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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: January 4, 2018
MAHS Docket No.: 17-013366
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 December 5, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing with her father, Robert Holtz and represented herself. The Department of Health and Human Services (Department) was represented by Karen Esterline and Ami Beebe, Eligibility Specialists.

ISSUE

Did the Department properly determine 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 [REDACTED], 2017 Petitioner submitted an application for cash assistance on the basis of a disability. (Exhibit A, pp. 1-29)
2. On December 6, 2017 the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. The DDS determined that Petitioner was capable of performing other work. (Exhibit A, pp. 288-294)
3. On October 10, 2017 the Department sent Petitioner a Notice of Case Action denying her SDA application based on DDS' finding that she was not disabled. (Exhibit A, pp. 310-313)
4. On October 17, 2017 Petitioner submitted a timely written request for hearing disputing the Department's denial of her SDA application. (Exhibit A, p. 314)

5. Petitioner alleged mental disabling impairment due to bipolar disorder, hyperactive disorder, attention deficit disorder, depression, anxiety disorder, psychosocial problems, environmental problems and post-traumatic stress disorder (PTSD).
6. As of the hearing date, Petitioner was [REDACTED] years old with a [REDACTED] 1999 date of birth; she is 5'4" in height and weighs about 202 pounds. Petitioner is enrolled in the 10th grade in an online high school and is expected to graduate in 2019.
7. At the time of application, Petitioner was not employed and given her age, did not have an employment history.
8. Petitioner has a pending disability claim with the Social Security Administration.

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.

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 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 (SGA); (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 at 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. The medical evidence presented at the hearing was thoroughly reviewed and is briefly summarized below.

A Psychiatric Evaluation was completed on [REDACTED], 2017 by [REDACTED] of [REDACTED]. During the evaluation, Petitioner reported: that she has difficulty with sadness, feels tired all the time, and has nightmares at night both about past trauma and about scary things; that she reports feeling worthless and guilty, and has an extensive history of self-harm. Petitioner reported a history of trauma, intrusive thoughts, recurrent dreams, flashbacks, triggers, reactivation, avoidance, difficulty concentrating and exaggerated startle which were witnessed by her father. She reported having a fear of big crowds and that she gets panic attacks with heart palpitations, shortness of breath, shaking, nausea, light headedness and fear of losing control. Difficulty with paying close attention, trouble following through, trouble organizing and completing tasks was also reported. Petitioner was assessed as presenting with anxiety and depression, in the context of extensive trauma and appeared predisposed to mood disorder, anxiety, learning difficulties. It was noted that Petitioner is just now learning how to live outside of an institution and continues to have trauma triggers. Diagnoses of post-traumatic stress disorder, social anxiety disorder, and unspecified depressive disorder were noted. (Exhibit 1).

A consultative Psychological Report completed by [REDACTED] on September 5, 2017 shows that Petitioner presented with classic symptoms of cluster B personality disorder including: excessive emotionality or self-dramatization; attention seeking, affective instability; marked reactivity of mood; inappropriate anger or difficulty controlling anger and impulsivity; recurrent suicidal behavior, gestures, threats or self-mutilation. A pattern of unstable and intense interpersonal relationships was reported which was consistent with Petitioner's presentation at the evaluation. It was noted that although she has issues with sustained focus and concentration, Petitioner is mentally capable of unskilled work and that her abilities are mildly impacted. The diagnostic impressions were indicated to be borderline personality disorder, anxiety disorder with mixed anxious and depressive features, reported history of psychological trauma and problems related to psychosocial circumstances. (Exhibit A, pp. 122-127)

On [REDACTED], 2017 [REDACTED], of [REDACTED] completed a Psychiatric Diagnostic Evaluation of Petitioner and noted that Petitioner was recently released from a residential facility ([REDACTED]) after five years of being placed there by her foster care worker as a result of being abused by her adopted parents. Petitioner presented with symptoms of depression, anxiety, PTSD and mood swings. [REDACTED] noted that Petitioner has a long standing history of acting out behaviors and has been psychiatrically hospitalized seven to eight times for inpatient treatment from 2007 to 2016. Petitioner had eight prior suicide attempts with the last attempt in 2016 and, as of the evaluation date, was taking Abilify, Zyprexa, Depakote, and Lexapro. During the evaluation, Petitioner's affect was sad and her functioning was at low average intellectual capacity, but appropriate for her level of development, age and education. Petitioner endorsed feeling depressed, having difficulty falling and staying asleep. [REDACTED]

██████ indicated that Petitioner's judgment and insight was poor and her impulse control limited. A diagnosis of bipolar disorder single manic episode unspecified and borderline personality disorder were also reflected. (Exhibit A, pp. 154-161).

