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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: May 24, 2023
MOAHR Docket No.: 23-001014
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 March 23, 2023, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Zelia Cobb, Medical Contact Worker.

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 medical documents on April 19, 2023, and April 20, 2023, that were marked and admitted into evidence as Exhibit 1. The record closed on April 24, 2023, 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. Petitioner was approved for SDA based on a July 15, 2021, decision of the Disability Determination Services (DDS)/Medical Review Team (MRT) and in connection with an application submitted on or around [REDACTED] 2021, finding that Petitioner was disabled because of her conditions of synovitis of the left ankle, osteomyelitis right talus requiring the use of a scooter and crutches. The findings indicated that Petitioner suffered an injury to her left ankle, the symptoms of which have continued to limit her functionality. Petitioner's treating source had consistently recommended for her to remain off work due to the severity of her condition, which required her to climb

on and off a large truck. The findings indicated that Petitioner was within the healing process at the time, and not ready to endure consistent work adherence, hence the inability to sustain even sedentary work. (Exhibit A, pp. 26-43)

2. The DDS requested that Petitioner's continued eligibility for SDA benefits be reviewed in July 2022. (Exhibit A, pp. 26-43)
3. The Department and DDS initiated a review of Petitioner's continued eligibility for SDA benefits and on December 20, 2022, the DDS found Petitioner not disabled for purposes of continued SDA benefits. DDS determined that Petitioner was capable of performing sedentary work. (Exhibit A, pp. 4-24)
4. On December 22, 2022, the Department sent Petitioner a Notice of Case Action advising her that effective February 1, 2023, her SDA benefits would be terminated based on DDS' finding that she is not disabled.
5. On January 31, 2023, Petitioner requested a hearing disputing the Department's termination of her SDA benefits and the DDS finding that she was not disabled.
6. Petitioner alleged continuing disabling impairments due to synovitis of the left ankle, osteomyelitis of the left and right talus causing severe pain, numbness, stiffness, and leg cramping. Petitioner also alleged disabling impairments of depression and post-traumatic stress disorder (PTSD).
7. As of the hearing date, Petitioner was ■ years old with a ■ 1979, date of birth. She was ■ and weighed approximately ■ pounds. Petitioner asserted that she graduated high school and has reported employment history of work as a driver, laborer, and certified nurse assistant. Petitioner has not been employed since July 2020.
8. 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).

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 synovitis of the left ankle, osteomyelitis of the left and right talus causing severe pain, numbness, stiffness, leg cramping. Petitioner also alleged disabling impairments of depression and post-traumatic stress disorder (PTSD). The medical evidence presented since the July 2021 DDS decision finding Petitioner disabled was thoroughly reviewed and is briefly summarized below.

Petitioner presented a progress note from her visit with her doctor at the physical medicine and rehabilitation clinic on [REDACTED] 2023, showing that she was receiving treatment for diagnosis of lumbar radicular pain, and ankle pain requiring referrals to podiatry and orthopedics. An EMG study was also recommended. Petitioner reported pain in her lower foot and left ankle which was described as sharp, stabbing, and radiating down her left leg with associated numbness. The pain interferes with her activities of daily living and was reported to be a 9/10 in severity. The pain was aggravated by standing and strenuous activity. While medication helped mildly, her physical therapy was ineffective. Petitioner had joint pain with decreased range of motion of the left ankle and back pain in the lower region described as severe. (Exhibit 1)

Petitioner presented the results of an MRI of her lumbar spine performed on [REDACTED] 2023, the results of which showed: mild and moderate degenerative disc changes, most pronounced at L5 – S1, a 1.5 cm system the right kidney, mild neural foraminal stenosis bilaterally due to disc bulging at L3 – L4 and L4 – L5, mild spinal canal stenosis and moderate neural foraminal stenosis bilaterally due to disc space narrowing and disc/osteophyte complex. (Exhibit 1)

Petitioner presented a letter from the Henry Ford Medical Center Columbus Behavioral Health department showing that she was last seen in clinic on [REDACTED] 2023, and diagnosed with PTSD, suggesting that Petitioner's mental health treatment was ongoing. (Exhibit 1)

