



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: September 9, 2016
MAHS Docket No.: 16-010612
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on September 1, 2016, from Detroit, Michigan. Petitioner appeared and was represented by [REDACTED]. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner is not a disabled individual.

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 [REDACTED], Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibit 2-8).
4. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action informing Petitioner of the denial.

5. On [REDACTED] Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 104-105).
6. As of the date of the administrative hearing, Petitioner was a 21-year-old female.
7. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
8. Petitioner's highest education year completed was the 12th grade.
9. Petitioner has no employment history.
10. Petitioner alleged disability based on restrictions related to anxiety, ADHD, and Asperger syndrome.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (July 2015), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (January 2012), p. 1. A person is disabled for SDA purposes if he/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; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id.

Petitioner requested a hearing to dispute the denial of a SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Notice of Case Action dated April 22, 2016, verifying Petitioner's application was denied based on a determination that Petitioner was not disabled.

Generally, state agencies such as MDHHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 [90 days for SDA eligibility]. 20 CFR 416.905.

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id.*, p. 9. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute SGA. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2016 monthly income limit considered SGA for non-blind individuals is \$1,130.00.

Petitioner credibly denied performing current employment; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA. Accordingly, the disability analysis may proceed to the second step.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)

- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Petitioner's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented medical documentation.

Mental health clinic notes (Exhibit 1, pp. 74-76) dated [REDACTED], were presented. It was noted Petitioner was discharged from a partial hospitalization program after attending only 1 of 3 days.

Mental health clinic notes (Exhibit 1, pp. 71-73) dated [REDACTED] were presented. The notes were completed by a social worker. It was noted Petitioner reported excessive worry accompanied by muscle tension, sleep disturbance, and restlessness.

A Psychiatric Evaluation (Exhibit 1, pp. 66-70) dated [REDACTED], was presented. Reported complaints included poor concentration mood swings, anxiety, excessive worry, helplessness, hopelessness, low self-esteem, low energy, and anhedonia. Petitioner's mood was assessed to be depressed, dysphoric, anxious, and anhedonic. Mental health assessments included impaired concentration, hyperactive psychomotor activity, and pressured speech. A primary Axis I diagnosis of major depressive disorder (recurrent and severe, without psychosis) was noted. Other diagnoses included generalized anxiety disorder, ADHD, mood disorder, and autistic disorder. A GAF of 45 was noted. A recommendation of behavioral therapy was noted. Adderall and Cymbalta were prescribed.

Mental health clinic notes (Exhibit 1, pp. 60-65) dated [REDACTED], were presented. It was noted Petitioner reported excessive worry accompanied by muscle tension, sleep disturbance, and restlessness. It was noted Petitioner reported being preoccupied with death. Mental health examination assessments of Petitioner were normal and/or unremarkable. Petitioner's treatment goals included discussing feelings about her relationship with her father, improving the way she thinks about herself, and managing time better.

Mental health clinic notes (Exhibit 1, pp. 57-59) dated [REDACTED], were presented. The notes were completed by a social worker. Petitioner's reported symptoms were unchanged from a previous visit.

Medication review notes (Exhibit 1, pp. 52-56) dated [REDACTED], were presented. Prescribed medication included Adderall and Cymbalta. It was noted Petitioner reported she was taking a break from school due to depression. It was noted Petitioner appeared to be moderately anxious and dysphoric. Petitioner's GAF was noted to be 45.

Mental health clinic notes (Exhibit 1, pp. 49-51) dated [REDACTED], were presented. The notes were completed by a social worker. It was noted Petitioner reported excessive worry, followed by muscle tension, restlessness, and sleep disturbance. Petitioner reported she is socially isolative, but has internet friends. Mental health examination assessments of Petitioner were normal and/or unremarkable. It was noted Petitioner began crying because she felt that she was a burden to her mother.

Mental health clinic notes (Exhibit 1, pp. 46-48) dated [REDACTED], were presented. The notes were completed by a social worker. Petitioner's reported problems included sleeping difficulty, sexual dysfunction, concentration difficulty, anxiety, and low mood. Mental health examination assessments of Petitioner included anxious and depressed mood and agitated/shaking psychomotor activity. It was noted Petitioner was fidgety and tearful throughout the session.

Presented documents verified an approximate 2 month history of mental health treatment. Despite the relatively short history, various diagnoses, marginal mental health improvement, and a low functional level were indicative of restrictions to social interaction, concentration, and persistence. The restrictions were likely to have lasted at least 90 days and at least since Petitioner's SDA application. Accordingly, it is found Petitioner established severe impairments and the analysis may proceed to the third step.