████████████████████ notes from August 10, 2017 and August 17, 2017 indicate that Petitioner reported: a history of physical and emotional abuse during childhood; that she experienced nightmares about the murder of her uncle and her abuse experiences; that she was raped and drugged at age 13; and that she has history of suicidal ideations and self-harm. (Exhibit A, pp. 144-153)

Petitioner's records from ████████ indicate that she was placed in ████████ in the ████████ program due to suicidal behaviors at her previous foster home. Petitioner was required to participate in a structured daily program consisting of among other things: individual and group therapy sessions; house jobs; extracurricular activities; life skills program; and structured experiential initiatives. It was noted that Petitioner continued to display low frustration tolerance due to her cognitive abilities and history of trauma. Petitioner did not complete the Structured Sensory Intervention for Traumatized Children, Adolescents and Parents because alterations to her medications disrupted the treatment and her mental and emotional state was too fragile to continue this work. It was recommended that after discharge, Petitioner participate in trauma focused therapy to allow her the opportunity to work through her feelings of grief and loss connected to her history of neglect, abuse and loss. During her stay, Petitioner participated in life skills programming and it was noted that she struggled to complete complex tasks that required more than one or two steps, including showering, laundry, and cooking. She was able to complete tasks if someone directed or walked her through it. During the reporting period, Petitioner had to be physically restrained to prevent her from running away or assaulting peers, she verbally threatened others, acted out and had issues with anxiety and depression resulting from difficult family relationships, and a history of abuse and neglect which contributed to prior self-harm, suicidal ideations and acting out. The post-placement recommendation was for Petitioner to continue to have her psychotropic medications monitored, and participate in therapy to address her depression, anger and trauma. Petitioner needed structured, consistent supervision and care and to continue her high school education, as she is behind her peers academically. (Exhibit A, pp. 48-60)

Records from ██████████ show that Petitioner was admitted for inpatient treatment from January 18, 2016 to January 29, 2016 because of problems with depression, suicidal ideations and anxiety. It was noted that this was Petitioner's sixth hospitalization for depression and suicidality and that she had previously been diagnosed with bipolar depression a few years prior. Petitioner was treated with psychosocial and medication therapy (Abilify for problems with mood; Lexapro for depression; Depakote for mood swings and irritability; and Zyprexa Zydis for mood disorder symptoms) and an Axis 1 diagnosis of bipolar 1 disorder, most recent episode mixed, severe without psychotic features and generalized anxiety disorder were noted. Petitioner was assessed to have a global assessment of functioning (GAF) score of 10 at admission and 40 at discharge. Petitioner was referred to ██████████

that was to arrange psychiatric medication management and psychotherapeutic treatment. (Exhibit A, pp. 94-118)

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.

Based on the medical evidence presented in this case, listings 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders), 12.08 (personality and impulse-control disorders), and 12.15 (trauma-and stressor-related disorders) were considered. Petitioner's medical record reflects: depressive disorder characterized by depressed mood, sleep disturbances, difficulty concentrating and limitations with her ability to understand, remember or apply information, interact with others and adapt or manage oneself. Petitioner's record also indicates that she has panic attacks and fear or anxiety being around crowds of people. The records clearly show that Petitioner has instability of interpersonal relationships, excessive emotionality and attention seeking behavior and a history of recurrent, impulsive, aggressive behavioral outbursts. In addition, Petitioner has been admitted for inpatient psychiatric treatment at least seven times and has had eight suicide attempts during her lifetime. The evidence showed that Petitioner has been exposed to various forms of trauma including physical and emotional abuse during childhood and experiences nightmares about the murder of her uncle and her abuse history.

Upon thorough review, while Petitioner's medical evidence does not show that each of her mental impairments meet an individual listing, when combined, the impairments are equal to the required level in severity to the criteria in Appendix 1 of the Guidelines to be considered as disabled. Accordingly, Petitioner **is disabled** at Step Three and no further analysis is required

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.

DECISION AND ORDER

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 July 1, 2017 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; and
3. Review Petitioner's continued eligibility in July 2018.



ZB/tlf

Zainab A. Baydoun
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

Via Email:

MDHHS-Clare-Hearings
BSC2 Hearing Decisions
B. Cabanaw
MAHS

Petitioner – Via First-Class Mail:

