



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 21, 2016
MAHS Docket No.: 16-001874

[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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; and 45 CFR 205.10. After due notice, a telephone hearing was held on March 16, 2016, from Lansing, Michigan. Petitioner personally appeared and testified. The Department of Health and Human Services (Department) was represented by Eligibility Specialist [REDACTED]

ISSUE

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

FINDINGS OF FACT

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

1. Department's Exhibit A (pages 1-457) is a copy of Petitioner's medical records.
2. On September 29, 2015, Petitioner applied for SDA.
3. On December 29, 2015, the Medical Review Team denied Petitioner's application for SDA, indicating she had a non-exertional impairment. (Dept Exh. A, pp 440-446).
4. On September 15, 2014, Petitioner presented to her primary care physician complaining of a headache and dizziness. The physician indicated that Petitioner requested narcotics again and the physician again refused. The Petitioner again told her physician that she may intentionally overdose on over-the-counter

medications and the physician told Petitioner that if she was going to ask her every time for narcotics, that it would be best for her to transfer. (Dept. Exh. A, p 273).

5. On March 6, 2015, Petitioner followed up with her psychiatrist for her medicine review appointment. The psychiatrist noted that Petitioner had not been there for her follow-up appointments in months. Petitioner stated that she was not taking her medications like she was supposed to be. She explained that she just gets in the habit of not taking them. She said she ran out of her antidepressants and she felt depressed. She reported she still had mood swings of agitation and irritability and she got angry very easily. The psychiatrist opined Petitioner was non-compliant with her medications and treatment. (Dept Exh. A, pp 68-69).
6. On April 3, 2015, Petitioner saw her primary care physician concerning her respiratory infection. The physician noted Petitioner's respiratory infection had lasted over one month. Petitioner's lungs were clear, but she was coughing until she vomited. Petitioner admitted to smoking one, to one and a half, packs of cigarettes a day in spite of her illness. The physician noted Petitioner was not taking her medication for her pseudotumor cerebri regularly which he suspected was causing her headaches and vertiginous symptoms. The physician suspected Petitioner had chronic bronchitis or possible chronic obstructive pulmonary disease. The physician indicated Petitioner had not undertaken a weight loss program which might assist with her pseudotumor symptoms. Chest x-ray and lab results showed no acute findings. She was referred to a rheumatologist due to an elevated C-reactive protein. (Dept Exh. A, pp 334-339).
7. On May 1, 2015, Petitioner met with her psychiatrist for a medication review. Petitioner reported she sometimes has crying spells and gets a little bit agitated or irritable but not often. She stated she was eating and sleeping well. She was working at [REDACTED] five days a week, approximately three to seven hours a day. She stated she felt tired in the morning. She took all of her medications at bedtime. She had no psychosis and did not feel paranoid. She did not endorse any side effects to the medications. She said that most of the time she was taking her medications as prescribed. The psychiatrist opined that Petitioner's affect seemed broad and appropriate and her mood seem euthymic. Her thought process was linear and coherent. She was oriented to time, place and person. Memory was grossly intact. She had nil to fair insight and her judgment was poor to fair. (Dept Exh. A, pp 60-61).
8. On May 20, 2015, Petitioner's counselor at [REDACTED] indicated Petitioner would benefit from applying for disability benefits. The counselor noted Petitioner's health had been failing her and she had been diagnosed with pseudotumor cerebri, lupus and fibromyalgia. Petitioner was noted to be in a lot of pain and extremely tired. The counselor indicated Petitioner had been working at McDonalds for the past eight years, but had to limit her hours due to her health. (Dept Exh. A, pp 45-54).

