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

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 5, 2021
MOAHR Docket No.: 20-005794
Agency No.:
Petitioner:

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 October 8, 2020. The Petitioner was represented by , Mother and Authorized Hearing Representative. the Petitioner, appeared and testified. The Department of Health and Human Services (Department) was represented by Barbara Schram, Family Independence Manager.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as marked, Exhibits A-H pp. 1-1636. The record was left open for 30 days for additional medical evidence, which has been received and admitted as Exhibit 1, pp. 1-17.

ISSUE

Did the Department properly determine that Petitioner was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On October 11, 2019, Petitioner was found disabled and was eligible for SDA with a physical capacity to perform light work and moderate to marked limitations on her mental ability to perform basic work activities. (Exhibit B, pp. 37-48)

2. The Department was to review Petitioner's ongoing eligibility in April 2020. (Exhibit B, p. 47)

3. On or about May 6, 2020, Petitioner's case was sent to Disability Determination Services (DDS) for review for the SDA program with current documentation. (Exhibit B p. 3)

4. On August 12, 2020, DDS found Petitioner not disabled for SDA based on a determination that she was capable of performing other work. (Exhibit B, pp. 3-9)

5. On August 17, 2020, the Department notified Petitioner of the DDS determination regarding SDA. (Exhibit G, pp. 1629-1632)

6. On August 25, 2020, the Department received Petitioner's timely written request for hearing. (Exhibit A, p. 1)

7. Petitioner alleged disabling impairments including neuropathy, hypertension, depression, and difficulties with memory and concentration. (Petitioner Testimony)

8. At the time of hearing, Petitioner was ██ years old with an █████ ████ birth date; was ███ in height; and weighed ███ pounds. (Petitioner and Mother Testimony)

9. Petitioner completed the 9th grade and has a work history of temporary service work and assembly. (Petitioner Testimony)

10. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 person is considered disabled for SDA purposes if the

person has a physical or mental impariment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's statements about pain or other symptoms are not, in and of themselves, sufficient to establish disability. 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) daily activities; (2) the location/duration/frequency/intensity of an applicant's pain or other symptoms; (3) precipitating and aggravating factors; (4) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain or other symptoms; (5) any treatment other than medication that the applicant has received to relieve pain or other symptoms; (6) any measures the applicant uses to relieve pain or other symptoms; and (7) other factors concerning the applicant's functional limitations and restrictions due to pain or other symptoms. 20 CFR 416.929(c)(3). The applicant's pain or other symptoms must be considered in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Once an individual has been found disabled for purposes of benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. In evaluating a claim for ongoing benefits, federal regulation requires a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease, and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Petitioner's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The first step in the analysis 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.

If the impairment(s) does not meet or equal a Listing, 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). If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii).

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v). If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) 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) are as follows:

(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;
(iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

(i) A prior determination was fraudulently obtained;
(ii) The individual failed to cooperate;
(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). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Petitioner's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

In the present case, Petitioner alleged disabling impairments including neuropathy, hypertension, depression, and difficulties with memory and concentration.

A office visit record documented diagnoses of dorsalgia, adjustment disorder, alcohol abuse, nicotine dependence, polyneuropathy, hypothyroidism, and disorder of lipoprotein metabolism. In part, this record indicated Petitioner's back pain was stable and there was reported improvement of initial depression symptoms. (Exhibit F, pp. 121-128)

A office visit record documented diagnoses of polyneuropathy, major depressive disorder, generalized muscle weakness, elevated blood pressure reading without diagnosis of hypertension, and memory loss. In part, this record indicated there was gait disturbance due to neuropathy, the neuropathy symptoms were spreading to the hands as well as bilateral legs, back pain, and muscle weakness. Petitioner's mother had sent a letter with concerns and comments about Petitioner that were somewhat different that Petitioner's reports regarding her symptoms, such as memory loss. It was noted that a neuropsychiatry evaluation was needed. A need for physical therapy for a functional evaluation for disability paperwork was noted as well. (Exhibit F, pp. 116-120)

A 2020, office visit record documented diagnoses of hypertension and polyneuropathy. In part, this record indicated Petitioner's hypertension was getting worse, there was gait disturbance due to neuropathy. (Exhibit F, pp. 111-115)

On 2020, Petitioner underwent an evaluation to determine her functional abilities and limitations. Regarding potential barriers to return to work, this report states that Petitioner expressed being able to work at some time as an assembler or prep cook. The evaluation indicates that at this time, the concerns with her memory would be a concern for safety, unless she could be directly supervised at all times. It was noted

that the large discrepancy between Petitioner's abilities and job demands may indicate limited success of rehabilitation to prior level of function. Alternative placement may be the most feasible plan. It was stated that Petitioner would need a work coach to be safe in a production type work setting or in any setting requiring time limits or any type of machine operation. While Petitioner was found to physically be able to perform light work, the evaluator was unable to determine job match status. (Exhibit 1, pp. 1-17)

Based on the objective medical evidence, considered listings included 11.14 Peripheral Neuropathy, 12.02 Neurocognitive Disorders and 12.04 Depressive, Bipolar, and Related disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Petitioner cannot be found disabled, or not disabled at this step.

