



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: October 10, 2016
MAHS Docket No.: 16-010031
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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 August 25, 2016, from Lansing, Michigan. The Petitioner, [REDACTED] appeared and testified with her witness, [REDACTED]. The Department of Health and Human Services (Department) was represented by Hearing Facilitator, [REDACTED] and Eligibility Specialist, [REDACTED].

PROCEDURAL HISTORY

After the hearing, the Administrative Law Judge issued an Interim Order Extending the Record for 30 days to afford the Petitioner an opportunity to submit additional medical evidence not already in the record. However, 30 days passed and without any of the specified additional evidence being received at the Michigan Administrative Hearing System, though some additional psychiatric and medical records were received. The following exhibits were offered and admitted into evidence:

Department: A-- March 21, 2016, Assistance Application.
B--July 7, 2016, Notice of Case Action.
C--July 25, 2016, SOLQ.
D--June 29, 2016, Medical Review Team (MRT) denial and Medical Packet.

ISSUE

Whether the Department properly determined that the Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On March 21, 2016, the Petitioner applied for SDA.
2. On June 29, 2016, the MRT denied the Petitioner's request.
3. On July 11, 2016, the Petitioner submitted to the Department a request for hearing.
4. The Petitioner is ■ years old.
5. The Petitioner completed education through high school and some college.
6. The Petitioner has employment experience and last worked in 2010 as a receptionist. The Petitioner also has employment experience in the fast food/restaurant industry.
7. The Petitioner's limitations have lasted for 12 months or more.
8. The Petitioner suffers from degenerative disc disease, asthma, fatty liver disease, anemia, heart murmur, scoliosis, bipolar and personality disorder, depression, anxiety, PTSD, kidney stones, migraines and nerve damage in her right arm.
9. The Petitioner has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and squatting.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of 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.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

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. 20 CFR 416.945(a).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Petitioner does not have a severe medically determinable impairment or combination of impairments, the Petitioner is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Petitioner's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the trier must consider all of the Petitioner's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of his past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner has the residual functional capacity to do past relevant work, then 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 step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, the Petitioner has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, the Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine the Petitioner's residual functional capacity to do relevant work.

In the present case, the Petitioner has been diagnosed with degenerative disc disease, asthma, fatty liver disease, anemia, heart murmur, scoliosis, bipolar and personality disorder, depression, anxiety, PTSD, kidney stones, migraines and nerve damage in her right arm. The Petitioner has some limitations as a result of these conditions. However, there are no reports of such limitations from her physicians in the record, though the record was left open for the Petitioner to submit such evidence.

The objective medical evidence in the record does support the Petitioner's testimony that she suffers from kidney stones. The record is replete with recent visits to the emergency room because of the Petitioner's kidney stones, which she identifies as her most disabling condition. The objective medical evidence in the record contains a physical residual functional capacity assessment from June 27, 2016. The assessment indicates that the Petitioner can only occasionally lift and/or carry up to 20 pounds, and can frequently lift and/or carry 10 pounds. The Petitioner can sit about six hours in an eight-hour workday and can stand and/or walk about six hours in an 8-hour workday. The Petitioner is unlimited regarding pushing and pulling. The Petitioner testified that she can only stand for five minutes and can only sit for 15 minutes. As noted previously, there is no report of the Petitioner's limitations from her physicians. The Petitioner's testimony is simply not supported by the objective, medical evidence in the record.

The Petitioner testified that she also suffers from mental disabilities. Again, though the record was left open for a Mental Residual Functional Capacity Assessment from the Petitioner psychiatrist, none was received. Rather, the organization which employs her psychiatrist sent psychiatric records which indicate that the Petitioner is oriented to person, place and time. The Mental Residual Functional Capacity Assessment in the record from the Social Security Administration indicates that the Petitioner is not significantly limited in any category but two. Those categories would encompass her ability to maintain attention and concentration for extended periods and her ability to complete a normal workday and workweek without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. In those categories the assessment indicates that the Petitioner is only moderately limited.

The fourth step of the analysis to be considered is whether the Petitioner has the ability to perform work previously performed by the Petitioner within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Petitioner from doing past relevant work. In the present case, the Petitioner's past employment was as a receptionist. This required the Petitioner to be sitting for most of her shift. The Petitioner's prior employment was also in the restaurant industry and would require the Petitioner to be standing her entire shift. The Petitioner's impairments prevent the Petitioner from being able to perform the duties for such a restaurant position. However, this Administrative Law Judge finds, based on the medical and psychiatric evidence and objective, physical findings, that the Petitioner is capable of the physical and mental activities required to perform her previous receptionist position. 20 CFR 416.920(e).

Therefore, the Administrative Law Judge finds that the Petitioner failed to provide the necessary objective medical evidence to establish that she is mentally or physically incapable of doing basic work activities.

Therefore, the Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds the Petitioner not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

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

It is SO ORDERED.



SH/nr

Susanne E. Harris
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]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

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