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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] MI [REDACTED]

Date Mailed: March 17, 2022  
MOAHR Docket No.: 22-000113  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 March 3, 2022, from Detroit, Michigan. Petitioner appeared for the hearing with Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Tina Bradley, Eligibility Specialist.

**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 SDA benefit recipient. Petitioner was approved for SDA based on an October 9, 2019 Disability Determination Services (DDS) decision (Exhibit A, pp. 41-47). Petitioner was determined as disabled due to post-traumatic stress disorder; depression; hearing impairment and arthritic pain. It was determined that Petitioner had severe hearing loss, major depressive disorder, PTSD, rheumatoid arthritis in multiple joints and degenerative disc disease of the thoracic and cervical spine (Exhibit A, p. 45).
2. Petitioner was approved for SDA benefits during the period of November 1, 2019 through November 30, 2021.
3. DDS began the review process of Petitioner's SDA eligibility in April 2021.

4. On November 18, 2021, DDS found Petitioner was not disabled for purposes of continued SDA benefits. DDS found Petitioner was capable of performing other work (Exhibit A, pp. 22-28).
5. On November 19, 2021, the Department sent Petitioner a Notice of Case Action informing her that her SDA benefit case was closing effective December 1, 2021, ongoing (Exhibit A, pp. 8-12).
6. On ██████████ 2022, Petitioner submitted a request for hearing disputing the Department's actions (Exhibit A, pp. 5-7).

### **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 this case, Petitioner has not engaged in SGA at any time since she became eligible for SDA. Therefore, her 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.

In the present case, Petitioner alleged continuing disabling impairments due to hearing loss and arthritis. The medical evidence presented since the October 2019 DDS decision finding Petitioner disabled was thoroughly reviewed and is briefly summarized below.

On [REDACTED], 2020, Petitioner was seen by her primary care physician (Exhibit A, pp. 845-848). Petitioner presented for her annual Wellness visit. Petitioner continued to complain of multiple joint pain due to arthritic changes. The records indicated that petitioner was complaining of left ear pain. She had a history of masses in her ear, requiring surgical intervention. Upon examination the physician found it difficult to see

into her left ear due to a constricted canal. It was noted that Petitioner's hands, feet, and multiple joints had increased pain with range of motion. There were no noted deformities in her hands and feet. Concerns of rheumatoid arthritis were discussed with Petitioner due to family history and physical findings. The physician indicated he would obtain sedimentation rate and rheumatoid factor to indicate the presence of an inflammatory process in the body.

On [REDACTED], 2021, Petitioner had an internal medicine examination (Exhibit A, pp. 710-717). Petitioner's medications included lithium and neomycin. Petitioner's visual acuity was rated as 20/40 in the right eye and 20/40 in the left eye. Petitioner's hearing was adequate for normal conversation during the exam, although it appeared she had no hearing in the left ear. Petitioner's blood pressure was within standard range, her pulse was regular, and her visual fields were normal. Petitioner ambulated with normal gait. Examination of Petitioner's hands indicated that her left hand revealed no tenderness, redness, warmth or swelling. There was no atrophy, and she was able to make a fist. There were no Heberden or Bouchard's nodes. On the right hand, there was some arthritic deformity noted at the DIP joint of the 4th digit. Petitioner had mild generalized synovial swelling of all of her fingers. Her grip strength was measured at 9, 7, and 15 KG of force on the right hand and 17, 17, and 19 KG of force on the left. Petitioner's finger squeeze on the left hand was 5/5, and the right hand was mildly weak at 4/5, but her dexterity appeared to be intact. Petitioner was able to write with her dominant hand and pick up coins with either hand without difficulty. Examination of Petitioner's cervical spine revealed no tenderness over the spinous process. There was no evidence of paravertebral muscle spasm. Examination of Petitioner's dorsolumbar spine revealed that she had mild left sided convexity in the upper lumbar and lower thoracic spine and a mild right sided convexity in the upper thoracic spine. Motion in the spine appeared to be normal. There was no evidence of paravertebral muscle spasm. There was no tenderness to percussion of the dorsal lumbar spinous process. Straight leg test in the sitting and supine positions were normal. Petitioner was able to stand on one leg at a time without difficulty. There was no hip joint tenderness, redness, warmth, swelling or crepitus. In summary, Petitioner's upper extremities had normal function and range of motion, though mildly weak in grip strength in the right hand. In the lower extremities, Petitioner had normal function, strength, and range of motion. It was indicated that Petitioner had some problems with performing tandem gait. Petitioner also had scoliosis in her spine. It was indicated that Petitioner's ability to perform work related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying and traveling, as well as pushing and pulling heavy objects, was mildly impaired due to the objective findings described in the examination.

