



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 6, 2016
MAHS Docket No.: 16-002710
Agency No.: [REDACTED]
Petitioner: [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 - 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on April 28, 2016, from Lansing, Michigan. Petitioner and her mother, [REDACTED], personally appeared and testified. Petitioner submitted Exhibits A-R which were admitted.

The Department of Health and Human Services (Department), Respondent, was represented by Lead Worker [REDACTED]. [REDACTED] testified as a witness on behalf of the Department. Department Exhibit A, (pages 1-27) was admitted.

On April 22, 2016, an Interim Order Extending the Record pending receipt of additional medical records from the [REDACTED] and [REDACTED] was issued. On May 16, 2016, the records were received and the record was closed.

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 December 9, 2015, Petitioner applied for SDA.
2. On February 3, 2016, the Medical Review Team (MRT) denied Petitioner's SDA application. (Dept. Exh. A, pp 16-22).

3. On February 4, 2016, the Department sent Petitioner notice that her application was denied. (Dept. Exh. A, pp 24-27).
4. On March 3, 2016, Petitioner filed a hearing request to contest the Department's negative action.
5. Petitioner has a history of seizures, uncontrolled high blood pressure, lumbar disc disease, cervical degenerative disc disease, degenerative joint disease, radiculopathy, lumbago with sciatica, traumatic brain injury and anxiety.
6. Petitioner's lumbar MRI dated [REDACTED] revealed a herniated disc left paramedian L5-S1 with mass effect upon the proximal aspect of the exiting left S1 nerve root, a central disc herniation at L4-L5, a nerve sheath cyst/mass at L3-L4, disc herniation at T10-T11 and lower thoracic and lumbar degenerative disc disease and facet degenerative changes. (Petitioner Exh. P, R).
7. On [REDACTED], Petitioner's electroencephalogram (EEG) results were abnormal and consistent with generalized seizure disorder (Grand Mal seizure, absence seizure, myoclonic seizure or a combination). (Petitioner Exh. H).
8. On [REDACTED], Petitioner followed up with her primary care physician regarding her recent EEG results which were abnormal for seizures. Petitioner was assaulted at the age of 17 where her nose was pushed into her brain and as a result, had loss of consciousness, was in a coma, and was diagnosed with postconcussion syndrome and a traumatic brain injury. The physician noted that Petitioner was experiencing a lot of stress which was causing more seizure activity. She was also having increased back pain and lumbar radiculopathy. She had bulging and herniated discs. On examination, Petitioner had an irregular heartbeat, nausea, headache, weakness, numbness, anxiety and paresthesias. Petitioner also had multiple closed head injuries from the initial injury and seizures. On examination, Petitioner's neck had limited flexion and limited extension. Also limited rotation to the left and right as well as limited lateral flexion to the left. Current impression was traumatic brain injury with chronic seizures and lumbar radiculopathy with chronic pain syndrome. The treating physician indicated that Petitioner had lost all jobs due to her seizures and postictal status. The treating physician opined that Petitioner was not employable due to her seizure and back conditions. (Dept. Exh. pp 11-15).
9. Petitioner is a 51-year-old woman born on [REDACTED]. She is 5'1" and weighs 160 pounds. She is a high school graduate and last worked in 2013 as a press operator.
10. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
11. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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).

Petitioner has a history of seizures, uncontrolled high blood pressure, lumbar disc disease, cervical degenerative disc disease, degenerative joint disease, radiculopathy, lumbago with sciatica, traumatic brain injury, anxiety and a herniated disc left paramedian L5-S1 with mass effect upon the proximal aspect of the exiting left S1 nerve root.

In this case, Petitioner was assaulted at the age of 17, losing consciousness and was in a coma. She was subsequently diagnosed with postconcussion syndrome and a traumatic brain injury. She has had uncontrolled seizures since the injury. She also has a herniated disc left paramedian L5-S1 with mass effect upon the proximal aspect of the exiting left S1 nerve root in addition to other herniated discs resulting in radiculopathy, lumbago with sciatica and chronic pain.

Petitioner's treating physician opined that Petitioner is not employable due to her seizure and back conditions. Because Petitioner's treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2).

Petitioner's complaints and allegations concerning her impairments and limitations, when considered in light of all the objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

Petitioner's credible testimony and the medical records submitted at hearing verify Petitioner was legally disabled continuously for a period of 90 days or longer. As such, the Department's denial of SDA pursuant to Petitioner's December 9, 2015 SDA application cannot be upheld.

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 December 9, 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 June, 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.

It is SO ORDERED.

VLA/las



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]

Petitioner

[REDACTED]