



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: May 23, 2016
MAHS Docket No.: 16-003665
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 May 4, 2016, from Lansing, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator. [REDACTED], Eligibility Specialist, appeared as a witness for the Department. [REDACTED], Eligibility Specialist, was present as an observer.

The following Exhibits were entered into the record during the hearing:

- o Department's March 28, 2016, Hearing Summary. (Exhibit A, p. 1)
- o Petitioner's March 28, 2016, Hearing Request. (Exhibit A, pp. 2-3)
- o March 15, 2016, Notice of Case Action. (Exhibit A, pp. 4-5)
- o March 10, 2016, Medical-Social Eligibility Certification (Exhibit A, pp. 6-12)
- o March 1, 2016, Case Analysis (Exhibit A, p. 13)
- o March 7, 2016, Psychiatric Review Technique. (Exhibit A, pp. 14-27)
- o March 1, 2016, Physical Residual Functional Capacity Assessment (Exhibit A, pp. 28-35)
- o October 29, 2015, Verification of Application or Appeal for SSI/RSDI. (Exhibit A, pp. 36-37)
- o November 9, 2015, Authorization to Release Protected Health Information (Exhibit A, pp. 38-40)
- o November 9, 2015, Medical Social Questionnaire Update. (Exhibit A, pp. 41-44)
- o January 8, 2016, Activities of Daily Living – Third Party completed by Daughter. (Exhibit A, pp. 45-52)

- Undated Activities of Daily Living – Third Party completed but not signed. (Exhibit A, pp. 53-60)
- Undated, Activities of Daily Living completed but not signed. (Exhibit A, pp. 61-65)
- November 2, 2015, Work History Questionnaire partially completed but not signed. (Exhibit A, pp. 66-71)
- January 14, 2016, responses from [REDACTED] ([REDACTED]) that medical records requested could not be processed because Petitioner did not receive services on the date(s) requested from the stated physician. (Exhibit A, pp. 72-73)
- January 2015 through January 2016, [REDACTED] Medical Records from [REDACTED]. (Exhibit A, pp. 74-96)
- December 2014 through November 2015, [REDACTED] Medical Records from [REDACTED]. (Exhibit A, pp. 97-116)
- January 2015 through January 2016, [REDACTED] Medical Records from [REDACTED]. (Exhibit A, pp. 117-136)
- November 2, 2015, [REDACTED] Medical Records from [REDACTED]. (Exhibit A, pp. 137-190)

ISSUE

Whether the Department properly determined that Petitioner was no longer disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) benefit programs?

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 or about December 2014, Petitioner was found disabled and was eligible for Medicaid (MA-P) and SDA based on a determination that she had a less than sedentary residual functional capacity (RFC). (Exhibit A, pp. 8-9 and 13)
2. On December 31, 2015, the Department was to review Petitioner's ongoing medical eligibility. (Exhibit A, p. 8)
3. Petitioner's case was sent to the Medical Review Team (MRT) for review for the MA-P and SDA programs with current documentation. (Exhibit A, pp. 6-190)
4. On March 10, 2016, the MRT found Petitioner not disabled for MA or SDA based on a determination that she had a light RFC and non-severe psychiatric review technique. (Exhibit A, pp. 9 and 11)

5. On March 15, 2015, the Department notified Petitioner of the MRT determination regarding SDA. (Exhibit A, pp. 4-5)
6. On March 28, 2016, the Department received Petitioner's timely written request for hearing. (Exhibit A, pp. 2-3)
7. Petitioner alleged disabling impairments including cirrhosis of the liver, memory loss, anxiety, depression, and trouble sleeping. (Exhibit A, pp. 3 and 41-42; Petitioner Testimony)
8. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED], birth date; was [REDACTED] in height; and weighed [REDACTED] pounds. (Petitioner Testimony)
9. Petitioner has an 11th grade education and a work history including: radiology transporter and assembly worker. (Exhibit A, pp. 66-67; Petitioner Testimony)
10. 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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. 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 416.913. 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 applicants 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).

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. In evaluating a claim for ongoing MA benefits, federal regulation requires a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Petitioner's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). If no medical improvement found, and no exception

applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii).

