[redacted]
MI [redacted]

Date Mailed: September 22, 2022
MOAHR Docket No.: 22-003115
Agency No.: [redacted]
Petitioner: [redacted]

**ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie**

## 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 August 23, 2022, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Kimberly Reed, Lead Worker. The hearing packet was introduced and made a part of the record of Department Exhibit 1, pgs. 1-3434.

## ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of continued 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. The Petitioner was a recipient of SDA benefits with a redetermination due February 2022 from another county, but there was no record of prior application or approval by the Medical Review Team on BRIDGES.

2. On January 19, 2022, the Department Caseworker received a Redetermination Application, DHS 1010, from the Petitioner.

3. On June 8, 2022, the MRT denied the Petitioner's redetermination application for SDA per BAM 815 because the Petitioner has had medical improvement under Medical Review of Continuing Eligibility for Disability-CDF 20 CFR 416.994.

4. On June 9, 2022, the Department Caseworker sent the Petitioner a notice that her redetermination was denied due to not meeting the disability criteria to be considered disabled, which made her not eligible for SDA per BEM 261.

4. On July 13, 2022, the Department received a hearing request from the Petitioner, contesting the Department's negative action.

5. The Petitioner is a [redacted]-year-old woman whose date of birth is [redacted] 1975. The Petitioner is [redacted] tall. The Petitioner completed High School. The Petitioner can read and write and do basic math. The Petitioner was last employed as a quality auditor at the medium level in December 2020 for 4 months. Her pertinent work history is as a factory worker at the medium level on January 10, 2020.

6. The Petitioner's alleged impairments are back issues of two broken rods in her back, back surgery in January 2021, missing bones in her right shoulder, immune compromised deficiency, infection in her hardware, type II diabetes, bipolar disorder, left shoulder issues where she fell down the stairs in December 2021, and a hole in her lungs from a fungal infection.

7. On February 15, 2022, the Petitioner was seen by her treating physician at Spectrum. She was seen for a follow-up for pain. The Petitioner had left shoulder pain, chronic pain in her lower back from a failed fusion that was infected at the surgical site due to MSSA, and right shoulder pain due to right shoulder being septic. A humerus fracture was cited. She was doing well on de-escalation of opioid medications. The Petitioner has a pinching pain in her back that her spine doctor is evaluating. Her pain is well managed. She will be trying a spine stimulator. She had a normal gait and mood. There was no edema over her midline scar from her lumbar fusion. Department Exhibit 1.

8. On February 15, 2022, the Petitioner underwent an x-ray of her lumber spine at Spectrum. The post op changes documented were no hardware fracture, with multilevel disc height loss and anterolisthesis of L5-S1. Department Exhibit 1.

9. On January 4, 2022, the Petitioner had her one year follow up examination with her neurosurgeon about her back surgery from January 2021. She had minimal back pain and was able to perform her activities of daily living. The Petitioner developed a new issue when she fell down the stairs and broke her left shoulder in December 2021. Department Exhibit 1.

## CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of 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 purusant 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 impairment 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.

The Department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

**DISABILITY – SDA**

**DEPARTMENT POLICY**

**SDA**

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

**Note:** There is no disability requirement for AMP. BEM 261, p. 1.

**DISABILITY**

A person is disabled for SDA purposes if he:

- receives other specified disability-related benefits or services, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1.

**Other Benefits or Services**

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.

- Supplemental Security Income (SSI), due to disability or blindness.

- Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
  - a DE/MRT/SRT determination, or
  - a hearing decision, or
  - having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

    Medicaid received by former SSI recipients based on policies in PEM 150 under **"SSI TERMINATIONS,"** INCLUDING **"MA While Appealing Disability Termination,"** does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See **"Medical Certification of Disability"** below.

- Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.

- Special education services from the local intermediate school district. To qualify, the person may be:

  - attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**

  - not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent and is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.

- Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit BEM, Item 261, pp. 1-2.

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

Medical history.
Clinical findings (such as the results of physical or mental status examinations);
Laboratory findings (such as blood pressure, X-rays);
Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).
Medical findings consist of symptoms, signs, and laboratory findings:

(a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

(c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.),

> roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.
>
> It must allow us to determine --
> (1) The nature and limiting effects of your impairment(s) for any period in question;
>
> (2) The probable duration of your impairment; and
>
> (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

In general, Petitioner has the responsibility to prove that he/she is disabled. Petitioner's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the petitioner has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

Step 1

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the Petitioner is not engaged in substantial gainful activity and has not worked since January 10, 2020. Therefore, the Petitioner is not disqualified from receiving disability at Step 1.

Step 2

In the second step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Petitioner's medical record will not support a finding that Petitioner's impairment(s)

is a “listed impairment” or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the Petitioner’s impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the Petitioner is disqualified from receiving disability at Step 2.

Step 3

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the Petitioner was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Petitioner’s impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the Petitioner’s ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

On February 15, 2022, the Petitioner was seen by her treating physician at Spectrum. She was seen for a follow-up for pain. The Petitioner had left shoulder pain, chronic pain in her lower back from a failed fusion that was infected at the surgical site due to MSSA, and right shoulder pain due to right shoulder being septic. A humerus fracture was cited. She was doing well on de-escalation of opioid medications. The Petitioner has a pinching pain in her back that her spine doctor is evaluating. Her pain is well managed. She will be trying a spine stimulator. She had a normal gait and mood. There was no edema over her midline scar from her lumbar fusion. Department Exhibit 1.

