



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: February 14, 2017
MAHS Docket No.: 16-017278
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 December 15, 2016, from Lansing, Michigan. Petitioner appeared and testified on her own behalf. [REDACTED] Eligibility Specialist, appeared on behalf of the Department of Health and Human Services (Department).

PROCEDURAL HISTORY

The Department offered the following exhibit that was marked and admitted into evidence:

Department's Exhibit No. 1 (pages 1 through 35) is a copy of Hearing Summary, Request for Hearing, Notice of Case Action (DHS-1605), Medical-Social Eligibility Certification (DHS-49-A), Medical-Social Questionnaire (DHS-49-F), and Disability Determination Service records.

Petitioner did not offer any exhibits into evidence.

During the hearing, Petitioner waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. On December 20, 2016, the Administrative Law Judge issued an Interim Order which extended the record an additional 30 days for the submission of the following additional records: Petitioner's medical records from [REDACTED], records from Petitioner's Podiatrist, [REDACTED], and Petitioner's medical records from [REDACTED]. The deadline to file the additional records was January 30, 2017.

The Department failed to provide any additional evidence. Accordingly, the undersigned will issue a decision based on the available evidence contained in the record.

ISSUE

Did the Department properly deny Petitioner's application for State Disability Assistance (SDA) based on the finding that she was not disabled?

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 17, 2015, the Department received Petitioner's application for SDA benefits alleging disability.
2. On October 27, 2015, the Medical Review Team (MRT) denied Petitioner's application.
3. On October 27, 2016, the Department caseworker sent Petitioner notice that her application was denied.
4. On November 9, 2016, Petitioner filed a request for a hearing to contest the Department's action.
5. A telephone hearing was held on December 15, 2016. During the hearing, Petitioner indicated that she had additional records and/or additional medical appointments that were relevant. The Administrative Law Judge held the record open to allow for Petitioner's additional records to be submitted. Petitioner consented and agreed to waive the time periods.
6. During the hearing, Petitioner stated that she had the following disabling impairments: diabetes that affects her vision, a stroke that affects her brain, bleeding in both eyes, lost vision for 8 months, and vision limited to her right eye.
7. Petitioner alleged that she cannot work due to the following: inability to control her blood sugar causing pain, burning and numbness in feet as well as frequent hospitalizations and surgeries. She has pain in right leg due to surgeries and the third toe on her right foot was amputated. Petitioner has seizures as often as twice a month.
8. At the time of the hearing, Petitioner testified that she was 46 years-old with a birth date of [REDACTED]. Petitioner said that she was 5 feet 3

inches tall and weighed approximately 180 pounds. Petitioner stated that she is left-hand dominant.

9. Petitioner testified that she has a high school education with some college, but no college degree.
10. Petitioner is currently unemployed and her past relevant work was as general office assistant/custodian in a church in March 2015. Petitioner testified that working as a general office assistant/custodian required her to clean toilets, greet people, and stuff envelopes. In this capacity, Petitioner said that she spent more than 50% of the work day standing and was regularly required to lift 10-15 lbs.
11. Petitioner has an unskilled work history that is transferrable to other jobs.
12. Petitioner's medical records show that she has the following medical conditions and/or treatment based on medically acceptable clinical and laboratory diagnostic techniques:
 - a. Petitioner was diagnosed with MRSA and necrotizing fasciitis on her right leg in March 2015. [Dept. Exh. 1, p. 17].
 - b. Petitioner had juvenile diabetes (Type 1) for 14 years with diabetic neuropathy, which caused pain in her extremities. She also had retinopathy with laser and cataract surgery. [Dept. Exh. 1, p. 17].
 - c. Petitioner had a stroke, which affected her right side while left her temporarily with slurred speech. However, she recovered after therapy and was able to fully speak. Apparently, the only residual effect is that Petitioner can now only write backwards after the stroke. [Dept. Exh. 1, p. 17].
 - d. Petitioner has been diagnosed with depression and she sees a psychologist. [Dept. Exh. 1, p. 17].
 - e. Petitioner has a thyroid gland disorder. [Dept. Exh. 1, p. 17].
 - f. Petitioner was advised to obtain nutrition counseling and enroll in a diet program. [Dept. Exh. 1, p. 17].
 - g. Petitioner's condition has been stable and she does not have organ damage or skin lesions. [Dept. Exh. 1, p. 9].
 - h. None of the medical records show that Petitioner had permanent vision problems.

13. During the relevant time period, Petitioner had been taking the following medications:
 - a. Simvastatin.
 - b. Lisinopril.
 - c. Synthoid.
 - d. Novlog.
 - e. Insulin.
 - f. Hydrocodone.

14. The objective medical records did not contain a written opinion from a licensed health professional that Petitioner is permanently disabled.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA program. 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. [Emphasis added].

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. The individual's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only the individual's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the individual has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the

period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Medical findings must allow a determination of: (1) the nature and limiting effects of the impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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 the individual's symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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.

There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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.

See 20 CFR 416.921(b).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

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 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.

