitioner failed to cooperate with the review process, and objective medical evidence was presented in the hearing record, a determination of Petitioner's continued disability will be assessed below.

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 and Step Two

Step 1

The first step 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.

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).

In the present case, Petitioner alleged continued disability due to PTSD, anxiety, photophobia, schizotypal personality disorder, hallucinations and schizophrenia. The medical evidence presented since the March 2018 DDS decision finding Petitioner disabled was thoroughly reviewed and is briefly summarized below.

Records from Petitioner's mental health treatment at [REDACTED] were reviewed and show that he continued to receive outpatient therapy (OPT), targeted case management, individual therapy, eye movement desensitization and reprocessing (EMDR) treatment, and psychiatric medication treatment for diagnosis of schizophrenia, PTSD, and schizotypal personality disorder. (Exhibit A, pp. 325-404). Mental status exam notes from individual therapy sessions completed in [REDACTED] 2018 and [REDACTED] 2019 indicate that Petitioner was at baseline and still experienced mental health symptoms that impede his everyday functioning. In [REDACTED] 2018, Petitioner reported experiencing symptoms of anxiety, depression, sleep disruption, paranoia, inability to focus, memory impairment, light sensitivity, headaches, sadness, and feelings of hopelessness. He was guarded when discussing auditory and visual hallucinations. During a [REDACTED], 2019 session, Petitioner explained that his sleeping medications are not working at all, reported that his hallucinations have returned and that he is in a bad place. Petitioner explained that everything feels like a dream and it's hard to keep track and hard to see what is real and what is not. The therapist indicated that Petitioner's mental illness symptoms continued to be persistent and continued to interfere with his daily life functioning. In [REDACTED] 2019, Petitioner reported that due to stress, his hallucinations have gotten worse and he is losing time more often. In [REDACTED] 2019, Petitioner stated that certain parts of him are interfering when it comes to his EMDR therapy. He stated that the younger parts that hold the trauma are not wanting to participate in EMDR due to thinking that he will not be able to handle the information that they are carrying. He reported that the younger traumatized parts do not even speak English, and the 12 to 13-year-old part of himself that holds the trauma speaks in Japanese. He reported that his goal was to be able to have the parts do EMDR but first he needs to work on getting them to all get along in the same room, which he states he has been working on. Case management notes from [REDACTED] 2019 indicate that Petitioner continued to struggle with hallucinations and to struggle with differentiating reality from non-reality. (Exhibit A, pp. 325-404).

On [REDACTED], 2019, Petitioner participated in a Psychiatric Evaluation during which, he reported that he suffers from auditory and visual hallucinations that include whispers and a lot of talk that doesn't make sense, as well as seeing movements out of the corner of his eye. Reportedly, the hallucinations are traveling but he did not know how to explain, stating that he has trouble relating to his environment and admitted to feelings of depression and isolation, hopelessness, helplessness, and worthlessness. Petitioner provided details of his past psychiatric and family history including history of sexual, physical, and emotional abuse which she indicated was difficult to talk about. Notes from the mental status exam during the evaluation indicate that Petitioner's responses were vague, evasive, and at times, very guarded. He admitted to hallucinations, feeling suspicious, and being controlled. Petitioner admitted to

depression, lack of sleep and decreased appetite but denied suicidal and homicidal ideations. His judgment was fair on formal testing, his social judgment appeared to be impaired and his insight was limited to poor. Petitioner was determined to have a primary diagnosis of schizophrenia, secondary diagnosis of PTSD, and schizotypal personality disorder. The doctor noted that there does not seem to be a mood event associated with the psychosis; therefore, Petitioner's diagnosis will be changed to schizophrenia and the schizoaffective disorder and major depressive disorder with psychosis will be marked as ruled out at this time and schizophrenia will be added. The doctor indicated that it was important to note that Petitioner has reported consistent use of antipsychotic medications with very little effect on the psychosis, suggesting personality disorder. He met several criteria for schizotypal personality disorder including odd beliefs, thinking and speech, unusual perceptual experiences particularly bodily illusions, suspiciousness and mild paranoia, restricted affect, limited social system, peculiar behavior including the dark sunglasses and social anxiety. Petitioner was prescribed Risperdal, Inderal, Wellbutrin, trazodone and Prolixin to address his diagnosis, and symptoms including hallucinations. (Exhibit 1)