Petitioner had an extensive mental health treatment history at Sanilac County Community Mental Health (CMH). Petitioner had been diagnosed with major depressive disorder, alcohol use disorder and post-traumatic stress disorder (PTSD).

In 2020, Petitioner was in remission for her alcohol abuse disorder but continued seeking treatment at CMH for her other diagnoses. On [REDACTED] 2020, Petitioner had an annual assessment at CMH (Exhibit A, pp. 790-796). It was indicated that Petitioner

needed therapeutic treatment for past trauma. Petitioner was prescribed lithium. On [REDACTED], 2020, Petitioner was contacted by CMH for medication review. Petitioner did not answer for her scheduled medication telephone appointment (Exhibit A, pp. 788-789). On [REDACTED], 2020, Petitioner had an individual plan of service at CMH. Petitioner requested a medication review to assist with mood stability and reducing anxiety (Exhibit A, pp. 781-786). On [REDACTED] 2020, Petitioner had a medication review at CMH (Exhibit A, pp. 779-780). Petitioner was contacted by telephone and the visit was rescheduled.

In 2021, Petitioner continued to receive psychiatric and therapeutic treatment at CMH. Petitioner had diagnosis of major depressive disorder, tobacco use disorder, PTSD, and developmental disorder of scholastic skills. On [REDACTED] 2021, Petitioner had a periodic review at CMH (Exhibit A, pp. 771-776). Petitioner expressed that she felt emotionally stable 4 out of 7 days of the week. Petitioner reported that she was taking her medications as prescribed, but felt they were not fully effective. Petitioner was encouraged to attend her medication review to discuss issues with her prescribed medications. On [REDACTED] 2021, Petitioner had a medication review at CMH (Exhibit A, pp. 769-770). Petitioner was a no call, no show for her appointment. On [REDACTED], 2021, Petitioner had a periodic review at CMH (Exhibit A, pp. 763-768). Petitioner reported no significant changes since her previous review. On [REDACTED] 2021, Petitioner had a medication review with CMH (Exhibit A, pp. 761-762). Petitioner was a no call, no show. On [REDACTED], 2021, Petitioner was seen at CMH for her annual BPS assessment (744-755). Petitioner reported that she was hesitant to take medication but admitted that she could no longer manage her mood swings. Petitioner's symptoms at the time included mood swings, psycho motor agitation, poor memory, heightened reactions, and poor concentration. Petitioner reported ongoing legal, housing, social, and employment problems related to alcohol use over the years. It was recommended that Petitioner receive a medication assessment. On [REDACTED], 2021, Petitioner had a medication review at CMH (Exhibit A, pp. 731-733). Petitioner reported that she was doing OK but would like to restart her lithium because she was having mood swings and anxiety. Petitioner was ordered to restart lithium as prescribed.

Based on the medical evidence presented in this case, applicable listings were considered including, hearing loss not treated with cochlear implants (2.10); abnormality of major joints (1.18); and depressive, bipolar and related disorders (12.04). Upon review, 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. Thus, 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 October 9, 2019 DDS decision. Petitioner was determined as disabled due to post-traumatic stress disorder; depression; hearing impairment and arthritic pain. It was determined that Petitioner had severe hearing loss, major depressive disorder, PTSD, rheumatoid arthritis in multiple joints and degenerative disc disease of the thoracic and cervical spine.

At the hearing, Petitioner testified that her mental health symptoms have significantly improved. Petitioner stated that she continues to receive treatment at CMH. Petitioner reported that her mood has improved due to the lithium. Petitioner reported that she does suffer from occasional anxiety/panic attacks. Petitioner indicated she has some difficulty with concentration and memory. Petitioner reported she has rare occurrences of crying spells or anger issues. Petitioner indicated she never has feelings of hurting herself or others. Petitioner reported her appetite has improved since starting the lithium. Petitioner reported she has limited social interactions but is capable of social communication. Petitioner testified that her mental health is not a significant barrier to her ability to work. Petitioner stated her physical symptoms are what are preventing her from gainful employment.

