



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: February 8, 2018
MAHS Docket No.: 17-015835
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; and 45 CFR 205.10. After due notice, telephone hearing was held on January 11, 2018, from Lansing, Michigan. Petitioner represented herself. [REDACTED] [REDACTED] Assistance Payments Supervisor, and [REDACTED] [REDACTED] Assistance Payment Supervisor, represented the Department of Health and Human Services (Department). The hearing record closed at the conclusion of the hearing.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that Petitioner did not meet the disability standard for State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] [REDACTED] [REDACTED] Petitioner applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA) benefits. Exhibit A, p 363.
2. On February 11, 2014, the Medical Review Team (MRT) found Petitioner to be disabled based on a non-exertional impairment, and eligible for State Disability Assistance (SDA) benefits. Exhibit A, 363-365.
3. On April 17, 2015, the Medical Review Team (MRT) reviewed Petitioner's case and found her to be disabled and eligible for State Disability Assistance (SDA) benefits. Exhibit A, pp 356-357.

4. On June 8, 2016, the Medical Review Team (MRT) reviewed Petitioner's case and found her to be disabled and eligible for State Disability Assistance (SDA) benefits. Exhibit A, pp 359-355.
5. On May 16, 2017, the Department received Petitioner's Redetermination (DHS-1010). Exhibit A, pp 1-8.
6. On June 12, 2017, the Department received Petitioner's Medical Social Questionnaire Update (DHS-49-FR). Exhibit A, pp 9-12.
7. On November 22, 2017, the Medical Review Team (MRT) determined that Petitioner's impairments do not prevent her from performing any work-related tasks and that that she is capable of performing other work. Exhibit A, pp 759-765.
8. On November 30, 2017, the Department notified Petitioner that her State Disability Assistance (SDA) benefits would close effective January 1, 2018. Exhibit A, pp 766-770.
9. On [REDACTED] [REDACTED] the Department received Petitioner's hearing request, protesting the denial of State Disability Assistance (SDA) benefits.
10. Petitioner applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
11. The Social Security Administration (SSA) denied Petitioner's federal Supplemental Security Income (SSI) application and Petitioner testified that a SSI appeal is pending.
12. On December 12, 2016, the Social Security Administration (SSA) Appeals Council remanded Petitioner's application to the federal Administrative Law Judge. Exhibit A, pp 17-18.
13. Petitioner was a [REDACTED] woman at the time of her eligibility redetermination whose birth date is [REDACTED]
14. Petitioner is [REDACTED]" tall and weighs [REDACTED] pounds.
15. Petitioner attended school through the 10th grade.
16. Petitioner is able to read and write and does have some basic math skills.
17. Petitioner was not engaged in substantial gainful activity at any time relevant to this matter.
18. Petitioner has limited past relevant work experience as a cook and was a homemaker before that.

19. Petitioner's disability claim is based on impairments due to a fractured back, posttraumatic stress disorder (PTSD), schizophrenia, and paranoia.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

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 State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease, and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CRR 416.994

For purpose of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time. 20 CFR 416.994

The Claimant's impairments are evaluated to determine whether they fit the description of a Social Security Administration disability listing in 20 CFR Part 404, Subpart P, Appendix 1. A Claimant that meets one of these listing that meets the duration requirements is considered to be disabled.

Claimant's impairment failed to meet the listing for a back injury under section 1.04 Disorders of the spine because the objective medical evidence does not demonstrate that Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively. Petitioner suffers from chronic pain and sometimes uses a cane, but the objective medical evidence supports a finding that she is capable of walking without assistance. Petitioner is not capable of climbing ladders or scaffolds but is not prevented from performing any work due to impairments resulting from her back injuries.

Claimant's impairment failed to meet the listing for posttraumatic stress disorder (PTSD) under section 12.15 Trauma and stressor related disorders because the objective medical evidence does not demonstrate that her disorder is serious and persistent. Petitioner is not receiving treatment for PTSD in a highly structured setting that diminishes the symptoms and signs of her mental disorder. Petitioner receives outpatient therapy for PTSD and with treatment she has the capacity to adapt to changes in her environment and demands that are not already part of her daily life. Petitioner has achieved more than marginal adjustment and a consultative physician found her functional capacity to be moderately impaired in some areas and not markedly impaired in any area.

Claimant's impairment failed to meet the listing for schizophrenia under section 12.03 Schizophrenia spectrum and other psychotic disorders because the objective medical evidence does not demonstrate that her disorder is serious and persistent. Petitioner is not receiving treatment for schizophrenia in a highly structured setting that diminishes the symptoms and signs of her mental disorder. Petitioner receives outpatient therapy for schizophrenia and with treatment she has the capacity to adapt to changes in her environment and demands that are not already part of her daily life. Petitioner has achieved more than marginal adjustment and a consultative physician found her function capacity to be moderately impaired in some areas and not markedly impaired in any area.

Claimant's impairment failed to meet the listing for paranoia under section 12.08 Personality and impulse-control disorders because the objective medical evidence does not demonstrate that her disorder has resulted in extreme or marked limitations of any areas of mental functioning. A consultative physician found Petitioner's mental functioning to be moderately impaired in some areas but not markedly or extremely impaired in any area.

The medical evidence of the Claimant's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

Next, the Claimant's impairments are evaluated to determine whether there has been medical improvement as shown by a decrease in medical severity. Medical

improvement is defined as any decrease in the medical severity of the impairment(s), which was present at the time of the most recent favorable medical decision that the Claimant was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Claimant's impairment(s).

On February 11, 2014, Petitioner received a determination that her impairments prevented her from working based on non-exertional impairments. Petitioner has not been found to be disabled by the Social Security Administration, although she had not received a final determination on her most recent application.

