



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 30, 2016
MAHS Docket No.: 16-001758

[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 23, 2016, from Lansing, Michigan. Petitioner, accompanied by her sister [REDACTED], personally appeared and testified. The Department of Health and Human Services (Department) was represented by Hearing Facilitator [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. On August 3, 2015, Petitioner applied for SDA. (Dept Exh. A, pp 1-13).
2. On December 7, 2015, the Medical Review Team (MRT) denied Petitioner's SDA application. (Dept Exh. C, pp 1-25).
3. On January 19, 2016, the Department sent Petitioner notice that her application was denied.
4. On February 5, 2016, Petitioner filed a hearing request to contest the Department's negative action.

5. Petitioner has a history of insulin dependent diabetes, diabetic neuropathy, posttraumatic stress disorder, bipolar disorder, major depression, anxiety, facial tics, bilateral carpal tunnel syndrome, morbid obesity, hyperlipidemia, senile nuclear sclerosis, arthritis, hypertension and obstructive sleep apnea.
6. On September 19, 2014, Petitioner was referred to [REDACTED] by the emergency department. Petitioner was tearful and crying throughout the session. Petitioner reported she had sleep disturbance, lack of concentration, exaggerated startle responses, sad or guilty affects and other signs of depression. Petitioner was severely depressed over the death of her husband. (Dept Exh. C, pp 144-151).
7. On November 24, 2014, Petitioner underwent a psychological evaluation. Petitioner had tic like movements affecting both eyes. Some persecutory thought content was evident. Her affect was restricted and her mood was depressed and anxious. Prognosis was fair. (Dept Exh. C, pp 129-131).
8. On April 1, 2015, Petitioner established care with her primary care physician. Petitioner presented for an evaluation of diabetes symptoms. Petitioner was originally diagnosed with diabetes in 1993 during a routine blood test. Exacerbating factors were emotional stress, missed medication, sedentary lifestyle and her husband's death last year. She was not working due to her health problems. She was not eating much. She was depressed with mood swings and could not be around other people. She had insomnia, fatigue and weight loss. Petitioner was diagnosed with uncontrolled diabetes, carpal tunnel syndrome, hyperlipidemia, hypertension, morbid obesity, obstructive sleep apnea, senile nuclear sclerosis and vitamin D insufficiency. The physician described Petitioner's health as worsening. (Dept Exh. C, pp 375-381).
9. On April 13, 2015, Petitioner saw her primary care physician complaining of memory loss, depression and pain. Petitioner stated she had trouble remembering names and was losing things. Petitioner was instructed to talk it over with her psychologist and the physician would order a dementia evaluation if not ordered by her psychologist. She complained of pain in her arms, wrists, low back and neck and she was referred to Rheumatology. The physician indicated Petitioner was stable on Celexa and would be following up with her psychologist later that afternoon. (Dept Exh. C, pp 293-298).
10. On July 15, 2015, Petitioner attended counseling for diabetes management. The counselor indicated that it was difficult to keep Petitioner on track for the appointment. Petitioner brought up again that her previous doctor had her drink orange juice before bed and that she gave herself insulin before bed. The counselor repeated that Petitioner should not drink orange juice at night and should not take the insulin unless it was with a snack. The counselor noted that Petitioner was not receptive to this instruction. Petitioner did not want to go back on atorvastatin. Petitioner tolerated it well in the past but felt that her cholesterol was good and was concerned about potential side effects. The counselor

reassured Petitioner that she did not have side effects in the past and reviewed the reasoning behind statin use in diabetics. Petitioner stated that she would consider restarting the medication after she gets her lipid panel drawn again. She discontinued iosartan due to dizziness. The physician agreed to restart Petitioner at half the dose to minimize side effects. (Dept Exh. C, pp 270-275).

11. On July 31, 2015, Petitioner presented for physical therapy and was irate because someone had called her daughter's telephone and left a message that it was urgent for her to stop all of her medications. A check was made of telephone calls from the office to Petitioner. One was a message regarding Petitioner's normal test results and the second was regarding her diabetes management. Petitioner was agitated and exhibited paranoid thinking, stating "someone is trying to cover this up." Petitioner stated that she had stopped all diabetic medications, but was unwilling to discuss her medication management because she was too upset. Petitioner was demanding that her daughter be allowed to come in and talk about it. Petitioner was referred to the office manager who attempted to pacify and redirect her toward medical care but he was unable to do so because Petitioner was too agitated. Petitioner left the office without finishing the appointment. (Dept Exh. C, p 264).
12. On August 5, 2015, Petitioner completed a Polysomnography (Sleep Study). The evaluation indicated Petitioner was symptomatic with sleep apnea and had associated comorbidities including diabetes and hypertension. Petitioner agreed to CPAP therapy. (Dept Exh. C, p 249).
13. On October 22, 2015, Petitioner underwent a Mental Status Examination. Petitioner reported she last worked 11 years ago as a director at a nursing home. She alleged disability due to anxiety, posttraumatic stress disorder, obstructive sleep apnea/narcolepsy and peripheral neuropathy. She stated she had lost the sensation in her fingertips and had sharp pain. Petitioner was dressed in house slippers, blue jeans and a mid-sleeved top. Her grooming was adequate. The psychologist opined Petitioner was cooperative did not exaggerate her symptoms. The psychologist noted that Petitioner's speech was pressured and 90% intelligible. Her thoughts were circumstantial and tangential. Her affect ranged from stable to emotional and agitated. She was diagnosed with unspecified bipolar and related disorder, uncomplicated bereavement, panic disorder, obstructive sleep apnea, narcolepsy, obesity, diabetes mellitus, and diabetic neuropathy. (Dept Exh. C, pp 26-30).
14. Petitioner is a [REDACTED]-year-old woman born on [REDACTED]. She is 5'4" and weighs 200 pounds. She has a college education. She last worked 11 years ago as the director of a nursing home.
15. Petitioner was appealing the denial of Social Security disability at the time of the hearing.

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.

A person is disabled for SDA purposes if he or she:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, 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), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2014).

"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].

[As Judge] We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. 20 CFR 416.927(e).

In this case, the medical evidence shows Petitioner is having difficulty functioning on a daily basis. Petitioner's paranoia and memory deficits have been witnessed by her physical therapist and counselor.

During an independent psychological evaluation in October, 2015, the examining psychologist opined that Petitioner was not exaggerating her symptoms. Petitioner's speech was pressured and 90% intelligible. Her thoughts were circumstantial and tangential. Her affect ranged from stable to emotional and agitated. This Administrative Law Judge finds Petitioner is unable to stay on task, as amply demonstrated during the hearing.

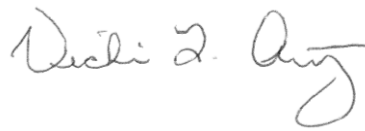
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's 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. The Department shall process Petitioner's August 3, 2015, application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in April, 2017, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.



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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]