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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]

Date Mailed: June 22, 2016
MAHS Docket No.: 16-005041
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 May 31, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. 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 1, pp. 3-18).
4. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action (Exhibit 1, pp. 1-2) informing Petitioner of the denial.

5. On [REDACTED], Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 1, p. 267).
6. As of the date of the administrative hearing, Petitioner was a 38-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 8th grade.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on restrictions related to various mental problems.

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 (Exhibit 1, pp. 1-2) verifying Petitioner's claim of disability was denied.

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.

Hospital emergency room documents (Exhibit 1, pp. 256-266) dated [REDACTED], [REDACTED] were presented. It was noted that Petitioner was brought to the hospital by police. Petitioner testified that she kept calling the police because she felt that somebody was after her. An impression of depression was indicated. Treatment details were not apparent.

Behavioral center documents (Exhibit 1, pp. 224-248) from an admission dated [REDACTED], were presented. It was noted that Petitioner presented with increased psychomotor activity, bewildered behavior, and rambling speech. Petitioner was observed to display disorganized thought process, labile affect, and delusional thinking. Petitioner's GAF at admission was 20. Petitioner received various treatments during admission, including medications and counseling. A discharge date of [REDACTED] was noted. An Axis I diagnosis of schizoaffective disorder (most likely bipolar mixed with psychotic features) was noted. Petitioner's GAF at discharge was 35. Discharge medications included Celexa, Risperdal, and Tergetol. A fair prognosis was noted.

Various mental health treatment notes (Exhibit 1, pp. 190-221) dated [REDACTED], were presented. It was noted Petitioner was referred after a recent hospitalization.

Symptoms of hallucinations and paranoia were noted as reported by Petitioner. Assessments of Petitioner included racing stream of mental activity, fair judgment, and calm emotional state. Petitioner reported she hoped to work. An Axis I diagnosis of simple type schizophrenia was stated. Petitioner's GAF was noted to be 46.

A Psychiatric Evaluation (Exhibit 1, pp. 173-176) dated [REDACTED], was presented. The evaluation was completed by a nurse practitioner. It was noted Petitioner reported audio and visual hallucinations over the last 6 months. Petitioner also reported mood swings. Mental health examination assessments included paranoid thought content, stilted speech, hallucinations, constricted affect, and sad mood.

Various mental health treatment notes (Exhibit 1, pp. 163-172, 177-189) from [REDACTED], were presented. Petitioner reported strengths of confidence and being able to "work well with others." Petitioner reported being good at cooking, cleaning, and doing hair. Petitioner reported struggles in obtaining a GED.

Mental health agency treatment notes (Exhibit 1, pp. 150-162) dated [REDACTED], were presented. A nurse practitioner noted Petitioner's medications were effective. A staff member stated Petitioner showed no signs of decompensation.

Mental health agency treatment notes (Exhibit 1, pp. 147-148) dated [REDACTED], were presented. A staff member noted Petitioner appeared to be stable, with no signs of decompensation.

Mental health agency treatment notes (Exhibit 1, pp. 126-138) dated [REDACTED], were presented. Petitioner's psychiatrist noted Petitioner had a depressed mood. Petitioner reported audio hallucinations. Affect, thought content, psychomotor activity, speech, and concentration were normal.

Mental health agency treatment notes (Exhibit 1, pp. 123-124) dated [REDACTED], were presented. Petitioner reported wanting to pursue her GED, but "needing a boost" first. Petitioner reported all else "was going good."

Mental health agency treatment notes (Exhibit 1, pp. 118-119) dated [REDACTED], were presented. Petitioner reported difficulty attending appointments due to transportation problems.

Mental health agency treatment notes (Exhibit 1, pp. 98-103) dated [REDACTED], were presented. It was noted Petitioner reported increased anxiety. Celexa and Risperdal were noted as ongoing medications. Mental health examination assessments included normal affect, normal attitude, normal mood, normal psychomotor activity, normal speech, normal thought process, and normal attention. Vistaril was prescribed.

Mental health agency treatment notes (Exhibit 1, pp. 104-105, 108-109) dated [REDACTED] were presented. Petitioner reported she is looking for housing and pursuing SSI. Petitioner reported no adverse reaction to psychotropic medications.

