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Date Mailed: November 13, 2024
MOAHR Docket No.: 24-005229
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 September 12, 2024, from Detroit, Michigan. Petitioner appeared for the hearing with her Authorized Hearing Representative (AHR) [redacted] The Department of Health and Human Services (Department) was represented by Ryan Kennedy, Hearing Facilitator.

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 October 14, 2024, that were marked and admitted into evidence as Exhibit 1. The record closed on October 14, 2024, 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 December 27, 2021, decision of the Disability Determination Services (DDS)/Medical Review Team (MRT) and in connection with an application submitted on or around September 22, 2021, finding that Petitioner was disabled because of her conditions of bilateral peripheral neuropathy, morbid obesity, prediabetes GERD, hypertension, bilateral foot drop, bipolar disorder II, alcohol dependence, Covid 19 infection, ADHD, asthma, cardiomegaly, and requiring the use of a walker to ambulate. The findings indicated that Petitioner's peripheral neuropathy is further aggravated by asthma, BMI of 41+, prediabetes, Covid 19 infection with lingering symptoms of dizziness, confusion, and double vision. The

evidence supported Petitioner's inability to sustain even sedentary work. With respect to impairments, it was noted that Petitioner takes psychotropic medications and was in mental health services for ADHD, anxiety with panic attacks, bipolar II disorder, and insomnia. (Exhibit A, pp. 1740-1773)

2. The DDS requested that Petitioner's continued eligibility for SDA benefits be reviewed in December 2022. (Exhibit A, pp. 1740-1745)

3. The Department and DDS initiated a review of Petitioner's continued eligibility for SDA benefits and on or around March 7, 2023, 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. 1780-1805)

4. The Department failed to timely act on the DDS decision and Petitioner's SDA case remained open.

5. On or around March 29, 2024, the Department sent Petitioner a Notice of Case Action advising her that effective May 1, 2024, her SDA benefits would be terminated based on DDS' finding that she is not disabled. (Exhibit A, pp. 1846-1851)

6. On or around March 29, 2024, the Department completed an Overissuance Referral, as it determined that Petitioner's case should have been closed upon receipt of the March 7, 2023, DDS decision but due to agency error, Petitioner continued to receive SDA benefits from April 2023 to April 2024. (Exhibit A, p. 1854)

    a. As of the hearing date, the amount and status of the agency error OI claim was unknown.

7. On or around May 8, 2024, Petitioner requested a hearing disputing the Department's termination of her SDA benefits and the DDS finding that she was not disabled. (Exhibit A, pp. 3-6)

8. Petitioner alleged continuing disabling impairments due to peripheral neuropathy, ankle and feet swelling, aortic heart valve disorder, diabetes, morbid obesity, bipolar depression and anxiety, memory and mental brain fog, asthma, long Covid, and sleep disorders.

9. As of the hearing date, Petitioner was [redacted] years old with a [redacted] 1994, date of birth. She was [redacted] and weighed approximately [redacted] pounds. Petitioner asserted that she graduated high school and has reported employment history of work as a cosmetologist and as an administrative assistant. Petitioner has not been employed since July 2020.

10. 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 peripheral neuropathy, ankle and feet swelling, aortic heart valve disorder, diabetes, morbid obesity, bipolar depression and anxiety, memory and mental brain fog, asthma, long Covid, and sleep disorders. The medical evidence presented since the [redacted] 2021 DDS decision finding Petitioner disabled was thoroughly reviewed and is briefly summarized below.

Petitioner presented records of her treatment with Matthew Andrews, Doctor of Podiatry. Petitioner received surgical treatment of painful toenails. Records indicate that Petitioner reported numbness in her toes and history of diabetes was noted. Edema of the bilateral lower extremities was found and neurological examination revealed decreased sensation in the first, third, and fifth bilateral feet digits. (Exhibit 1)

Petitioner presented records of her cardiology treatment for her aortic valve disorder. Records indicate Petitioner had diabetes, hypertension, moderate aortic regurgitation, residual neuropathy from COVID 19 illness, and previous history of alcohol abuse but now sober for eight months as of the [redacted] 2022 visit. Petitioner presented for a follow-up visit on [redacted], 2023, which indicated that she continued to follow up with neurology to treat her neuropathy. Petitioner was referred to undergo a transesophageal echocardiogram to evaluate the aortic valve and determine if she has a bicuspid aortic valve. Progress notes from the [redacted], 2023 cardiology visit indicate that Petitioner presented to the hospital for the transesophageal echocardiogram, however, anesthesia was not able to sedate her safely and the procedure was aborted. At that time, a cardiac MRI was ordered to evaluate the aortic valve, but as of the appointment date, had not been completed. On [redacted], 2023, Petitioner underwent a cardiac MRI, the results

of which showed quadricuspid aortic valve with mild aortic regurgitation and left atrial enlargement. Notes indicate that Petitioner has four leaflets of the aortic valve, when normally, most people have three leaflets. These results suggest a congenital abnormality. (Exhibit 1)