Upon review of the medical evidence, Petitioner has a history of noncompliance with taking her medication as prescribed and attending all scheduled appointments. Based on the medical evidence provided and Petitioner's testimony, Petitioner's mental health is managed when she is appropriately seeking treatment. Petitioner reported that her mental health is not a barrier to her ability to work. Therefore, there has been a significant decrease in medical severity in regard to Petitioner's mental health.

Petitioner reported that she has had chronic pain in her fingers and back due to her arthritis for 10 years, with an increase in severity in the previous 4 years. Petitioner reported that she walks without any walking aides and is able to walk up to  $\frac{1}{4}$  of a mile. Petitioner can grip and grasp but not too hard. Petitioner stated she could not lift more than a gallon of milk. Petitioner stated she can hold a pen to write. Petitioner testified she could stand for up to an hour. Petitioner stated she could bend/squat and did not have difficulty climbing or descending stairs. Petitioner stated she was receiving treatment for her arthritis in the form of medication from her PCP, Dr. Sams. Petitioner reported that when she was taking her medication, she had an improvement in her arthritic symptoms due to a decrease in swelling. Petitioner testified that she is no longer seeing Dr. Sams, because she was discharged as a patient. Petitioner testified that she failed to attend several appointments and had to seek care from a new PCP.

Petitioner stated she has not had her medication to treat her arthritis since October 2020. Petitioner also reported that she is completely deaf in her right ear, increasing the difficulty in her ability to work.

Again, Petitioner has a history of noncompliance with her medical treatment. Petitioner was not under the care of a rheumatologist and was discharged as a patient by her PCP, who was the only physician treating her arthritic condition. When Petitioner was taking medication to treat her arthritis, her symptoms improved. When Petitioner is compliant with treatment, her issues with arthritis are minimized. Upon review of the medical evidence, Petitioner's PCP indicated Petitioner had some pain and decreased range of motion. During Petitioner's [REDACTED] 2021 examination, it was indicated that Petitioner's upper extremities had normal function and range of motion, though mildly weak in grip strength in the right hand. In the lower extremities, Petitioner had normal function, strength, and range of motion. It was indicated that Petitioner had some problems with performing tandem gait. Petitioner also had scoliosis in her spine. It was indicated that Petitioner's ability to perform work related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying and traveling, as well as pushing and pulling heavy objects, was mildly impaired due to the objective findings described in the examination. The medical evidence provided does not support Petitioner's testimony regarding the severity of her physical limitations due to her arthritis. Additionally, the [REDACTED], 2021 examination revealed Petitioner was capable of normal conversation despite some hearing loss. Therefore, there has been medical improvement related to Petitioner's physical disability.

As Petitioner has had medical improvement in the severity of her mental and physical conditions, the analysis proceeds to step 3.

### **Step Three**

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).

In the most recent favorable decision issued by DDS, it was determined that Petitioner had severe PTSD and major depressive disorder, preventing her from gainful employment. Petitioner testified that her physical impairments are the barrier to her ability to work, not her mental health. Therefore, Petitioner's medical improvement in connection with her mental health is related to her ability to work.

In the most recent favorable decision issued by DDS, it was determined that Petitioner had severe rheumatoid arthritis in multiple joints and degenerative disc disease of the thoracic and cervical spine. Petitioner testified that her arthritis was the primary cause of



her inability to work. As stated above, the medical evidence does not support Petitioner's testimony that her condition is severe, and therefore, there was medical improvement. Because Petitioner's medical improvement is related to her 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. 20 CFR 404.1522. Basic work activities means the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting.

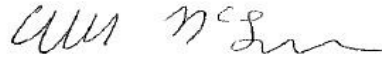
20 CFR 404.1522.

As stated above, Petitioner's mental health diagnoses do not prevent her from substantial gainful employment. Additionally, Petitioner's physical limitations are non-severe. Petitioner's most recent medical evaluation on [REDACTED], 2021, revealed that Petitioner's upper extremities had normal function and range of motion, though a mildly weak in grip strength in the right hand. In the lower extremities, Petitioner had normal function, strength, and range of motion. It was indicated that Petitioner had some problems with performing tandem gait. Petitioner also had scoliosis in her spine. It was noted that Petitioner's ability to perform work related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying and traveling, as well as pushing and pulling heavy objects, was mildly impaired due to the objective findings described in the examination. Therefore, Petitioner's physical impairments do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Accordingly, Petitioner is not disabled at Step 5, and the analysis ends.

**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**.



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**Ellen McLemore**  
Administrative Law Judge

**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

**Email Recipients:**

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