



GRETCHEN WHITMER
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: June 9, 2020
MOAHR Docket No.: 20-002794
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 June 4, 2020, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Corliss Tripp-Watson, Manager.

ISSUE

Did the Department properly close Petitioner's State Disability Assistance (SDA) case?

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 [REDACTED] 2019, the Department and the Disability Determination Service (DDS) initiated a review of Petitioner's continued eligibility for SDA benefits. (Exhibit A, pp. 16-23)
3. In connection with the review, Petitioner was scheduled to attend a consultative mental status examination on or around [REDACTED], 2020. DDS sent Petitioner an appointment confirmation notice, instructing her to return the notice and confirm her attendance at the examination. (Exhibit A, pp. 25-26)
4. The Case Development Sheet indicates that DDS received the appointment confirmation notice from Petitioner, on which the box indicating she would not attend the appointment was checked. (Exhibit A, pp. 25-26)

5. Neither the appointment confirmation notice sent to Petitioner, nor the notice returned to DDS were presented for review at the hearing.
6. On or around March 11, 2020 the DDS found Petitioner not disabled for purposes of the SDA program. The DDS determined that there was insufficient evidence to assess the severity of Petitioner's alleged impairments or whether her statements were consistent because she indicated she would not attend the consultative exam. (Exhibit A, pp. 16-23)
7. On March 18, 2020, the Department sent Petitioner a Notice of Case Action advising her that effective April 1, 2020, her SDA case would be closed. (Exhibit A, pp. 5-9)
8. On March 23, 2020, Petitioner requested a hearing disputing the Department's actions and the closure of her SDA case, indicating that she could not attend the consultative examination on March 11th because she had a prescheduled doctor appointment and that she requested the consultative examination be rescheduled. (Exhibit A, p. 11)

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 general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913.

The DDS develops and reviews medical evidence for disability and either certifies or denies a client's medical eligibility for SDA assistance. BEM 261, p. 4; BAM 815 (April 2018), p. 1. When completing a medical determination review, the Department is required to send the client a DHS 3503 MRT Medical Determination Verification Checklist, indicating the type of verification requested and the due date. The client must also complete the mandatory DHS 49FR, Medication Social Questionnaire Update and the mandatory DHS 1555, Authorization to Release Protected Health Information. BAM 815, pp. 5-6.

A client may be required to attend one or more consultative examinations: if attempts to obtain evidence from a client's own medical sources are unsuccessful; to resolve an inconsistency in the evidence; or when the evidence as a whole is insufficient to allow a determination or decision on a client's claim. Generally, a consultative examination will not be requested until reasonable efforts have been made to obtain evidence from a client's own medical sources. 20 CFR 404.1512(b)(2); 20 CFR 404.1517; 20 CFR 404.1519a (a),(b); 20 CFR 416.912 (b)(2). Additionally, a failure to attend or participate in a consultative examination without good cause or reason may result in a finding of not disabled based on the failure to appear. 20 CFR 416.918 (a), (b). Examples of good reasons for a failure to appear are found in 20 CFR 416.918 (b).

In the present case, Petitioner had been previously approved for SDA benefits based on a DDS finding that she was disabled. Petitioner's ongoing SDA eligibility was set for review in [REDACTED] 2019 and she was scheduled to attend a consultative mental status examination on [REDACTED], 2020. According to the Case Development Sheet, Petitioner returned the appointment confirmation notice with the box checked that she would not attend the examination appointment. As a result, DDS determined that there was insufficient evidence and the Department sent Petitioner the notice of case closure, effective April 1, 2020.

At the hearing, Petitioner confirmed that she received the appointment notice advising her of the consultative mental status examination scheduled for [REDACTED], 2020. Petitioner credibly testified that she could not attend the scheduled consultative examination because she had a pre-scheduled appointment with her psychologist that

day. She did not dispute that she checked the box on the appointment confirmation notice indicating she could not attend the appointment on [REDACTED], 2020 and that she returned the notice to DDS. However, Petitioner further credibly testified that she included a note on the notice explaining why she could not attend on the scheduled date and time and requesting that the consultative examination be rescheduled. Petitioner's testimony at the hearing was consistent with the information she provided in her request for hearing. As indicated above, the Department and DDS failed to present for review during the hearing the appointment confirmation notice sent to Petitioner or the notice returned by Petitioner to DDS. Therefore, Petitioner's testimony that she included a handwritten note on the appointment notice requesting a rescheduled appointment date for the consultative examination was unrefuted.

As such, upon review, 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 the Department did not properly close Petitioner's SDA case effective April 1, 2020, as there was no evidence presented that Petitioner refused to attend the consultative examination, as she asserted that she requested that it be rescheduled.

DECISION AND ORDER

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 April 1, 2020;
2. Initiate a review of Petitioner's ongoing/continued SDA eligibility in accordance with Department policy;
3. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified; and

4. Notify Petitioner in writing of its decision.

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

Yaita Turner
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Petitioner

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