The third step of the sequential analysis requires determining whether the Petitioner's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a petitioner's impairments are listed and deemed to meet the durational requirement, then the petitioner is deemed disabled. If the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

Petitioner's primary diagnosis was depression. Depression is an affective disorder covered by Listing 12.04 which reads as follows:

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking

OR

2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions or paranoid thinking

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

- B. Resulting in at least two of the following:
 1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Petitioner testified she barely leaves her home due to depression. Petitioner testified she spends most of her time in her room, doing housework, and taking care of her dogs.

Petitioner testified she completed the 12th grade, but attended a special high school that specialized in students with disabilities. Petitioner testified she recently went to employment training and was told that she was not ready for employment.

Petitioner's mother testified her daughter often cries when speaking with her. Petitioner and her mother both think Petitioner is unable to work due to anxiety and related symptoms.

Petitioner testified medication helps to reduce her anxiety, but symptoms are persistent. Petitioner's mother testified her daughter's anti-anxiety medication was increased 3 times in the past 6 months. Petitioner estimated she had 10 or more anxiety episodes in the last 12 months.

Presented treatment documents verified recurring symptoms of sleep disturbance, anhedonia, decreased energy, and concentration difficulty. It is found Petitioner meets Part A of the listing for affective disorders. The analysis will proceed to determine the severity of Petitioner's symptoms.

Petitioner testimony conceded she has no history of psychiatric hospitalization. A total absence of psychiatric hospitalization is generally indicative of not having marked restrictions.

The most compelling evidence of marked restrictions was Petitioner's GAF; it was stated to be 45 at the end points of an approximate 6 week period. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in

social, occupational, or school functioning (e.g. no friends, unable to keep a job).” Other considerations were less supportive of a finding that Petitioner has marked restrictions.

Only an approximate 6 week period of treatment was verified. The brief history is not very insightful into determining whether therapy and/or medications improved Petitioner’s functioning level. Generally, very little improvement should be expected after six weeks of outpatient therapy.

Documented history was not only brief, but it occurred more than 6 months before Petitioner applied for SDA benefits. Consideration was given to whether a secondary diagnosis of an autistic disorder (a very severe disorder) would justify an inference that Petitioner had marked restrictions at the time she applied for SDA benefits. Evidence of autism beyond the secondary diagnosis was not presented.

Petitioner’s documented treatment history failed to adequately show Petitioner’s responses to medication. It is plausible that Petitioner responded well to medication adjustments made by her psychiatrist. It is plausible that Petitioner’s symptoms lessened as behavioral therapy continued. Petitioner and her mother testified to the contrary, however, such statement should be stated by medical treaters.

It is found Petitioner failed to establish marked restrictions to ADL performance, social interaction, and/or concentration, persistence and/or pace. Presented evidence was also insufficient that Petitioner meets Part C of the listing for affective disorders.

Listings for anxiety disorder (Listing 12.06) and autism (Listing 12.10) were also considered based on corresponding diagnoses. The listings were rejected for the same reasons that the listing for affective disorder was rejected.

It is found Petitioner does not meet any SSA listings. Accordingly, the analysis may proceed to the fourth step.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner’s residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a petitioner can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Petitioner testified she has applied for jobs in the past, but was never offered employment. Petitioner's testimony was credible and unrebutted. Without any employment history, it can only be found that Petitioner cannot return to perform past, relevant employment and the analysis may proceed to the final step.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered non-exertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Petitioner did not allege any exertional restrictions. Thus, exertional levels of employment and medical-vocational rules are not applicable.

Physician statements of Petitioner's restrictions were not presented. Restrictions can be inferred based on presented documents.

Presented treatment sufficiently verified Petitioner struggles with concentration, persistence, and social interactions. Petitioner would be best suited for employment

involving relatively simple and repetitive activity which was not heavily reliant on verbal communication. Examples of such employment would include stockperson, assembly, data entry, and operation of light machinery. MDHHS did not present evidence of jobs available to Petitioner within her residential area, however, it is presumed that ample opportunities exist for Petitioner to be employed.

It is found Petitioner is capable of performing substantial gainful work despite non-exertional restrictions, and therefore, not disabled. Accordingly, it is found that MDHHS properly denied Petitioner's SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's SDA benefit application dated [REDACTED], based on a determination that Petitioner is not disabled. The actions taken by MDHHS are **AFFIRMED**.

CG/hw



Christian Gardocki
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]

Authorized Hearing Rep.

[REDACTED]