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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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Date Mailed: July 21, 2017
MAHS Docket No.: 17-007413
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 ██████████, from Detroit, Michigan. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by ██████████ Medical Contact Worker.

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 ██████████, Petitioner submitted an application seeking cash assistance on the basis of a disability. [Exhibit A, p. 1.]
2. On or about March 21, 2017, the Disability Determination Service (DDS)/Medical Review Team (MRT) found that Petitioner was not disabled for purposes of the SDA program. [Exhibit A, pp. 10-16.]
3. On ██████████, the Department sent Petitioner a Notice of Case Action denying her application for SDA benefits effective ██████████, based on DDS/MRT's finding of no disability. [Exhibit A, pp. 2-4.]
4. On ██████████, Petitioner filed a hearing request protesting the Department's finding that she was not disabled. [Exhibit A, pp. 2-4.]

5. Petitioner alleged disabling impairments due to cervical neuropathy, degenerative disc disease, memory issues, physical pain, including neck pain, seizures, depression, and anxiety.
6. On the date of the hearing, Petitioner was ■ years old with a date of birth of ■■■■■■■■■■; she was ■ in height and weighed ■ pounds.
7. Petitioner obtained her associates degree in criminal law
8. Petitioner has an employment history of work as a business specialist, dental instructor, dental office manager, dental office coordinator, dental assistant, and specialty assistance.
9. Petitioner had a pending appeal with the Social Security Administration (SSA). [Exhibit A, p. 106.]

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 90 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.

Preliminary matter

In this case, Petitioner attempted to submit post-hearing correspondence, which the undersigned Administrative Law Judge (ALJ) did not take into consideration because it was not admitted into the evidence record.

SDA disability

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity

(SGA) by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity; (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, she is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has

lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimis* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. SSR 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In the present case, Petitioner alleges disabling impairments due to cervical neuropathy, degenerative disc disease, memory issues, physical pain, including neck pain, seizures, depression, and anxiety. The medical evidence presented at the hearing was reviewed and is summarized below:

In mental health records from on or about [REDACTED], it showed the Petitioner received mental health treatment from Licensed Master Social Workers (LMSWs). The LMSWs diagnosed Petitioner with the following: major depressive disorder, recurrent severe psychotic features; cocaine dependence; economic problems other psychosocial and environment problems, and other medical diagnoses. [Exhibit A, pp. 111-144.] On [REDACTED], Petitioner had an Initial Psychiatric Evaluation, in which the doctor diagnosed Petitioner with major depressive disorder, recurrent moderate; cocaine dependence; and other findings. [Exhibit A, pp. 120-123.]

On [REDACTED], Petitioner had an Intelligence Testing and Employability Evaluation conducted by a licensed psychologist. The psychologist noted Petitioner has difficulty sleeping, she has daytime fatigue, she is severely depressed, she cries intermittently,

she has suicidal ideation, she stays to herself and experiences a lot of irritability, and she does have a church support group. [Exhibit A, p. 184.] Petitioner's Wechsler Adult Intelligence Scale-IV (WAIS-IV) resulted in a full scale intelligence quotient (IQ) of 68, which places her in the extremely low range of intelligence. [Exhibit A, p. 184.] The psychologist noted Petitioner shows poor remedial skills in reading, spelling, and math. [Exhibit A, p. 185.] The psychologist diagnosed Petitioner with major depressive disorder, recurrent, secondary to chronic pain; extremely low range of intellectual functioning; physical diagnoses (i.e., headaches); unable to work due to residuals of traumatic brain injury due to motor vehicle accident, occupational/financial/housing issues, alienated from others; and serious symptoms. [Exhibit A, p. 185.] The psychologist noted that is suggestive that Petitioner is suffering from the residuals of a traumatic brain injury, she did note that she has undergone neuropsychological testing, which was unavailable to the psychologist. [Exhibit A, p. 185.] The psychologist noted Petitioner has memory issues and based on her age, education, past work experience and current level of symptoms related not only to her psychological state, but also her chronic pain, Petitioner is not a viable rehabilitation candidate, nor is she capable of sustaining substantial, gainful work activity. [Exhibit A, p. 185.] Petitioner also scored a Global Assessment Functioning Scale (GAF) score of 47, which falls in the serious symptoms category (e.g. suicidal ideation) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job). [Exhibit A, p. 187.]

Finally, the psychologist conducted a Mental Residual Functional Capacity Assessment on [REDACTED], in which Petitioner was marked with the following limitations: (i) she had limitations ranging from moderate, marked, and extreme for understanding and memory; and (ii) she had limitations ranging from moderate and extreme for sustained concentration and persistence. [Exhibit A, pp. 188-189.]

Included in the medical evidence were progress notes and history and physical from [REDACTED], with diagnoses and impressions from her doctor. [Exhibit A, pp. 209-223, and Exhibit 1, pp. 1-4.] Included in the doctor's medical records was a CT scan of Petitioner's lumbar spine on [REDACTED], in which the doctor found moderate L5 DDD with prominent posterior right paracentric hard disk protrusion; a 2.8 cm calcified left uterine fundal mass, most likely due to fibroid; and (iii) mild bilateral degenerative sacroiliitis. [Exhibit A, p. 214, and see also p. 222 (CT scan of thoracic spine).]

