



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 15, 2017
MAHS Docket No.: 17-010924
Agency No.: [REDACTED]
Petitioner: [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. After due notice, a telephone hearing was held on October 16, 2017, from Lansing, Michigan. Petitioner personally appeared and testified through Interpreter [REDACTED], of [REDACTED]. Petitioner submitted eight exhibits which were admitted into evidence.

The Department of Health and Human Services (Department), Respondent, was represented by Assistance Payment Supervisor, [REDACTED], and Assistance Payment Worker, [REDACTED]. [REDACTED] and [REDACTED] testified on behalf of the Department. The Department submitted 207 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

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 competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], Petitioner submitted an application for SDA benefits. [Hearing Summary; Dept. Exh. 11-24].

2. Petitioner claimed she was unable to work due to her chronic back and knee pain, atrial fibrillation, kidney infections, arthritis, gastroesophageal reflux disease, asthma, hypertension, depression, and anxiety. [Dept. Exh. 27].
3. A review of Petitioner's medical records showed she was diagnosed with bilateral lower extremity venous insufficiency on the right greater and lesser, and on the left the greater, anxiety, major depressive disorder, mood disorder, panic disorder without agoraphobia, hyperlipidemia, chronic back pain, gastric reflux disease, and osteoarthritis.
4. Petitioner's SDA application passed through the hands of several workers during that time and it was not sent to the Medical Review Team (MRT) timely.
5. Petitioner's SDA application and medical treatment records were submitted to MRT on [REDACTED]. [Testimony of [REDACTED]].
6. On [REDACTED], MRT denied Petitioner's SDA application. The MRT denial was not reviewed or signed by a medical consultant as required. [Dept. Exh. 4-10].
7. On [REDACTED], Petitioner followed up regarding a venous Doppler on her bilateral lower extremities. She had severe venous insufficiency of the bilateral greater saphenous veins and right lesser saphenous. This was Petitioner's second greater saphenous venous ablation; therefore, she was also checked for bilateral legs for deep vein thrombosis and the success of the venous ablation. Her venous Doppler showed that bilateral greater saphenous vein ablations were successful and the veins were closed and were negative for deep vein thrombosis. [Dept. Exh. 73].
8. On [REDACTED], Petitioner underwent a Medical Examination by her treating physician. Petitioner was diagnosed with general anxiety, chronic back pain, asthma, and hyperlipidemia. The physician opined Petitioner had physical limitations resulting in never lifting 25 pounds or more and that she was unable to stand or sit more than two hours a day. [Dept. Exh. 201-203].
9. Petitioner reported in her application that she had trouble sleeping, trouble putting on her shoes, combing her hair, and bending due to her back and knee pain. She also needed assistance in fixing meals, and grocery shopping. She also reported problems concentrating. [Dept. Exh. 60-64].
10. At the time of application, Petitioner was [REDACTED] years old, and was a high school graduate. She is unable to communicate in English.
11. Petitioner credibly testified during the hearing in the above captioned matter that she had not worked in over 15 or 20 years.

12. Petitioner was appealing her denial of social security benefits at the time of application. [Dept. Exh. 33, 41-42].

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

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). 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 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has

received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

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 an individual is found disabled, or not disabled, at any step, 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 Petitioner's case, the ongoing depression, back and knee pain, and other non-exertional symptoms she describes are consistent with the objective medical evidence presented. Consequently, great weight and credibility must be given to her testimony in this regard.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Petitioner has not been employed in the past 15-20 years; consequently, the analysis must move to Step 2.

In this case, Petitioner has presented the required medical data and evidence necessary to support a finding that Petitioner has a significant physical impairment on her ability to perform basic work activities. 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 the third step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Petitioner's medical record will not support a finding that Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment(s) prevents Petitioner from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective medical findings, that Petitioner does not have any past relevant work.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon Petitioner's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 16.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and

- (3) the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Petitioner reaches Step 5 in the sequential review process, Petitioner has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Petitioner has the residual functional capacity for substantial gainful activity.

After careful review of Petitioner's medical record and the Administrative Law Judge's personal interaction with Petitioner at the hearing, this Administrative Law Judge finds that Petitioner's exertional and non-exertional impairments render Petitioner unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). Based on Petitioner's vocational profile (advanced age, Claimant is [REDACTED], has a high school education and an unskilled work history), this Administrative Law Judge finds Claimant's SDA benefits are approved using Vocational Rule 201.01 as a guide. Consequently, the Department's denial of her [REDACTED], SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department erred in determining Petitioner is not currently disabled for SDA eligibility purposes.

Accordingly, the department's decision is REVERSED, and it is Ordered that:

1. The Department shall process Petitioner's [REDACTED], SDA 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 [REDACTED], unless the 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.

VLA/bb



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

DHHS

[REDACTED]

Petitioner

[REDACTED]