

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-019808
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: January 26, 2016
County: GENESEE UNION ST

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

PROCEDURAL HISTORY

Following the 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; and 45 CFR 205.10. After due notice, a telephone hearing was held on January 26, 2016, from Lansing, Michigan. The Petitioner, [REDACTED] [REDACTED] appeared and testified as did her Peer Support Mental Health Specialist with Consumer Services, [REDACTED] [REDACTED]. The Department was represented by Hearing Facilitator, [REDACTED] [REDACTED].

ISSUE

Whether the Department properly determined that the Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

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

1. On July 17, 2015, the Petitioner applied for SDA.
2. On October 13, 2015, the Medical Review Team denied the Petitioner's request.
3. On October 23, 2015, the Petitioner submitted to the Department a request for hearing.
4. The Petitioner is [REDACTED] years old.
5. The Petitioner completed education through 10th grade and was in special education throughout school.
6. The Petitioner has no employment experience.

7. The Petitioner's limitations have lasted for 12 months or more.
8. The Petitioner suffers from generalized anxiety, mood disorder, bipolar disorder, obesity, hypertension, PTSD, sarcoidosis, torn rotator cuff and cognitive disorder.
9. The Petitioner has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and squatting. The Petitioner also has significant limitations with her cognitive abilities, memory, concentration, persistence and pace.

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 pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental 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 conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

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, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment,

the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is “substantial gainful activity” (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” 20 CFR 404.1520(c). An impairment or combination of impairments is “severe” within the meaning of regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Petitioner does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Petitioner’s residual functional capacity. 20 CFR 404.1520(e). An individual’s residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the Petitioner’s impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner has the residual functional capacity to do his/her past relevant work, then the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual’s residual functional capacity is considered in determining whether disability exists. An individual’s age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

In the present case, the Petitioner has been diagnosed with generalized anxiety, mood disorder, bipolar disorder, obesity, hypertension, PTSD, sarcoidosis, torn rotator cuff and cognitive disorder. The Petitioner has a number of symptoms and limitations, as cited above, as a result of these conditions. The Petitioner testified that she can only stand for five or 10 minutes at a time and can only sit for 30 minutes at a time. The Petitioner testified that she cannot squat because her knees are bad and she cannot bend at the waist. The Petitioner cannot carry more than 5 pounds. The objective medical evidence in the record includes a MRI from December 19, 2015. It indicates that the Petitioner has degenerative change of the acromioclavicular joint; bicep tendon subluxed medially in relation to the bicipital groove; probable care of the anterior superior labrum and complete tear with retraction of the supraspinatus infraspinatus complex. An October 29, 2015 ultrasound of the Petitioner's right shoulder revealed rotator cuff tears.

The objective, psychiatric evidence in the record includes extensive psychiatric records from the Michigan Department of Corrections. The Petitioner's GAF ranges anywhere from 40 to 60 during the time that she was incarcerated. The Petitioner reports that she had three suicide attempts in 2012. The Petitioner has suffered from a closed head injury in 1986 and subsequent headaches. The Petitioner reports that she hears things, she has racing thoughts, she has crying jags, and she has problems with people in social settings and tends to isolate because of that. The objective, psychiatric evidence in the record includes a neuropsychological evaluation report based on a date of testing of September 17, 2015. The Petitioner was administered several assessments. The Petitioner has a full scale IQ of 69 and an extremely low working memory index at 66. The Petitioner was diagnosed with a Mild Neurocognitive Disorder as well as Attention Deficit/Hyperactivity Disorder, with a recommendation to rule out Bipolar Disorder NOS. The Petitioner was assigned a GAF score of 51.

In this case, this Administrative Law Judge finds that the Petitioner may be considered presently disabled at the third step. The Petitioner appears to meet listing 12.05 or its equivalent. The Petitioner's testimony and the medical documentation support the finding that the Petitioner meets the requirements of a listing.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Petitioner is medically disabled as of July, 2015.

Accordingly, the Department's decision is hereby **REVERSED** and the Department is ORDERED to initiate a review of the application dated July 17, 2015, if not done previously, to determine Petitioner's non-medical eligibility. The Department shall inform the Petitioner of the determination in writing. A review of this case shall be set for February, 2017.



Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **2/17/2016**

SEH/nr

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

