



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: July 26, 2017
MAHS Docket No.: 17-006545
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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. After due notice, a telephone hearing was held on June 27, 2017, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED] AP Supervisor. Department Exhibit 1, pp. 1-175 was received and admitted. Petitioner Exhibit A, pp. 1-11 was received and 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. Petitioner applied for SDA on June 14, 2016.
2. The Medical Review Team denied the application on May 8, 2017.
3. Petitioner filed a request for hearing on May 12, 2017, regarding the SDA denial.
4. A telephone hearing was held on June 27, 2017.
5. Petitioner is 5' 3" tall and weighs 160 pounds.
6. Petitioner is 53 years of age.

7. Petitioner's impairments have been medically diagnosed as herpes encephalitis, right temporal encephalomalacia, seizure disorder, depression, PTSD, mild neurocognitive disorder and tinnitus.
8. Petitioner has the following symptoms: memory loss, tremors, and balance problems.
9. Petitioner completed 10th grade and a GED. Petitioner also trained making dentures and crowns
10. Petitioner is able to read, write, and perform basic math skills.
11. Petitioner is not working. Petitioner last worked making dentures and crowns in 2009.
12. Petitioner lives with her mother.
13. Petitioner testified that she cannot perform some household chores.
14. Petitioner takes the following prescribed medications:
 - a. Depakote
 - b. Lamictal
15. Petitioner testified to the following physical limitations:
 - i. Sitting: no difficulty
 - ii. Standing: 15-20 minutes
 - iii. Walking: 1 block
 - iv. Bend/stoop: some difficulty
 - v. Lifting: 10 lbs.
 - vi. Grip/grasp: no limitations
16. In a Psychiatric/Psychological Medical Report dated March 5, 2017, the consulting psychologist stated the following under Medical Source Statement: "Based upon today's examination the claimant's mood, health and cognitive issues seem to restrict her from working in a setting that calls for long full term employment. Her ability to understand, remember instructions and perform work like procedures may also be restricted. Employment does not seem to be a viable option considering her health issues at this time and any attempts at future employment may require some restrictions or accommodations at the work site." (Dept. Ex. 1, p.112)

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.

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-P 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.

Federal regulations require that the Department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is, or is not, disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, Petitioner is not working. Therefore, Petitioner is not disqualified at this step in the evaluation.

The second step to be determined in considering whether Petitioner is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe, which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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. 20 CFR 416.921(b).

In this case, Petitioner's medical evidence of record supports a finding that Petitioner has significant physical and mental limitations upon Petitioner's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that Petitioner has an impairment (or combination of impairments) that has more than a minimal effect on Petitioner's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In this case, this Administrative Law Judge finds that Petitioner may be considered presently disabled at the third step. Petitioner meets listing 12.04 or its equivalent. The statement of the consulting psychologist supports this position. This Administrative Law Judge will not continue through the remaining steps of the assessment. Petitioner's testimony and the medical documentation support the finding that Petitioner meets the requirements of the listing. Petitioner has other significant health problems that were not fully addressed in this decision because Petitioner is found to meet a listing for a different impairment.

Therefore, Petitioner is found to be disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is medically disabled as of June 2016.

Accordingly, the Department's decision is hereby **REVERSED** and the Department is ORDERED to:

1. Initiate a review of the application for SDA dated June 14, 2016, if not done previously, to determine Petitioner's non-medical eligibility.
2. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for July 2018.

AM/md



Aaron McClintic

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]

Petitioner

[REDACTED]