Step 2 requires a determination of whether there has been medical improvement. The medical records and testimony do not establish that there has been medical improvement since Petitioner was found disabled on October 11, 2019. The [redacted], 2020, evaluation shows that physically, Petitioner is still limited to light work. The evaluation also indicated that at this time, the concerns with Petitioner's memory would be a concern for safety, unless she could be directly supervised at all times. It was noted that the large discrepancy between Petitioner's abilities and job demands may indicate limited success of rehabilitation to prior level of function. Alternative placement may be the most feasible plan. It was stated that Petitioner would need a work coach to be safe in a production type work setting or in any setting requiring time limits or any type of machine operation. While Petitioner was found to physically be able to perform light work, the evaluator was unable to determine job match status. (Exhibit 1, pp. 1-17) Therefore, the non-exertional limitations related to Petitioner's mental health have also continued.

In consideration of all medical evidence, it is found that, overall, there has not been medical improvement. Therefore, the exceptions contained in 20 CFR 416.994(b)(3) and 20 CFR 416.994(b)(4) must be considered.

In this case, it appears that DDS felt the prior disability determination from the October 11, 2019, Hearing Decision was in error. The DDS determination, in part, stated:

> Clmt appealed that decision w/MOAHR. On 10/11/19, MOAHR overturned DDS decision finding that clmt was disabled and eligible for SDA benefits w/a light unskilled RFC and MRFC. This is the same RFC/MRFC that DDS gave the clmt, but apparently the ALJ has a different set of vocation rules that would miraculously result in this person being found unable to perform any work in the national economy. MOAHR says DDS did not provide evidence of 'enough jobs that exist in the national economy that the clmt could perform w/her light unskilled RFC/MRFC." CLAIM WAS EXPEDITED BASED ON AGE, EDUCATION (10TH GRADE, NO GED), RFC/MRFC,

> AND WORK HISTORY (NO JOBS IN PAST 15 YEARS). SPECIFIC JOBS SHE COULD PERFORM ARE NOT REQUIRED.
>
> (Exhibit B, p. 5)

Review of the October 11, 2019, Hearing Decision indicates that ALJ found Petitioner had a physical capacity to perform light work and moderate to marked limitations on her mental ability to perform basic work activities. (Exhibit B, pp. 37-48) The ALJ did not find that Petitioner was capable of performing the full range of light work, which would have allowed for using the Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). Rather, the ALJ found that Petitioner also had non-exertional impairments that moderately to markedly affect her ability to perform basic work activities. Therefore, it appears that the ALJ did not find that sufficient evidence was presented by the Department regarding what jobs Petitioner would be able to perform with these additional non-exertional limitations. (Exhibit B, pp. 37-48) For example, in this case, the October 13, 2020, evaluation indicates that Petitioner is physically capable of performing light work but the evaluator was unable to determine job match status due to the non-exertional limitations. Petitioner's memory would be a concern for safety unless she could be directly supervised at all times. Petitioner would need a work coach to be safe in a production type work setting or in any setting requiring time limits or any type of machine operation. (Exhibit 1, pp. 1-17)

While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden at Step 5. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). In the cited statement above, the Department acknowledges that they did not provide evidence of specific jobs. Therefore, an exception to medical improvement will not be applied because substantial evidence does not demonstrate that the prior determination was in error.

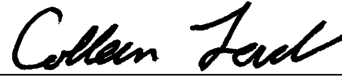
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program.

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. Initiate a review of Petitioner's SDA case, if not done previously, to determine Petitioner's non-medical eligibility. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for July 2021.



CL/ml

Colleen Lack
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	Barbara Schram - 35 Iosco County DHHS – via electronic mail BSC1 – via electronic mail L. Karadsheh – via electronic mail
Petitioner	[redacted] – via first class mail [redacted] [redacted], MI [redacted]
Authorized Hearing Rep.	[redacted] – via first class mail [redacted] [redacted] MI [redacted]