At step one, the Administrative Law Judge must determine whether the individual is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized

(20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he or she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he or she is not disabled regardless of how severe his or her physical or mental impairments are and regardless of his or her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At the time of the hearing, Petitioner provided credible testimony that she is currently unemployed and last worked in March 2015. Therefore, Petitioner is not engaged in SGA and is not disqualified from receiving disability at step one. The analysis proceeds to step two.

At step two, the Administrative Law Judge must determine whether the individual has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the person does not have a severe medically determinable impairment or combination of impairments, he or she is not disabled.

At this step, the Administrative Law Judge must also evaluate the individual's symptoms to see if there is an underlying medically determinable physical or mental impairment that could reasonably be expected to produce pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which they limit his or her ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

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, App. 1, 12.00(C). First, an individual's pertinent symptoms, signs and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental

impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively and on a sustained basis. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings, medication and other treatment, and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

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). An impairment qualifies as non-severe only if, regardless of an individual's age, education, or work experience, the impairment would not affect the individual's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence. As summarized in the above Findings of Fact, Petitioner has presented objective medical evidence establishing that she does have some limitations on the ability to perform basic work activities. Here, Petitioner has presented sufficient evidence to survive dismissal of her disability claim based on the absence of medical merit. See *Higgs, supra*. The objective medical records did not contain a written opinion from a licensed health professional psychologist or psychiatrist that Petitioner is permanently disabled from work. However, the medical evidence in this record shows that Petitioner may have an impairment, or combination thereof, that has more than a *de minimis* effect on her basic work activities. However, this does not mean that Petitioner is necessarily disabled at this point in the analysis.

In addition, the individual must show that she has an impairment, or a combination of impairments, that have lasted continuously for a period of 90 days. BEM, 261 (7-1-2015), p. 1. Based on the above Findings of Fact, Petitioner has shown the presence of some physical and mental limitations on her ability to perform basic work activities. According to the medical records, Petitioner has had symptoms and/or pain associated with diabetes and neuropathy since at least 2015. This evidence shows that Petitioner has a medically determinable mental impairment based on documented signs, symptoms, and laboratory findings. Thus, this Administrative Law Judge finds that Petitioner has some impairments that have lasted continuously for 90 days and; therefore, is not disqualified from receiving SDA benefits due to lack of duration. The analysis must proceed to step three.

As indicated above, after an individual has shown the presence of an underlying physical or mental impairment, she must also show that the impairment, or impairments,

possess the requisite intensity, persistence, and limiting effects such that it would limit her ability to do basic work activities. In order to assist with this determination, the analysis shall proceed to the next step.

At step three, the Administrative Law Judge must determine whether the individual's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the individual's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the individual is disabled. If it does not, the analysis proceeds to the next step.

In the instant matter, Petitioner has been diagnosed with diabetes, neuropathy, depression, and a thyroid gland disorder. Based upon the objective medical evidence, the Administrative Law Judge will consider the following listings: 2.02 Loss of Central Visual Acuity, 2.03 Contraction of the visual field in the better eye, 2.04 Loss of Visual Efficiency, or visual impairment, in the better eye, 9.00 Endocrine-Adult, and 12.04 Depressive, bipolar and related disorders. Based upon the above Findings of Fact, Petitioner's objective medical records shows that she does not meet or medically equal the requirements of any of the above listings. Therefore, the medical evidence presented in this matter is not sufficient to meet the intent and severity requirements of any listing, or its equivalent.

This Administrative Law Judge finds that Petitioner has not satisfied the burden of proof to show by competent, material and substantial evidence that she has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Petitioner has cited medical problems, there is insufficient objective medical evidence to substantiate Petitioner's assertion that her alleged impairments are severe enough to reach the criteria and definition of disability. Accordingly, this Administrative Law Judge concludes that Petitioner does not meet the definition of disabled based upon the requirements of the MA program.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

With regard to Petitioner's request for disability under the SDA program, it should be noted that the Department's BEMs contain policy statements and instructions for caseworkers regarding eligibility for SDA. In order to receive SDA, "a person must be disabled, caring for a disabled person or age 65 or older." BEM, 261, p. 1.

A person is disabled for SDA purposes if he or she: (1) receives other specified disability-related benefits or services¹; or (2) resides in a qualified Special Living Arrangement facility; or (3) is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or (4) is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS). BEM 261, pp. 1-2. [Emphasis added].

As indicated in the above analysis, Petitioner does not meet the definition of disabled under the MA program and the evidence of record does not show that Petitioner is unable to work for a period exceeding 90 (ninety) days. In addition, this record does not show that Petitioner has met any of the requirements under BEM 261. Accordingly, this Administrative Law Judge finds that Petitioner is not disabled for purposes of the SDA program.

The Department has established by the necessary competent, material, and substantial evidence on the record that it acted in compliance with Department policy when it determined that Petitioner was not eligible to receive SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it acted in compliance with Department policy when it denied Petitioner's application for SDA benefits.

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

IT IS SO ORDERED.

CAP/mc



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

¹Retirement, Survivors and Disability Insurance (RSDI) due to disability/blindness, Supplemental Security Income (SSI) due to disability/blindness, Medicaid as blind/disabled based on a disability examiner or MRT determination or hearing decision, or Michigan Rehabilitation 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]

Petitioner

[REDACTED]