Records from Petitioner's 2021 and 2022 treatment with her primary care physician were presented and reviewed. Progress notes indicate that Petitioner was receiving treatment for peripheral neuropathy, asthma, aortic valve disorder, bipolar disorder, hypertension, alcohol abuse disorder, and prediabetes, among other conditions. In [redacted] 2022, Petitioner presented to her physician and reported that she recently had a relapse of her alcoholism and was released from rehab. She reported neuropathic pain and reported that her pain is a trigger as to why she went back to alcohol. Notes indicate that Petitioner had swelling in her legs and ankles. In [redacted] 2022, Petitioner identified concerns regarding a [redacted] pound weight gain and requesting medication to help her lose weight. Petitioner noted that she was limited in how much she could exercise because of her neuropathy and lower extremity edema. Notes indicate that Petitioner had class III severe obesity with serious comorbidity and body mass index of 45-49.9.

In [redacted] 2022, Petitioner completed a pain questionnaire, where she described pain in her hands, legs, feet, and toes. She reported numbness, swelling, stiffness, burning that ranges from mild to severe daily and worsens at night. She reported that her pain has limited or restricted her activities, and she does not go anywhere or do anything and this also impacts her mental health.

On [redacted], 2022, Petitioner participated in a consultative physical examination, where her chief complaints were reported to be peripheral neuropathy, bipolar disorder, depression, post Covid 19, and aortic valve disorder. It was noted that Petitioner reported her peripheral neuropathy was a result of several Covid 19 infections. Her endurance to sit was 20 minutes, stand five minutes, and walk five minutes. A review of the medical records indicated to the examiner that Petitioner had history of alcohol abuse which contributed to her neuropathy. Physical examination of the extremities showed pedal edema and swollen toes on both sides. Strength was 4/5 in both ankles and feet. Ankle dorsiflexion was limited by edema and tender feet, as well as Achilles tendonitis bilaterally. Deep tendon reflexes of the biceps, triceps, and brachioradialis were absent, as were knee-jerk and ankle jerk reflexes. Petitioner's gait was slow and wobbly. She was able to heel walk, toe walk, and tandem walk with balance issues and complaints of pain. She was able to squat to 20° shakily with complaints of pain. Her straight leg raising was 35° on the right and 45° on the left. Range of motion of the cervical spine was within normal limits, but complaints of pain were noted. Range of motion in the shoulders, elbows, wrists, and hands was done with pain noted in all. Range of motion of the lumbar spine was limited with some balance issues. Range of motion of the hips, knees, ankles, and feet was done with pain noted bilaterally. Petitioner complained of feeling dizzy, that sensory functions decreased in both feet, vibratory responses decreased in both feet and head side. The medical source statement indicates that Petitioner has occasional to frequent physical limitations with both lower limbs with stooping, standing, squatting,

bending, and weight-bearing activities due to the findings noted, as well as hypertension with pedal edema of both feet and swollen toes.

On or around [redacted] 2022, Petitioner participated in a consultative psychiatric examination. She reported that she was diagnosed with Covid in 2021 and was hospitalized for about a week and had been on oxygen. Since that time, she experiences numbness and tingling and pain in both of her hands, legs, and feet. Petitioner reported history of high blood pressure and diagnosis of an aortic valve disorder. Petitioner reported history of morbid obesity, gastroesophageal reflux disease, and at age 19, was diagnosed of bipolar disorder. She described depressive symptoms including disturbed sleep, increase in appetite, increase in weight, low energy, poor motivation, self-isolation, easily frustrated and emotional. Petitioner reported history of suicidal thoughts but denied hallucinations. When questioned regarding manic episodes, she indicated that during those times, she tends to drink, and has racing thoughts. She reported starting things but not being able to finish. Petitioner reported diagnoses of ADHD during childhood and anxiety with worry, increased heart rate, and shortness of breath. Petitioner indicated she would usually use a walker or cane to assist with ambulation, which is dependent on how she feels each day. She reported lack of self-esteem, was able to respond to questions with no pressured speech or thought blocking. Petitioner reported no delusions but described signs and symptoms of mood swings, with more depression and anxiety. Her focus and concentration is difficult, and she needs reminders as she has difficulty recalling. Petitioner uses an alarm on her phone to remind her went to take her medication. Petitioner's emotional reaction was mostly down and depressed. She gave the date as [redacted] 2023, and identified an incorrect city. She was able to recall zero digits backward and three digits forward. With respect to calculations, she was observed to count on her fingers and made the comment "I'm not good in numbers." Petitioner's prognosis was guarded to fair, with continuing mental health treatment.

