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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 2, 2017
MAHS Docket No.: 17-005625
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 May 31, 2017, from [REDACTED] Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED] Eligibility Specialist. Some medical records were received on August 11, 2017, but the rest of the medical records were not received even with a second interim order extension and the record was closed on August 28, 2017.

ISSUE

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

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 January 10, 2017, the Petitioner applied for SDA.
2. On March 30, 2017, the Medical Review Team (MRT) denied the Petitioner's application for SDA is denied per BEM 261 because the nature and severity of the Petitioner's impairment's would not preclude work activity at the above stated level for 90 days and is capable of performing her past relevant work per 20 CFR 416.920(E).
3. On April 11, 2017, the Department Caseworker sent the Petitioner a notice that her application was denied.

4. On April 20, 2017, the Department received a hearing request from the Petitioner, contesting the Department's negative action.
5. The Petitioner is a [REDACTED] year-old woman whose date of birth is [REDACTED]. The Petitioner is 5' 4" tall and weighs 195 pounds. The Petitioner completed High School and 1 year of college majoring in nursing. The Petitioner can read and write and do basic math. The Petitioner was last employed as a cashier at the medium/heavy level in 2016, which is her pertinent work history.
6. The Petitioner's alleged impairments are failed knee replacement with 2 knee replacements in 2011 and 2012, arthritis in hands and knees, fibromyalgia, and irritable bowel syndrome with chronic diarrhea.
7. The Petitioner was seen for a follow up appointment on [REDACTED] from her treating rheumatologist. She had an essentially normal physical examination. She had a normal gait and station. She remained symptomatic, but a Medrol dose pack was found to be helpful. Her medications were adjusted as medically required. She had diffuse tenderness throughout the trunk and extremities consistent with fibromyalgia. Her bilateral knees were tender to palpation with no joint effusion or synovitis. Petitioner Exhibit 1, pgs. a-c.
8. On [REDACTED], the Petitioner was seen by her treating specialist for gastroenterology. Her chief complaint was diarrhea. She had an essentially normal physical examination. Her medication was changed to Vibrezzi because she tried other medications and failed on numerous other products. Her visit diagnosis was diarrhea, unspecified type and irritable bowel syndrome with diarrhea. Petitioner Exhibit 1, pgs. d-g.
9. On [REDACTED] the Petitioner was seen by an independent medical examiner for a psychiatric/psychology examination with [REDACTED]. She was diagnosed with major depressive disorder, single episode, mild. The Petitioner is able to manage her benefit funds. She presented depressed with a sad affect and cried in the evaluation. The Petitioner demonstrated adequate ability to understand both simple and complex instructions and to interact appropriately with others. At this time, her prognosis for improved psychological and adaptive functioning was guarded. There was no evidence of a severe thought disorder or risk factors. Department Exhibit 1, pgs. 552-557.
10. On [REDACTED], the Petitioner was seen by her treating physician for an office visit. Her medications were changed as medically required. She was in no acute distress. Her treating physician's clinical impression was bilateral hand pain and irritable bowel syndrome. She had an essentially normal physical examination. Her pain level was at a 3 in 0-5 that was sharp in her hands and legs. Department Exhibit 1, pgs. 1042-1046.

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 and two of the sequential evaluation. However, the Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for step 3. Therefore, vocational factors will be considered to determine the Petitioner's residual functional capacity to do relevant work and past relevant work.

In the present case, the Petitioner was seen for a follow up appointment on July [REDACTED] [REDACTED] from her treating rheumatologist. She had an essentially normal physical examination. She had a normal gait and station. She remained symptomatic, but a Medrol dose pack was found to be helpful. Her medications were adjusted as medically

required. She had diffuse tenderness throughout the trunk and extremities consistent with fibromyalgia. Her bilateral knees were tender to palpation with no joint effusion or synovitis. Petitioner Exhibit 1, pgs. a-c.

On [REDACTED], the Petitioner was seen by her treating specialist for gastroenterology. Her chief complaint was diarrhea. She had an essentially normal physical examination. Her medication was changed to Vibrezzi because she tried other medications and failed on numerous other products. Her visit diagnosis was diarrhea, unspecified type and irritable bowel syndrome with diarrhea. Petitioner Exhibit 1, pgs. d-g.

On [REDACTED], the Petitioner was seen by an independent medical examiner for a psychiatric/psychology examination with [REDACTED]. She was diagnosed with major depressive disorder, single episode, mild. The Petitioner is able to manage her benefit funds. She presented depressed with a sad affect and cried in the evaluation. The Petitioner demonstrated adequate ability to understand both simple and complex instructions and to interact appropriately with others. At this time, her prognosis for improved psychological and adaptive functioning was guarded. There was no evidence of a severe thought disorder or risk factors. Department Exhibit 1, pgs. 552-557.

On January 5, 2017, the Petitioner was seen by her treating physician for an office visit. Her medications were changed as medically required. She was in no acute distress. Her treating physician's clinical impression was bilateral hand pain and irritable bowel syndrome. She had an essentially normal physical examination. Her pain level was at a 3 in 0-5 that was sharp in her hands and legs. Department Exhibit 1, pgs. 1042-1046.

This Administrative Law Judge finds that the Petitioner is physically limited with her hands and knees. She does have arthritis in her hands and knees and fibromyalgia. However, she should be able to perform light work. She is taking medications for her mental impairments, but not in therapy. There was no evidence of a severe thought disorder or risk factors.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the Petitioner testified that she does perform some of her daily living activities. The Petitioner does feel that her condition has worsened because of her arthritis and pain in hands. The Petitioner stated that she does have mental impairments where she is taking medication, but not in therapy. The Petitioner does not or has ever smoked cigarettes. She stopped drinking, where before she drunk socially. She does not or has ever used illegal and illicit drugs. The Petitioner did not feel there was any work she could do.

At Step 4, this Administrative Law Judge finds that the Petitioner has not established that she cannot perform any of her prior work. She was previously employed as a cashier at the medium/heavy level in 2016, which is her pertinent work history. The Petitioner is taking medication for her mental impairments, but not in therapy. There

was no evidence of a severe thought disorder or risk factors. She is physically limited because of her hands and knees. Therefore, the Petitioner is disqualified from receiving disability at Step 4. The Petitioner is capable of performing her past work at the light level. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the Petitioner has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

The objective medical evidence on the record is insufficient that the Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. The Petitioner's testimony as to her limitation indicates her limitations are non-exertional and exertional.

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).

In the instant case, the Petitioner testified that she has depression. The Petitioner is taking medication for her mental impairments, but not in therapy. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. Based on the independent psychiatric evaluation, she should be able to perform work.

After giving full consideration to the Petitioner's mental and physical impairments, the Administrative Law Judge finds that the Petitioner could perform her past, relevant work and that the Petitioner does not meet the definition of disabled under the SDA program.

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 not disabled for purposes of the SDA benefit program. The Petitioner could perform her past, relevant work and that the Petitioner does not meet the definition of disabled under the SDA program.

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



CF/nr

Carmen G. Fahie
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]