



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 29, 2016
MAHS Docket No.: 16-010107
[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 held on September 7, 2016, from Lansing, Michigan. Petitioner and her sister, [REDACTED] personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist [REDACTED] [REDACTED] testified on behalf of the Department. The Department submitted 507 exhibits which were admitted.

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 May 11, 2016, Petitioner applied for SDA. [Dept. Exh. 54-67].
2. On July 14, 2016, the Medical Review Team (MRT) denied Petitioner's SDA application. [Dept Exh. 4-10].
3. On July 18, 2016, the Department sent Petitioner notice that her application was denied. [Dept. Exh. 502-503].

4. On July 21, 2016, Petitioner filed a hearing request to contest the Department's negative action. [Dept. Exh. 3].
5. Petitioner has a history of spondylolisthesis, radiculopathy, postlaminectomy syndrome/failed back syndrome (FBS), hip replacement, carpal tunnel syndrome, osteoarthritis, degenerative disc disease, bursitis, obsessive-compulsive disorder, depression, and anxiety.
6. On March 10, 2016, Petitioner was evaluated for physical therapy. Petitioner presented with acute hip pain with mobility deficits, acute hip pain with strength deficits and status post hip arthroscopic surgery. Petitioner had a slow gait and an antalgic gait/limp was observed. [Dept. Exh. 205-206].
7. On [REDACTED], Petitioner saw her orthopedic surgeon for a follow-up of her right hip videoarthroscopy with labral repair and Cam resection. Petitioner stated she had been doing well. The pain was 90% improved and her limp was almost gone. [Dept. Exh. 204].
8. On May 4, 2016, Petitioner underwent a Mental Status Examination on behalf of the Department. Petitioner alleged disability on the basis of degenerative disc disease, spinal fusion, an unstable spine, pain in right leg, possible labrum tear, right hip surgery pending, depression and anxiety. The psychologist observed Petitioner had a slight limp and her motor activities were slightly slowed when she walked. Petitioner had poor self-esteem and poor insight. The psychologist opined that he believed Petitioner was capable of understanding and remembering instructions, location and work-like procedures. He believed Petitioner would have mild difficulty with her ability to concentrate and persist in carrying out instructions and sustaining a normal work routines. He opined that Petitioner would be able to interact appropriately with co-workers and supervision, adhere to basic standards of neatness and cleanliness and adapt to changes in the work environment. Prognosis was fair and guarded. [Dept. Exh. 213-218].
9. On June 6, 2016, Petitioner underwent a consultation for bilateral thoracic, lumbar and leg pain as well as secondary symptoms of bilateral buttock pain since October 1999, due to lifting and bending. She also reported constant numbness in her right foot as well as intermittent weakness in her lower back and hips. She stated she needed help with ambulation. Petitioner was diagnosed with spondylolisthesis, lumbosacral region; bilateral radiculopathy, lumbar region; postlaminectomy syndrome, failed back syndrome; and thoracic spine pain. The physician noted Petitioner had had four lumbar surgeries in 1999, 2001, 2007 and 2011. Petitioner continued to have significant right greater than left lower extremity pain, numbness and tingling. [Dept. Exh. 197-198].
10. On August 2, 2016, Petitioner's primary care physician wrote a letter indicating in his opinion, Petitioner was permanently and totally disabled based on her chronic history of low back pain and slipped discs. The physician noted that Petitioner's first surgery was a lumbar laminectomy and fusion in 2000 for intractable pain.

Over the years, Petitioner had four back surgeries, several nerve blocks and epidural steroid injections. Petitioner was now experiencing pain from scar tissue and nerve entrapment. [Petitioner Exh. 1].

11. Petitioner is a [REDACTED] year-old woman born on [REDACTED]. She is [REDACTED] and weighs [REDACTED] pounds. She has a high school education. She last worked in November, 2015.
12. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
13. 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 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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

A person is disabled for SDA purposes if he or 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.
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2014).

"Disability" is:

. . . 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. [SDA = 90 day duration].

[As Judge] We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. 20 CFR 416.927(e).

In this case, [REDACTED] treating physician and surgeon submitted statements indicating [REDACTED] is unable to work due to her multiple impairments resulting in disability expected to last more than 90 days. Because [REDACTED] surgeons' and treating physician's opinions are well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2).

Petitioner's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

The credible testimony and medical records submitted at hearing verify Petitioner was legally disabled for ninety (90) days. As such, the Department's denial of SDA pursuant to Petitioner's May 11, 2016 SDA application cannot be upheld.

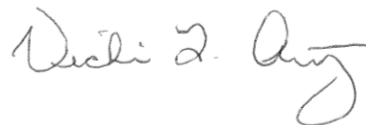
DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall process Petitioner's May 11, 2016 application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in October, 2017, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

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

[REDACTED]

[REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]