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v). If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology related to the ability to work;
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Petitioner's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

In the present case, Petitioner alleged disabling impairments including cirrhosis of the liver, memory loss, anxiety, depression, and trouble sleeping. (Exhibit A, pp. 3 and 41-42; Petitioner's Testimony)

January 2015 through January 2016, records from the internal medicine doctor show ongoing treatment for alcoholic liver disease, depression, and anxiety. The progress notes, in part, document that Petitioner has continued to be abstinent from alcohol and both the liver disease and depression are stable on medications. (Exhibit A, pp. 74-96, and 117-136) Further, a January 8, 2016, progress note, in regards to depression, indicated that Petitioner had been doing very well taking her medications, had no new complaints, and was thinking about going back to work part time. (Exhibit A, p. 92)

December 2014 through November 2015, records from the gastroenterology doctor show ongoing treatment for cirrhosis of the liver. A December 19, 2014, progress note documented a history of liver disease that had progressed to cirrhosis with ascites and encephalopathy. The cirrhosis of liver appeared stable the time of this encounter and Petitioner was commended for being abstinent for 8 months. (Exhibit A, pp. 101-105) May 20, 2015, and November 20, 2015, progress notes state that Petitioner appears to have preserved function and was stable. Continued abstinence was also noted. (Exhibit A, pp. 106-116)

Based on the objective medical evidence, considered listings included 5.05 Chronic Liver Disease and 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Petitioner cannot be found disabled, or not disabled at this step.

Step 2 requires a determination of whether there has been medical improvement. On or about December 2014, Petitioner was found disabled and was eligible for MA-P and SDA based on a determination that she had a less than sedentary RFC. (Exhibit A, pp. 8-9 and 13) As described above, the medical records from December 2014 through January 2016, document medical improvement regarding both physical and mental health impairments. Regarding liver disease, the medical records indicate preserved function and stability with the current medications. Petitioner also testified that she had jaundice in the beginning, but not anymore. (Petitioner Testimony) Regarding depression, the medical records also document stability with medications. Petitioner

testified that she used to have panic attacks, but has not had any since taking medications. (Petitioner Testimony)

In consideration of all medical evidence, it is found that, overall, there has been some medical improvement. The exceptions contained in 20 CFR 416.994(b)(3) and 20 CFR 416.994(b)(4) are not applicable. Accordingly, an assessment of the Petitioner's Residual Functional Capacity (RFC) to perform past relevant work is required. 20 CFR 416.994(b)(5)(vi).

An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity

assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function 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 (i.e. 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.*

Petitioner's testimony indicated she can walk 30 minutes, stand 5 minutes, sit 30 minutes, and lift a gallon of milk but nothing heavier. Petitioner described memory problems, fatigue, and trouble falling asleep. (Petitioner Testimony) Petitioner's testimony regarding her limitations is not fully supported by the medical evidence and found only partially credible. The recent medical records described above do not support the reported severity of Petitioner's limitations. Petitioner also testified that she is able to do her own cooking, dishes, and housework without assistance. After review of the entire record it is found, at this point, that Petitioner maintains the residual functional capacity to perform light work as defined by 20 CFR 416.967(b).

Petitioner has a work history including: radiology transporter and assembly worker. However, the radiology transporter work was not quite full time work. The assembly worker job, as described by Petitioner, appears to have been at least medium exertional level work involving standing and lifting truck windshields that were heavier than 25 pounds. (Exhibit A, pp. 66-67; Petitioner Testimony) In light of the entire record and Petitioner's RFC (see above), it is found that Petitioner is not able to perform her past relevant work. Accordingly, the Petitioner cannot be found disabled, or not disabled at this step. Therefore, the analysis continues to an assessment of whether the Petitioner is able to perform other work in consideration of vocational factors such as Petitioner's age, education, and past work experience.

An assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Petitioner was 50 years old and, thus, considered to be closely approaching advanced age for purposes of this review. Petitioner completed the 11th grade and has a history of unskilled work. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Petitioner to the Department to present proof that the Petitioner has the residual capacity to substantial gainful employment. 20 CFR

416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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).

As noted above, Petitioner maintains the residual functional capacity to perform light work as defined by 20 CFR 416.967(b). After review of the entire record, and in consideration of the Petitioner's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.10, it is found that Petitioner is able to adjust to other work. Accordingly, Petitioner is found not disabled for purposes of the MA-P and SDA programs.

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 not disabled for purposes of the MA and/or the SDA benefit programs.

DECISION AND ORDER

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

CL/mc



Colleen Lack
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

Fiona Wicks

[REDACTED]

Petitioner

[REDACTED]