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GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: July 11, 2016  
MAHS Docket No.: 16-006108  
Agency No.: [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 - 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was held on June 15, 2016, in Kalkaska, Michigan. Petitioner, her daughter [REDACTED], her sister [REDACTED] and her friend [REDACTED], all personally appeared and testified. Petitioner submitted Exhibits 1-114 which were admitted.

The Department of Health and Human Services (Department), was represented by Eligibility Specialist [REDACTED] [REDACTED] testified as a witness on behalf of the Department. Department Exhibit A, (pages 1-359) was admitted. The record was closed at the conclusion of the hearing.

**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 competent, material, and substantial evidence on the whole record, finds as material fact:

1. On September 11, 2015, Petitioner applied for SDA. [Dept. Exh. A, pp 2-20].
2. On March 16, 2016, the Medical Review Team (MRT) denied Petitioner's SDA application. [Dept. Exh. A, pp 335-339].
3. On March 23, 2016, the Department sent Petitioner notice that her application was denied. [Dept. Exh. A, pp 354-357].

4. On April 28, 2016, Petitioner filed a hearing request to contest the Department's negative action. [Dept. Exh. A, p 358].
5. Petitioner is diagnosed with fibromyalgia, neuropathy, migraines, muscle deterioration, bipolar disorder, anxiety, depression, post-traumatic stress disorder (PTSD), palpitations, anemia, gastroesophageal reflux disease (GERD), chronic sinusitis, emphysema, chronic obstructive pulmonary disease (COPD), irritable bowel syndrome (IBS), a deviated septum, collagenous colitis, gastritis, cellulitis and a 4.5 cm renal kidney cyst.
6. On April 8, 2015, Petitioner followed up at the emergency department regarding her chronic sinus symptoms. Petitioner presented with a cough and difficulty breathing. She had cellulitis on the back of her neck and folliculitis in the hairline. She also had mild wheezing throughout. She was given a nebulizer treatment which resolved her wheezing. She was also started on Keflex for the cellulitis. Diagnosis: Upper respiratory infection with bronchospasm and cellulitis. [Petitioner Exh. 38-41].
7. On June 22, 2015, Petitioner presented to the emergency department with a headache and sinus pain. She was diagnosed with acute on-chronic sinusitis and chronic obstructive pulmonary disease (COPD) exacerbation. [Petitioner Exh. 14-15].
8. On August 24, 2015, Petitioner followed up with her primary care physician regarding her COPD, colitis and depression. Petitioner complained of back pain from her head to upper thighs. She also stated that her colitis was worse. She had abdominal pain across her midline and her abdomen was swollen. Petitioner was assessed with COPD, depression, tobacco abuse and lumbago. [Petitioner Exh. 51-53].
9. On September 14, 2015, Petitioner saw her primary care physician for COPD, a urinary tract infection and depression. Petitioner was assessed with acute bronchitis. [Petitioner Exh. 54-56].
10. On October 12, 2015, Petitioner saw her primary care physician for COPD. On examination, Petitioner was diagnosed with COPD with exacerbation and dysthymic disorder. [Dept. Exh. A, pp 38-39].
11. On November 9, 2015, x-rays of Petitioner's thoracic spine when compared to previous x-rays of April 20, 2004 revealed an unchanged mild chronic T10 vertebral body compression fracture, minor multilevel thoracic degenerative changes and an unchanged slight levoconvex curvature of the upper thoracic spine. X-rays of Petitioner's cervical spine compared to April 20, 2004 found a loss of normal cervical lordosis which might have been positional or related to a muscle spasm and degenerative progressive degenerative changes at the C5-C6 and C6-C7. The x-ray of the lumbar spine showed minor multi-level degenerative end plate spurring commensurate with Petitioner's age. [Petitioner Exh. 1-3].