Petitioner was referred to physical therapy at Team Rehabilitation. During an initial evaluation on [REDACTED] 2022, Petitioner presented with and records indicate that she

had surgery to repair a ligament in her left ankle followed by physical therapy for three months at a different facility. Petitioner reported that she has not been attending physical therapy for four months due to not having medical insurance. Petitioner's functional limitations were noted as pain onset with walking 5 to 10 feet, ability to tolerate 30 feet of ambulation for shopping, and it was estimated that Petitioner used a scooter at the store 50% of the time. Notes indicate that Petitioner suffered from an inability to carry groceries up the steps without pain, that she suffers from daily tripping due to foot numbness, and that she is unable to stand longer than 15 minutes. The plan of care was to reduce Petitioner's pain with manual therapy, therapeutic exercise, neuromuscular reeducation, and therapeutic modalities. Physical therapy was recommended twice a week until [REDACTED] 2022. Petitioner participated in a physical therapy session on [REDACTED], 2022, during which her rehab potential was noted to be fair. On [REDACTED], 2022, Petitioner reported continuing difficulty ambulating greater than 10 minutes and navigating the stairs. Increased soreness in the ankle was noted with increased activity. During a [REDACTED] 2022 visit, it was recommended that Petitioner's treatment be extended to [REDACTED], 2022. As of the [REDACTED], 2022 visit, Petitioner had partially met her progress goals after more than six weeks of physical therapy. On [REDACTED], 2022, Petitioner reported that she recently fell on her right knee due to numbness she was experiencing in her right foot causing her to trip. Her treatment was extended to [REDACTED], 2022.

An x-ray taken on [REDACTED] 2021 showed moderate lateral ankle swelling on the left, and soft tissue swelling. During an [REDACTED], 2021 appointment with the DMC orthopedics clinic, Petitioner continued to express left ankle pain and weakness and reported that she continues to wear her boot when she is out and walking. Petitioner continued to express that her toes are numb and this is causing her some balance issues. Petitioner reported feeling unsteady. Notes indicate that Petitioner was still quite weak in her operative extremity and she can barely perform a heel rise. Petitioner was informed that numbness could continue to last up to 12 months. The doctor noted that Petitioner's off work restriction should be extended to [REDACTED], 2021. On [REDACTED] 2021, significant left ankle pain and swelling was reported, and have made it difficult for Petitioner to get back to full activities. Petitioner was informed that after follow-up in six weeks, she may require MRI imaging.

An MRI was performed on Petitioner's ankle and foot on [REDACTED] 2022, the results showed an osteochondral with likely postsurgical changes involving the dorsal anterior medial talus measuring 0.7 cm, without displacement or adjacent bone marrow edema, posterior tibiotalar impingement, with stieda process syndrome, mild talonvicular osteoarthritis, and posterior tibiotalar small collection of fluid.

On [REDACTED] 2022, an x-ray of Petitioner's right foot was performed and showed an old fracture deformity within the head of the second metatarsal osteoarthritis of the second metatarsophalangeal joint. The middle and distal phalanges of the 3rd to 5th toe were fused. Calcaneal and navicular bone spurring was noted.

During a [REDACTED] 2022 visit with her primary care physician's office, Petitioner was noted to have a history of PTSD, chronic back pain, and ankle surgery. During the appointment, Petitioner reported that her chronic left ankle pain was throbbing, and worsened with weight-bearing. She indicated that it was improved with rest and ice. Petitioner described chronic low back pain that is worsened with movement and improves with ice and rest. Petitioner was noted to be obese in appearance. A referral was made to physical therapy and integrative medicine, Petitioner was diagnosed with chronic bilateral low back pain without sciatica, a back brace was ordered.