A Verification of Disability and/or Special Needs (Exhibit A, p. 1) dated [REDACTED], was presented. Petitioner's psychiatrist indicated Petitioner was "permanently disabled" for purposes of HUD housing.

Petitioner testimony conceded she had no physical problems. Petitioner testified she sees a psychiatrist, counselor, and case manager on a monthly basis for the treatment of various psychological impairments.

Petitioner testified she deals with anxiety. Petitioner testified she experiences panic attacks and nervousness. Petitioner testified she is particularly anxious when she is waiting. Petitioner testified she most recently felt anxious 2 days earlier after drinking a cola. Petitioner testified she "tore up" a dresser a month earlier, for unspecified reasons.

Petitioner testimony implied social situations make her anxious. Petitioner testified she sometimes goes shopping for herself, but not "too much."

Petitioner testified she feels depressed and hopeless. Petitioner testified she has suicidal thoughts. Petitioner testimony conceded she has never attempted suicide.

Presented evidence sufficiently established some degree of impairment related to anxiety and function for a period longer than 90 days. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

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 alleged disability, in part, based on schizoaffective disorder and related symptoms. The applicable disorder reads as follows:

12.03 Schizophrenic, paranoid and other psychotic disorders:

Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

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 or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or

3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect; OR
 4. Emotional withdrawal and/or isolation;
- 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 schizophrenic, paranoid, or other psychotic 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 has only been hospitalized once due to psychological symptoms. At the time of hospital discharge, Petitioner's GAF was 35.

The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a score of 31-40 is described as "some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood." Petitioner's GAF at discharge is consistent with marked restrictions to concentration and/or social function.

Petitioner's GAF shortly after hospitalization was noted to be 45. Despite some increase in GAF, it is not indicative of much increased function. 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)." Petitioner's GAF is consistent with marked restrictions.

It is notable that Petitioner appeared to not be on medication at the time of hospitalization. Since the hospitalization, Petitioner's condition appears to have improved as few symptoms were reported, fewer symptoms were verified, and no hospitalizations have occurred.

It is also notable that Petitioner's GAF has not been updated since January 2015. Presumably, Petitioner's GAF has increased as few symptoms are apparent.

One ongoing reported symptom is hallucinations. Generally, hallucinations are persuasive evidence of disability. Petitioner testified visual hallucinations included sometimes seeing a mouse and thinking that a neighbor was a family member. Shortly after hospital discharge, Petitioner reported being able to complete chores, ADLs, and money management (see Exhibit 1, p. 192). Petitioner also testified she is a single mother who is raising a 14 year old son. Petitioner testified she also raised a 23 year old son who has left her household. Petitioner testified her children have never been removed. Petitioner testified her child's father provides parenting for her child, when needed. Petitioner's reported hallucinations appear not to significantly impact daily function.

Overall, little evidence was suggestive of disability, as long as Petitioner is compliant with medications. It is found that Petitioner failed to establish meeting an SSA listing. Accordingly, the analysis moves to the fourth step.

The fourth and fifth step of the disability analysis requires an assessment of Petitioner's functional capacity.

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

Petitioner's mental illness would reasonably preclude her from performing any employment involving physical dangers. For example, working at heights, heavy machinery, and/or near open water would reasonably be precluded.

Petitioner's reported anxiety might not allow for particularly stressful employment nor employment involving significant social interaction. No other restrictions were justified.

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 her only full-time employment from the past 15 years was as a housekeeper for a nursing home. Petitioner testified her duties included cleaning rooms, disinfecting beds, cleaning bathrooms, and mopping floors. Petitioner did not think she was capable of performing previous employment, in part, because of her medication, which makes her drowsy. Presented evidence was not suggestive that Petitioner's medications or dosages prevent her from performing housekeeping employment. There is also little evidence that Petitioner's anxiety would prevent the performance of past employment.

It is found Petitioner is capable of performing past, relevant employment as a housekeeper. Accordingly, Petitioner is not disabled and it is found that MDHHS properly denied Petitioner's application for SDA benefits.

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]