12. On February 13, 2016, Petitioner underwent a medical evaluation on behalf of the Department. Petitioner's chief complaints were anxiety, bipolar disorder, COPD, GERD, arthritis and degenerative disc disease. Petitioner reported a history of dyspnea. The exam revealed mild diminution of breath sounds and slightly diminished respiratory excursion. She also reported a history of discomfort involving several joints. She reported tenderness with movement in all joints tested. On examination, all trigger points were positive including controls. Petitioner also reported a history of GERD and IBS. [Dept. Exh. A, pp 57-63].
13. On February 13, 2016, Petitioner underwent a mental status examination on behalf of the Department. The psychologist noted that Petitioner was not a good historian and obtaining information from her was difficult. Petitioner reported multiple chronic problems causing pain and mobility issues. She also had pulmonary and gastrointestinal problems. She reported a history of childhood trauma as well as domestic abuse in both of her marriages. She reported she occasionally had nightmares and flashbacks related to the abuse. She reported an exaggerated startle response. She admitted to suicidal thinking but reported she would not take her own life. She stated she had difficulty sleeping and had a diminished appetite. She described feelings of hopelessness and helplessness. She had difficulty concentrating and was easily distracted. Her communication was tangential and often difficult to follow. The examining psychologist opined that Petitioner would understand both simple and complex instructions, however, her ability to complete instructions on a sustained basis would be limited by her chronic health problems, depression and anxiety interfering with her ability to concentrate. Her problem solving and judgment were adequate. Her ability to manage a normal amount of stress was limited by depression and trauma based symptoms. Her ability to effectively interact and communicate with coworkers, authority figures, and the public was limited due to a tendency to have difficulty remaining on topic in conversation. [Dept. Exh. A, pp 66-71].
14. On February 24, 2016, Petitioner underwent an initial psychological assessment with her psychologist. The psychologist indicated that Petitioner needed significant redirection during the interview to maintain focus. Petitioner was also a relatively poor historian, often changing details of her story and sharing considerable tangential information. She reported a history of going multiple days without any need for sleep or fatigue. She viewed herself as having a gift of insight into circumstances that others may not perceive. She referred to this gift as a third level of intelligence or third eye level. She reported that she was in a relationship but was not proceeding with it because she believed he was attempting to send subliminal messages to control her mind. She also reported having periods of significant confusion and disorganized thoughts. She noted that the confusion occurred when her pain elevated. She also reported sexual and physical abuse as a child and again as an adult. [Petitioner Exh. 93-96].

15. On March 15, 2016, Petitioner saw her primary care physician for anxiety. Petitioner presented with anxious/fearful thoughts, difficulty concentrating, easily startled, excessively worried, fatigue, racing thoughts and restlessness. Petitioner was assessed with COPD, major depression, neuropathy, fibromyalgia and was given a referral to a rheumatologist. [Petitioner Exh. 69-71].
16. On May 9, 2016, Petitioner followed up at the pain clinic. Petitioner appeared down, tired and tearful. She gave a rambling history. She had innumerable complaints of pain. She did not seem to have any psychotic breaks. Petitioner presented with features of significant psychological distress and fibromyalgia. On examination, Petitioner had widespread tenderness circumferentially about the neck. She also had widespread circumferential trunk tenderness including the usual fibromyalgia tender points. Reflexes of the bilateral upper and lower extremities were somewhat hyporeflexic but symmetric. She was assessed with Bipolar II disorder, PTSD and fibromyalgia. [Petitioner Exh. 90-92].
17. Petitioner is a [REDACTED] year-old woman born on [REDACTED]. She is 5'4" and weighs 139 pounds. She is a high school graduate and last worked in November, 2014.
18. Petitioner had applied for Social Security disability at the time of the hearing.
19. 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 fibromyalgia, neuropathy, migraines, muscle deterioration, bipolar disorder, anxiety, depression, post-traumatic stress disorder (PTSD), palpitations, anemia, gastroesophageal reflux disease (GERD), chronic sinusitis, emphysema, chronic obstructive pulmonary disease (COPD), irritable bowel syndrome (IBS), a deviated septum, collagenous colitis, gastritis, cellulitis and a 4.5 cm renal kidney cyst.

In this case, Petitioner underwent an independent psychological evaluation on February 13, 2016. The examining psychologist opined that Petitioner would understand both simple and complex instructions, but her ability to complete the instructions on a sustained basis would be limited by her chronic health problems, depression and anxiety that interfere with her ability to concentrate. The psychologist indicated that Petitioner's ability to manage a normal amount of stress was limited by her depression and trauma based symptoms. Also, Petitioner's ability to effectively interact and communicate with coworkers, authority figures, and the public would be limited due to a tendency of being unable to remain on topic in conversations.

Petitioner's daughter credibly testified that it was hard to watch what was happening to her mother. Petitioner's sister credibly testified that Petitioner has been sick for a long time due to her immune deficiencies. The Department representative credibly testified that she never doubted Petitioner's credibility or disability. The Eligibility Specialist observed that Petitioner could not sit still, her mind wandered and she was unable to stay on task.

Petitioner credibly testified that she can drive, but that her ability to drive is limited by the side effects of her medications. It was also observed by the undersigned Administrative Law Judge during the hearing, that Petitioner had to be redirected numerous times to remain on topic and answer questions.

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.

The credible testimony and 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 September 11, 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.

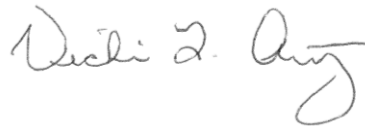
### **DECISION AND ORDER**

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 September 11, 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 July, 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.**



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**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]

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