On [REDACTED], 2022, Petitioner participated in a psychology evaluation for the internal medicine clinic. Petitioner was referred for a psychology evaluation due to trauma. During the evaluation, Petitioner reported experiencing symptoms of trauma including flashbacks 3 to 4 times a day, avoidance behaviors, hypervigilance, feelings of sadness and irritability following the traumatic event, difficulties with sleep reporting that she sleeps only 2 to 3 hours per night and checking the locks five times a day since 2018. Petitioner reported symptoms of depression including depressed mood, anhedonia, sleep difficulties, fatigue, difficulties concentrating, hopelessness, and psychomotor retardation since 2018. Petitioner denied any psychiatric symptom history prior to 2018. She reported that her current psychiatric symptoms are present in the context of trauma experiences 2018, as well as ongoing psychosocial stressors. She reported that in 2018 she married her husband who was physically abusive and that seven months ago she left her husband, and since then has experienced homelessness, having to sleep in her car for several months. She reported receiving assistance through Wayne Metropolitan Community Action Agency, as well as a local domestic violence shelter. Petitioner reported experiencing chronic pain in her left ankle for the last two years, after falling into a manhole. Because of her pain, she has not worked in two years and has had difficulty obtaining disability/financial assistance for her pain due to her history of incarceration. Petitioner was diagnosed with PTSD and persistent depressive disorder, currently moderate. The assessment was that Petitioner is experiencing symptoms of trauma and depression following abuse from her husband since 2018, and ongoing financial and health stressors. Her current psychosocial stressors include food insecurity, financial stress, unemployment, health stress, limited mobility due to chronic left foot pain, and past and recent trauma history likely contribute to the maintenance of her mood symptoms. Although she is high risk for suicide, she had no current suicidal or homicidal ideations. It was recommended that Petitioner begin psychotropic medication management of her mood symptoms and long-term psychotherapy that is trauma centered.

Based on the medical evidence presented in this case, applicable listings were considered. 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 July 16, 2021, DDS decision finding that at the time and due to her impairments of synovitis of the left ankle, osteomyelitis right talus requiring the use of a scooter and crutches, that Petitioner suffered an injury to her left ankle, the symptoms of which have continued to limit her functionality. Petitioner's treating source had consistently recommended for her to remain off work due to the severity of her condition, which required her to climb on and off a large truck. The findings indicated that Petitioner was within the healing process at the time, and not ready to endure consistent work adherence, hence the inability to sustain even sedentary work. (Exhibit A, pp. 26-43)

As referenced above, the medical evidence presented with the current review showed that Petitioner continued to receive ongoing treatment for the conditions that rendered her disabled in July 2021. Petitioner participated in physical therapy that doctors noted wasn't effective, continued to be treated for severe left ankle pain, left foot pain, which results in numbness and stiffness. Petitioner also has pain in lumbar spine as well as participates in mental health treatment for PTSD and depression. Petitioner continues to be treated by a pain management specialist and participates in physical therapy. Petitioner continues to require the assistance of walking aid including cane when ambulating and is able to sit for no more than 30 minutes at a time. Petitioner described requiring the need to elevate her ankle due to shooting pain.

Therefore, the evidence presented in connection with the current review does not show a decrease in medical severity or an otherwise medical improvement in Petitioner's condition from that presented in the July 2021 DDS decision, which is the most recent favorable decision finding Petitioner disabled. Because there is no medical improvement, the analysis proceeds to Step 4. 20 CFR 416.994(b)(5)(ii).

Step Four

When there is no medical improvement, Step 4 requires an assessment of whether one of the exceptions in 20 CFR 416.994(b)(3) or (b)(4) applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.*

The first group of exceptions 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) applies when any of the following exist:

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

In this case, the Department did not present any evidence establishing that, from the time Petitioner was last approved for SDA benefits in the July 2021 DDS decision, to the time of the current medical review, one of the above first set of exceptions to medical improvement applied to Petitioner's situation.

The second group of exceptions to medical improvement found in 20 CFR 416.994(b)(4) applies when any of the following exist:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate in providing requested medical documents or participating in requested examinations;
- (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). In this case, the Department has failed to establish that any of the listed exceptions in the second group of exceptions to medical improvement apply to Petitioner's case.

Because the evidence presented does not show a medical improvement and no exception under either group of exceptions at Step 4 applies, the disability is found to continue.

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 her SDA case.

Accordingly, the Department's SDA 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 February 1, 2023;
2. Issue supplements to Petitioner for any lost SDA benefits that she was entitled to receive from February 1, 2023, 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 February 2024 in accordance with Department policy.

ZB/ml



Zainab A. Baydoun
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

Via Electronic Mail:

DHHS

Denise McCoggle
Wayne-Greydale-DHHS
27260 Plymouth Rd
Redford, MI 48239

MDHHS-Wayne-15-Greydale-Hearings@michigan.gov

Interested Parties

BSC1
L Karadsheh
MOAHR

Via First Class Mail:

Petitioner

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