Records from Petitioner's 2022 mental health treatment with New Oakland Family Centers were presented and reviewed. Records indicate that Petitioner was receiving weekly or biweekly therapy treatment During a [redacted], 2022 therapy appointment, Petitioner's mood was anxious and she had a GAF score of 50. Notes indicate that Petitioner was gaining insight of her depressive symptomology, admitted that she does not take care of herself, she is overweight and on the verge of type II diabetes. Lack of motivation was identified as a barrier to progress. On [redacted] 2022, Petitioner's mood was noted to be depressed and anxious.

Petitioner was admitted to Sacred Heart for rehabilitation treatment from [redacted] 2022, through [redacted], 2022.

Petitioner's 2021 treatment records with physical medicine and rehabilitation specialist Dr. Weingarden were also presented and reviewed. The records indicate that Petitioner reported numbness and tingling in her hips down to her feet, as well as pins and needles in her hands, difficulty walking, and use of the cane to assist with ambulation. EMG testing of the bilateral lower extremities showed evidence of active axon loss sensory and motor peripheral polyneuropathy.

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 December 2021, DDS decision finding that Petitioner's peripheral neuropathy is further aggravated by asthma, BMI of 41+, prediabetes, Covid 19 infection with lingering symptoms of dizziness, confusion, and double vision. The evidence supported Petitioner's inability to sustain even sedentary work. With respect to mental impairments, it was noted that Petitioner takes psychotropic medications and was in mental health services for ADHD, anxiety with panic attacks, bipolar II disorder, and insomnia.

As referenced above, the medical evidence presented with the current review showed that Petitioner continued to receive ongoing treatment for the conditions that first rendered her disabled. Petitioner suffers from pain and weakness in her feet, legs, and hands. She sometimes uses a cane to assist with ambulation and is able to walk for not more than five minutes. She is able to sit for 5 to 10 minutes and can stand for up to five minutes. Petitioner identified symptoms of memory loss and indicated that she is unable to retain any information. She suffers from difficulty with concentration, anxiety attacks that result in sweating, shaking, and vomiting at times. She reported that her throat closes and she is unable to breathe as she feels paralyzed around people when she leaves the home. Petitioner suffers from crying spells, and identified anger issues which manifests both physically and verbally. Petitioner engages in self-harm behaviors including digging her nails into her skin. She attends Alcoholics Anonymous meetings two times per week and identified thoughts of hurting herself, reporting that she previously suffered a suicide attempt by adjusting pills and has history of cutting. Petitioner continues to experience symptoms related to chronic upper and lower back pain, with balance issues, as well as bilateral hip, knee, and ankle pain with some weakness. Although records from Petitioner's primary care physician indicate that she had some recent weight loss,

Petitioner is still considered morbidly obese. The consultative physical examination indicated that Petitioner had occasional to frequent physical limitations with her lower limbs, as well as with respect to stooping, standing, squatting, bending, and weight-bearing activities. Petitioner's hypertension has caused swelling in Petitioner's feet and toes. Petitioner also continues to receive mental health treatment.

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 December 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 December 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.

It is noted that since Petitioner was found eligible for SDA benefits, the Department would not be entitled to recoupment of an alleged agency error overissuance for the period between April 2023 and April 2024 as referenced in the Overissuance Referral and any outstanding claim should be deleted.

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. Delete any outstanding agency error overissuance claim for the period from April 2023 through April 2024 related to the present matter and the Department's failure to timely close Petitioner's SDA case effective April 1, 2023, and if applicable, cease any recoupment action;

2. Reinstate Petitioner's SDA case effective May 1, 2024;

3. Issue supplements to Petitioner for any lost SDA benefits that she was entitled to receive from May 1, 2024, ongoing if otherwise eligible and qualified in accordance with Department policy; Notify Petitioner of its decision in writing; and

4. Review Petitioner's continued SDA eligibility in May 2025 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
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Interested Parties
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Via First Class Mail:

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Petitioner
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