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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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DIRECTOR

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Date Mailed: December 7, 2016
MAHS Docket No.: 16-014538

[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 commenced on November 9, 2016, from Lansing, Michigan. Petitioner personally appeared and testified.

Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] testified on behalf of the Department. The Department submitted [REDACTED] exhibits which were admitted into evidence. The record was closed at the completion 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 the competent, material, and substantial evidence on the whole record, finds as material fact:

- (1) On February 4, 2016, Petitioner filed an application for SDA benefits alleging disability.
- (2) On September 14, 2016, the Medical Review Team (MRT) denied Petitioner's application for SDA.
- (3) On September 23, 2016, the Department sent Petitioner notice that her application was denied. [Dept. Exh. 1].

- (4) On [REDACTED], Petitioner filed a request for a hearing to contest the Department's negative action.
- (5) Petitioner reported a history of degenerative disc disease, collapsed C5-C6 vertebrae, cervical radiculopathy, nerve entrapment, anxiety, and depression.
- (6) On [REDACTED], an MRI of Petitioner's lumbar spine revealed moderate degenerative disc disease at L5-S1 level. The protruding disc was seen abutting the right S1 nerve root. [Dept. Exh. 415-416].
- (7) On [REDACTED], the MRI of Petitioner's cervical spine found minimal 2mm degenerative retrolisthesis of C5 in relation to C6, there was a right paracentral disc protrusion at that level which resulted in mild canal stenosis and mild flattening of the anterior right lateral aspect of the cervical spinal cord. There was mild bilateral neural foraminal narrowing right greater than left at that level. There was also a minimal disc bulge at C6-C7, not resulting in any appreciable canal stenosis. Also mild degenerative changes involving the uncovertebral joints which contributed to mild bilateral neural foraminal narrowing at the C6-C7 level, right greater than left. [Dept. Exh. 297-298].
- (8) On [REDACTED], Petitioner was discharged from physical therapy which she had been attending since [REDACTED]. It was noted that Petitioner showed improvement with therapy sessions, but plateaued with progress made at therapy. She still noted mild tenderness and tension across the lower back. She had an increase in mobility and strength at lumbar spine and lower extremity. Petitioner was scheduled to get epidural injections at the cervical spine. She had improvement in a few activities of daily living but still complained of pain with lift activities, home health activities, sleep, prolonged walking, etc. [Dept. Exh. 431-432].
- (9) On [REDACTED], Petitioner underwent a neurological surgery consultation. The surgical option of an anterior cervical discectomy and fusion of C5-C6 was discussed, pending the results of the neuromuscular electrodiagnosis (EMG). [Dept. Exh. 348-350].
- (10) On [REDACTED], Petitioner had a normal EMG of the left upper extremity. There was no evidence of left cervical radiculopathy, brachial plexopathy, compressive mononeuropathy or peripheral polyneuropathy. [Dept. Exh. 598-599].
- (11) On [REDACTED], x-rays of Petitioner's cervical spine revealed spondylosis at C5-C6 and C6-C7 without acute wedge compression fracture. [Dept. Exh. 267].

- (12) On [REDACTED] [REDACTED], Petitioner underwent a psychiatric evaluation. Petitioner was diagnosed with Generalized Anxiety Disorder and Depressive Disorder due to Chronic Pain. [Dept. Exh. 553-554].
- (13) On [REDACTED], Petitioner returned to the neurological surgeon. Petitioner had undergone an EMG study which showed no true radicular symptoms at present. The MRI of her cervical spine showed disc degeneration. An anterior cervical discectomy and fusion were recommended if she developed radicular symptoms. Until then, conservative management was recommended. [Dept. Exh. 572-579].
- (14) On [REDACTED], Petitioner was discharged from physical therapy, having attended since [REDACTED]. She had a normal gait and negative straight leg testing. Improved lumbar range of motion within normal limits was also noted. Her muscle strength and endurance were good. [Dept. Exh. 496-497].
- (15) On [REDACTED], Petitioner was referred to a pain specialist. Petitioner received epidural injects at L3-L4, L4-L5 and L5-S1. [Dept. Exh. 225-227].
- (16) On [REDACTED], Petitioner underwent an independent psychological evaluation on behalf of the Department. Petitioner was brought to the interview by medical transit. Petitioner stated she rarely drives because she is nervous. She wore a back brace. The psychologist opined that Petitioner's memory and concentration were slightly impaired indicating mild difficulties with learning and retaining new information. She had a fund of knowledge consistent with her education. Her insight and judgment were appropriate. Her work-related failures seemed to correspond to her medical ailments. [Dept. Exh. 166-169].
- (17) On [REDACTED] [REDACTED], Petitioner underwent an independent medical evaluation on behalf of the Department. During the examination, Petitioner was able to complete all tasks asked of her with mild to moderate difficulty, mainly due to pain. [Dept. Exh 157-159].
- (18) Petitioner is a 50-year-old woman born on [REDACTED]. Petitioner is 5'6" tall and weighs 148 lbs. Petitioner has a college education. Petitioner last worked in December, 2014, as a cashier for 90 days. Prior to that she was a bus driver for four years.
- (19) Petitioner was appealing the denial of Social Security disability benefits 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.