Medication Review notes from [REDACTED], 2019, [REDACTED], 2019, and [REDACTED] 2019, indicate that Petitioner continued to struggle with sleep, reality, paranoia, racing thoughts, and periods of anxiety. Records show that Petitioner continued to participate in individual therapy sessions, reporting that he struggles with delusions, hallucinations and dissociation, and discussed his urges to return to the wilderness instead of the shelter. Difficulty was noted, as Petitioner's hallucinations interfered with even the simplest tasks of going to the store, and Petitioner's frustration that despite being so intelligent, he is unable to follow through with everyday tasks of living. Petitioner was to continue to work on addressing the dissociative issues that prevent him from processing properly with EMDR. Medication side effects including grogginess, weight gain, and sleep disturbances. (Exhibit 1).

Based on the medical evidence presented in this case, listings 12.03 (schizophrenia spectrum and other psychotic disorders), 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders), 12.08 (personality and impulse-control disorders), and 12.15 (trauma and stressor related disorders) were considered.

The most recent favorable decision finding Petitioner disabled is the [REDACTED] 2018 DDS decision finding that at the time, his condition met a listing under 12.03 A/B (schizophrenia spectrum and other psychotic disorders), as he suffered from delusions or hallucinations and had marked limitations in his ability to understand, remember or apply information; marked limitations in his ability to interact with others; marked limitations in his concentration persistence or pace; and marked limitations in his ability to adapt or manage himself. (Exhibit A, pp. 39-66)

As referenced above, the medical evidence presented with the current review showed that Petitioner continued to receive ongoing treatment for the conditions that rendered

him disabled in the [REDACTED] 2018 DDS decision. Additionally, the Department did not establish that there has been an improvement in Petitioner's conditions and impairments since that time, as there was insufficient evidence to show a decrease in the medical severity of the impairments. 20 CFR 416.994(b)(1)(i); 20 CFR 416.994(b)(5)(ii).

At the hearing, Petitioner testified that it is hard for him to determine where and who he is as he loses track of reality. He reported inpatient hospitalizations but did not remember the date of his hospitalizations. It is noted that Petitioner was unable to recall much of his medical history, as he has short-term and long-term memory issues. He reported suffering from anxiety attacks several days a week that can last hours and include symptoms of shortness of breath and chest pain. He indicated that he goes to a dark corner to avoid sensory issues. He reported suffering from racing thoughts and that he has auditory and visual hallucinations. Petitioner testified that his auditory hallucinations are frequent and increase at night when his medications wear off. He stated that he has visual hallucinations nightly which are made worse by stress.

Upon thorough review, the medical evidence presented with the current review continues to support the prior DDS finding that Petitioner's impairments meet or are the equivalent to the required level in severity to the criteria in listing 12.03 of Appendix 1 of the Guidelines to be considered as disabling without further consideration. Furthermore, the Department has failed to satisfy its burden of showing that there has been an improvement in Petitioner's conditions and impairments since the time of the [REDACTED] 2018 DDS decision, as there was insufficient evidence to show a decrease in medical severity. Therefore, Petitioner's disability is continuing, 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** 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 [REDACTED] 2019;

2. Issue supplements to Petitioner for any lost SDA benefits that he was entitled to receive from [REDACTED] 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 [REDACTED] in accordance with Department policy.



ZB/tm

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 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

DHHS

Kim Cates
1399 W. Center Road
Essexville, MI
48732

Petitioner

[REDACTED]
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[REDACTED]

cc: SDA: L. Karadsheh
Bay County AP Specialist (2)