On February 15, 2022, the Petitioner underwent an x-ray of her lumber spine at Spectrum. The post op changes documented were no hardware fracture, with multilevel disc height loss and anterolisthesis of L5-S1. Department Exhibit 1.

On January 4, 2022, the Petitioner had her one year follow up examination with her neurosurgeon about her back surgery from January 2021. She had minimal back pain and was able to perform her activities of daily living. The Petitioner developed a new issue when she fell down the stairs and broke her left shoulder in December 2021. Department Exhibit 1.

This Administrative Law Judge finds that the Petitioner has had medical improvement. She still has limitations with her back after surgery but should be able to perform at least light work. The Petitioner had a fall down the stairs in December 2021 where she suffered injuries. However, the Petitioner is expected to be able to work at the light

level. Even though she has an additional injury with her left shoulder, she is not unable to work for 90 days because of her left shoulder issues. She is taking medications, but not therapy for her mental impairments. There was no evidence of a severe thought disorder or risk factors. At Step 3, this Administrative Law Judge finds that the Petitioner does have medical improvement and her medical improvement is related to the Petitioner's ability to perform substantial gainful activity. As a result, the Petitioner is able to perform light work. Therefore, the Petitioner is disqualified from receiving disability at Step 3.

Step 4

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to Petitioner 's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). The Petitioner had back surgery in January 2021, but by her one year follow up on January 4, 2022, she had minimal back pain and was able to perform her activities of daily living. The Petitioner had medical improvement of her original back injury for which she was approved for SDA benefits with a medical review due February 2022. The Petitioner had a new injury to her left shoulder after falling down the stairs on December 28, 2021. It is the finding of this Administrative Law Judge, after careful review of the record, that there has been medical improvement where she can perform work.

At Step 4, the Petitioner testified that she does perform most of her daily living activities. The Petitioner testified that her condition has gotten worse because she has been hospitalized for the last five months from February 15, 2021, through June 21, 2021. She has a problem walking. She does have mental impairments that she is taking medications for, but she is not in therapy. The Petitioner stopped smoking cigarettes when she previously smoked half a pack of cigarettes a day. She does not, nor has ever used illegal or illicit drugs. She drinks alcohol on occasion. The Petitioner did not think that there was any work that she could perform.

This Administrative Law Judge finds that the Petitioner's medical improvement is related to her ability to do work. Her pertinent work history is as a factory worker at the medium level on January 10, 2020. The Petitioner should be able to perform at least light work. She is not in treatment and taking medications for her mental impairments. She does have physical limitations related to her back, which limits her to light work. Therefore, the Petitioner is disqualified from receiving disability at Step 4 where the Petitioner can perform simple and unskilled, light work. If there is a finding of medical improvement related to Petitioner's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

Step 6

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the Petitioner's current impairment(s) is not severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant

limitations upon a Petitioner's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds Petitioner can perform light work. See Steps 3 and 4. She is not in treatment and taking medications for her mental impairments. She is physically limited because of her back and shoulders to light work. Therefore, the Petitioner is not disqualified from receiving disability at Step 6 where the Petitioner passes for severity.

Step 7

In the seventh step of the sequential evaluation, the trier of fact is to assess a Petitioner's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the Petitioner's current residual functional capacity based on all current impairments and consider whether the Petitioner can still do work she has done in the past.

At Step 7, the Petitioner has a pertinent work history as a factory worker at the medium level on January 10, 2020. In this case, this Administrative Law Judge finds that Petitioner should be able to perform light work. The Petitioner is not capable of performing past, relevant work at the medium level because of her physical limitations with her back and shoulders. See Steps 3 and 4. Therefore, the Petitioner is not disqualified from receiving disability at Step 7 where the Petitioner is not capable of performing her past, relevant work.

Step 8

The objective medical evidence on the record is insufficient that the Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. The Petitioner's testimony as to her limitation indicates her limitations are exertional and non-exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the Petitioner testified that she has bipolar disorder. The Petitioner is taking medication but not in therapy for her mental impairments. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. The Petitioner has a high school education.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the Petitioner can do any other work, given the Petitioner's residual function

capacity and Petitioner's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon the Petitioner's vocational profile of a closely approaching advanced age individual, with a high school education, and a history of unskilled work, MA-P is denied using Vocational Rule 202.13 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as bipolar disorder. 20 CFR 404, Subpart P, Appendix 2, Section 200.00.

This Administrative Law Judge finds that Petitioner does have medical improvement in this case and the Department has established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with Department policy when it proposed to close Petitioner's SDA case based upon medical improvement. She was previously approved due to a physical impairment due to back surgery. The Petitioner continues to take medications for her mental impairments. There was no evidence of a serious thought disorder or risk factors. She has physical limitations with her back and shoulders to the light level. Therefore, the Petitioner has had medical improvement making her capable of performing light work where she does not meet the disability criteria for SDA.

## 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 medical review of SDA benefit programs.

Accordingly, the Department's determination is **AFFIRMED**.

Carmen G. Fahie

CF/cc

**Carmen G. Fahie**
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 :** **Interested Parties**

MDHHS-Montcalm-Hearings
BSC3-HearingDecisions
L. Karadsheh
MOAHR

**Via-First Class Mail :** **Petitioner**

[redacted]
MI [redacted]