On [REDACTED], Petitioner had a Psychiatric Evaluation by a nurse practitioner, in which she diagnosed Petitioner with major depressive disorder, recurrent, severe psychotic symptoms; substance abuse diagnoses; and generalized anxiety disorder. [Exhibit A, pp. 159-172.]

On [REDACTED], and [REDACTED], the doctors completed Disability Certificates. [Exhibit A, pp. 250-251.]

Included in the medical evidence, were physical therapy documents from on or about [REDACTED]. [Exhibit A, pp. 252-275.]

On [REDACTED], Petitioner had a Mental Status Examination, in which she was diagnosed with depression secondary to general medical condition, managed with

medication; neurocognitive disorder secondary to brain injury; and rule out mood disorder secondary to traumatic brain injury. [Exhibit A, pp. 155-157.] It was noted that Petitioner does present with problems in the areas of short-term working memory, calculations, and she would not likely be able to do work-related activities at a sustained pace due to her cognitive impairments which are further exacerbated by distractions from pain. [Exhibit A, p. 157.]

On [REDACTED], Petitioner had an Internal Medicine Report, in which the doctor diagnosed her with: (i) history of memory problems, she was involved in two motor vehicle accidents and did have c-spine surgery with chronic pain from that, she believes the memory problems are related to the accident, she had testing, but it is not clear if she ever had neuropsychological testing; (ii) history of chronic pain in her neck and spine, she uses a cane for balance and support, she may have difficulty with standing or walking greater than four hours in a day as well as lifting and bending greater than 20 to 25 pounds; and (iii) she has a history of seizure disorder, she should avoid operating foot and leg controls as well as motorized equipment. [Exhibit A, pp. 174-177.]

On [REDACTED], Petitioner had an Integrated BioPsychosocial Assessment conducted by a Licensed Master Social Worker (LMSW), in which she was diagnosed with major depressive disorder, recurrent, severe with psychotic symptoms; and generalized anxiety disorder. [Exhibit A, pp. 278-294.]

On [REDACTED], Petitioner had a CT lumbar spine scan, in which the doctor diagnosed her with (i) combination of disc degenerative disease and facet arthropathy resulting in spinal canal stenosis, moderate at L4-L5 and mild at L3-L4; (ii) right paracentral disc protrusion at L5-S1 impinging the intradural segments of the right S1 nerve roots; and (iii) asymmetric arthropathy resulting in bilateral neural foraminal stenosis, severe at L5-S1 and mild to moderate to L4-L5 as described. [Exhibit 1, p. 6.]

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

As stated above, Petitioner has alleged both physical and mental disabling impairments, which included depression. Listing 12.04, depressive, bipolar and related disorders, was reviewed to determine if the Petitioner met the specific requirements of the listing.

The listing provides:

12.04 Depressive, bipolar and related disorders (see 12.00B3), satisfied by A and B, or A and C:

A. Medical documentation of the requirements of paragraph 1 or 2:

1. Depressive disorder, characterized by five or more of the following:

- a. Depressed mood;
- b. Diminished interest in almost all activities;
- c. Appetite disturbance with change in weight;
- d. Sleep disturbance;
- e. Observable psychomotor agitation or retardation;
- f. Decreased energy;
- g. Feelings of guilt or worthlessness;
- h. Difficulty concentrating or thinking; or
- i. Thoughts of death or suicide.

2. Bipolar disorder, characterized by three or more of the following:

- a. Pressured speech;
- b. Flight of ideas;
- c. Inflated self-esteem;
- d. Decreased need for sleep;
- e. Distractibility;
- f. Involvement in activities that have a high probability of painful consequences that are not recognized; or
- g. Increase in goal-directed activity or psychomotor agitation.

AND

B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see 12.00F):

- 1. Understand, remember, or apply information (see 12.00E1).
- 2. Interact with others (see 12.00E2).
- 3. Concentrate, persist, or maintain pace (see 12.00E3).
- 4. Adapt or manage oneself (see 12.00E4).

OR

C. Your mental disorder in this listing category is “serious and persistent;” that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:

1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see 12.00G2b); and
2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see 12.00G2c).

Based upon Petitioner's Intelligence Testing and Employability Evaluation and Mental Residual Functional Capacity Assessment conducted by the licensed psychologist, the Initial Psychiatric Evaluation conducted by the doctor, the Mental Status Examination, and other mental health treatments she received, it is determined that the Petitioner has met the requirements of Listing 12.04 (A and B satisfied above) and thus, is found disabled with no further analysis required. [Exhibit A, pp. 120-123, 155-157, 159-172, 183-189, and 278-294.]

DECISION AND ORDER


The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program.

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 THE ORDER WAS ISSUED:

1. Reregister and process Petitioner's [REDACTED], SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified effective [REDACTED]; and
3. Review Petitioner's continued eligibility in [REDACTED].

EJF/jaf



Eric J. Feldman
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]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

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