9. On July 10, 2015, Petitioner presented to the emergency department complaining of a headache. The ER physician noted Petitioner had not been following with her neurologist because she did not like him. Petitioner described similar symptoms when she had “flares” of pseudotumor cerebri. Petitioner was released in good and stable condition with a diagnosis of chronic headache and pseudotumor cerebri and instructed to follow up with her neurologist. (Dept Exh. A, pp 131-136).
10. On September 23, 2015, Petitioner followed up with her psychiatrist for a medication review. The psychiatrist noted it had been some time since she had seen Petitioner. Petitioner’s medication list indicated Petitioner ran out of medications in July. The psychiatrist told Petitioner she had run out, and Petitioner said she was just running out. The psychiatrist opined that Petitioner is very non-compliant with her medications. The psychiatrist expressed her frustration to Petitioner and Petitioner stated that she does this to her medical prescriptions too. She stated that she does not have any crying periods and does not feel tearful. She does not really have any mood swings. Petitioner stated that medications make her sleepy and she has always been non-compliant with all her medications from family doctors and psychiatrists. The psychiatrist noted that Petitioner initially wanted the psychiatrist to fill out paperwork for disability. The psychiatrist refused. (Dept Exh. A, pp 37-38).
11. On October 30, 2015, Petitioner had an evaluation by Infectious Disease. The examining physician opined that Petitioner’s histoplasmosis infection was at least seven years old based on the radiographic evidence; calcified pulmonary granulomas were present in 2008. The physician opined that it was not likely that there was any active histoplasma infection once the granulomas had calcified. The physician also found that while Petitioner may have lupus, Petitioner did have fibromyalgia. (Dept Exh. A, pp 30-31).
12. On November 6, 2015, Petitioner underwent a consultative examination reference her chronic dyspnea, chronic chest wall pain and history of tobacco use. Petitioner was diagnosed with chronic obstructive pulmonary disease; costal chondritis bilateral 5 6 7 costal chondral junctions, left worse than right; fibromyalgia with multiple trigger points; lupus per history; and possible histoplasmosis, serology pending. (Dept Exh. A, pp 412-413).
13. On November 20, 2015, a pulmonary function test showed Petitioner had asthma chronic bronchitis. (Dept Exh. A, pp 406-407).
14. On January 15, 2016, the Department issued Petitioner a Notice of Case Action informing her that her SDA application was denied. (Dept Exh. A, pp 4-7).
15. Petitioner is a [REDACTED]-year-old woman born on [REDACTED]. She is [REDACTED] and weighs [REDACTED] pounds. She is a high school graduate and had a position with [REDACTED] for eight or nine years until 2015.

[REDACTED]

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 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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

"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. [SDA = 90 day duration].

The test for receiving SDA is whether a person is unable, due to a medically determinable physical or mental impairment, to do any substantial gainful activity for a continuous period of not less than 90 days.

In this case, Petitioner testified that she is unable to drive due to her anxiety attacks; she can grocery shop, but she is exhausted afterwards; and she can do housework, but she must do it slowly. Petitioner stated she is only comfortable when she is lying down.

However, this Administrative Law Judge finds Petitioner less than credible because compared to the record, Petitioner's testimony appeared exaggerated. When asked to describe a typical day, Petitioner stated that she got up, played on the computer, napped, then got back up and played on the computer. From Petitioner's testimony, playing on the computer was the motivating factor in Petitioner getting out of bed. This appears contradictory to Petitioner's own testimony, that lying in bed was when she was the most comfortable. In other words, Petitioner appeared capable of getting out of bed if sufficiently motivated.

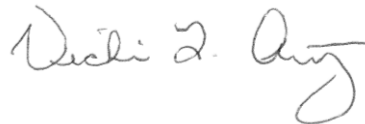
In addition, Petitioner's own primary care physician wrote that she told Petitioner to stop asking for narcotics every office visit or she should seek treatment elsewhere. There is also ample evidence that Petitioner is non-compliant with medications and treatment.

While it does appear from the evidence on the record that Petitioner does have some physical and mental impairments, there is nothing in the record indicating that Petitioner is or was unable to engage in substantial gainful work activity for at least 90 continuous days.

Therefore, the Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds Petitioner not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

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



VLA/db

Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]