Disability is defined as 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 (90 days for SDA). 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with

vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and testified that she has not worked since December, 2014. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a petitioner's age, education, or work experience, the impairment would not affect the petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleges disability due to degenerative disc disease, collapsed disc at C6-C7, anxiety, depression, traumatic collapse of L5, cervical radiculopathy and nerve entrapment.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented some limited medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Petitioner has alleged physical disabling impairments due to degenerative disc disease, collapsed disc at C6-C7, anxiety, depression, traumatic collapse of L5, cervical radiculopathy and nerve entrapment.

Listing 1.04 was considered in light of the objective record evidence. This listing requires a disorder of the spine such as a herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, or vertebral fracture, resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With evidence of nerve root compression characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated

muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine) and lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Petitioner's MRI's showed moderate degenerative disc disease at the L5-S1 level. Regarding the cervical spine, there was minimal degenerative retrolisthesis at C5 in relation to C6, with a right paracentral disc protrusion resulting in mild canal stenosis and mild flattening of the anterior right lateral aspect of the cervical spinal cord. There was also mild bilateral neural foraminal narrowing and a minimal disc bulge at C6-C7 with no appreciable canal stenosis. X-rays revealed spondylosis at C5-C6, but without an acute wedge compression fracture.

Petitioner was examined by a neurological surgeon who referred her to have an EMG. The EMG was normal and revealed no evidence of left cervical radiculopathy. In February, 2016, the neurological surgeon recommended conservative treatment unless she developed radicular symptoms.

In March, 2016, Petitioner was discharged from physical therapy. She was noted to have a normal gait and negative straight leg testing.

Petitioner testified as to her daily pain and depression. The independent psychologist indicated Petitioner's memory and concentration were slightly impaired, but that her work-related failures corresponded to her medical ailments. The independent medical examination showed Petitioner was able to complete all tasks asked of her with mild to moderate difficulty, mainly due to pain.

At hearing in the above captioned matter, Petitioner listed her impairments as a collapsed disc at C6-C7 and a traumatic collapse of L5, cervical radiculopathy and nerve entrapment. However, x-rays revealed spondylosis at C5-C6, without an acute wedge compression fracture. Further, the EMG was normal showing no nerve entrapment. There was also no evidence of a traumatic collapse of L5, only moderate degenerative disc disease. As a result, Petitioner's testimony was not substantiated by the medical evidence.

Petitioner has the burden of establishing her disability. The record evidence was insufficient to meet a listing. While there was evidence of degenerative disc disease, there was no evidence presented of nerve root compression characterized by positive straight-leg raising or lumbar spinal stenosis resulting in pseudoclaudication. In fact, there was a minimal disc bulge at C6-C7 with no appreciable canal stenosis. Therefore, the analysis continues to Step 4.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the petitioner's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her

ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the petitioner's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Based on the record evidence, Petitioner has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a). In making this finding, the Administrative Law Judge considered all Petitioner's symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence.

Petitioner testified that she had degenerative disc disease, a collapsed C5-C6 vertebrae, cervical radiculopathy, nerve entrapment, anxiety, and depression. She said that she had increasing lower back pain and wore a back brace. She rated her pain as a nine on a scale of ten. Further, she said that she was unable to walk long distances and needed to change positions for relief. She estimated that she could sit and stand for 15 minutes and carry five pounds.

After considering the evidence of record, the Administrative Law Judge finds that petitioner's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the petitioner's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible.

Next, the Administrative Law Judge must determine at step four whether the petitioner has the residual functional capacity to perform the requirements of her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the petitioner actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the petitioner to learn to do the job and have been substantial gainful activity (SGA). (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the petitioner has the residual functional capacity to do her past relevant work, the petitioner is not disabled. If the petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

Petitioner's past relevant employment was as a bus driver. The demands of the Petitioner's past relevant work exceed the residual functional capacity. The analysis continues.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the petitioner is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the petitioner is able to do other work, he/she is not disabled. If the petitioner is not able to do other work and meets the duration requirements, he/she is disabled.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the burden of proof shifts to the Department to establish that Petitioner does have residual function capacity. The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. See discussion at Step 2 above.

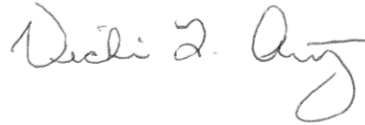
The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). Petitioner is 50-years-old and falls into the category of closely approaching advanced age. She has a college degree. Transferability of job skills is not an issue in this case because the petitioner's past relevant work is unskilled. Considering the petitioner's age, education, work experience and residual functional capacity, a finding of not disabled is directed under Medical Vocational Rule 201.13.

DECISION AND ORDER

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.

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

It is **SO ORDERED**.



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