Petitioner is capable of lifting 20 pounds occasionally and 10 pounds frequently. Petitioner is capable of standing about 6 hours in an 8-hour workday. Petitioner is capable of unassisted ambulation. Petitioner suffers from chronic pain that could reasonably be expected to result from a severe automobile accident but does not result in exertional impairments that prevent her from performing any work-related tasks for more than 90 days.

Petitioner mental capabilities are moderately impaired, but the objective medical evidence does not support a finding that she suffers marked limitations of her mental capacity to function independently.

This Administrative Law Judge finds that there has been medical improvement as shown by a decrease in medical severity since the Medical Review Team determined that her impairments prevented her from working on February 11, 2014.

Next, the Claimant's medical improvement is evaluated to determine whether it is related to her ability to do work.

On February 11, 2014, Petitioner received a determination that she was unable to perform work based on non-exertional impairments. Since that determination, a consultative physician determined that her mental capacity is only moderately impaired in some areas and that she is not markedly impaired in any area. Petitioner failed to offer any evidence to rebut the findings of the consultative physician.

This Administrative Law Judge finds that the Claimant's improvement is related to her ability to perform work.

Next, the Claimant's impairments are evaluated to determine whether current impairments result in a severely restrictive physical or mental impairment despite the improvement she has experienced.

The Claimant is a [REDACTED] woman that is [REDACTED] tall and weighs [REDACTED] pounds.

Petitioner suffered injuries in an automobile accident in 2005. On November 2, 2010, a magnetic resonance imaging (MRI) scan revealed a mild compression fracture of the L1 vertebra superior endplate with anterior wedging that was considered by Petitioner's treating physician to be an old fracture with no bone edema. On October 29, 2010, a

MRI scan revealed a small right-sided posterior T5-T6 thoracic disc herniation without significant impingement on the spinal canal. On February 26, 2014, Petitioner received a lumbar epidural steroid injection with sedation as treatment for lower mid-back pain and bilateral neck and shoulder pain.

Petitioner has a limited range of motion of the dorsolumbar spine, but her range of motion is otherwise intact and full. Petitioner's strength and grip were rated 5/5. Motor and sensory function remain intact. Petitioner uses a cane but is capable of unassisted ambulation.

On September 1, 2017, Petitioner reported chronic back pain to a treating physician. The treating physician found Petitioner to exhibit tenderness but that she had normal muscle tone. Petitioner's treating physician diagnosed her with chronic pain from a back fracture, chronic depression, chronic pain syndrome, posttraumatic stress disorder, and schizophrenia.

On November 14, 2017, a consultative physician determined that Petitioner is capable of carrying a gallon of milk with either hand. Petitioner is capable of bathing and dressing herself. Petitioner has a caregiver for assistance with cooking, cleaning, grocery shopping, and driving tasks. Petitioner is capable of performing minor housework such as making her bed, vacuuming floors, wiping counters, and cleaning her bathroom. Petitioner enjoys reading twice a week. Petitioner sometimes uses a cane but is capable of walking without assistance. On November 28, 2017, a consultative physician determined that Petitioner is capable of lifting 10 pounds frequently and 20 pounds occasionally. Petitioner was found to be capable of standing about 6 hours in an 8-hour workday and her ability to push and pull was not impaired. Petitioner's is not capable of climbing ladders or scaffolds.

On December 19, 2014, Petitioner was diagnosed with posttraumatic stress disorder (PTSD), anxiety disorder, cannabis dependence, cocaine abuse, and psychotic disorder. Petitioner was found to be fully oriented. Petitioner reported auditory, visual, and tactile hallucinations. Petitioner was found to have serious symptoms and serious impairments in social and occupational functioning.

Petitioner has been diagnosed with cocaine dependence and posttraumatic stress disorder. Petitioner experiences hallucinations. In 2017, Petitioner was found by a consultative psychologist to be oriented in place and person but did not know the date during the examination. On November 22, 2017, a consultative psychologist found Petitioner to have some moderate impairments of her mental residual functional capacity but was not markedly impaired in any area.

Medical records indicate that Petitioner smokes cigarettes, drinks alcohol occasionally, and uses marijuana as a treatment for her chronic pain.

This Administrative Law Judge finds a physical impairment that has more than a de minimus effect on the Petitioner's ability to perform work activities. The Petitioner is not disqualified from receiving SDA benefits at this step and the analysis will continue.

Next, the Claimant's impairments are evaluated to determine whether she can still do work she has done in the past.

Petitioner testified that she had a limited work history after working as a cook for only approximately 1 week in the previous 15 years. Medical records indicate that in 2017, Petitioner told a consultative psychologist that she had worked as a cook for 2 or 3 years, and a waitress for 2 years.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work in which she has engaged in, in the past. Based on the record evidence, Petitioner is not disqualified from receiving SDA benefits at this step.

Next, the Department has the burden to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

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.

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

The objective medical evidence indicates that Petitioner is capable of lifting 20 pounds occasionally and 10 pounds frequently. Petitioner is capable of standing about 6 hours in an 8-hour workday and her ability to push and pull is not impaired. Petitioner suffered moderate impairment of her mental capacities in some areas but her the objective medical evidence does not support a finding of any marked limitations of her functional capacity.

Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Petitioner's ability to perform work. Petitioner was able to answer all the questions at the hearing and was responsive to the questions. The Petitioner was oriented to time, person and place during the hearing.

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and

that she is physically able to do light or sedentary work if demanded of her. The Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Claimant is [REDACTED], a younger person, under age 50, with a limited education, and a limited history of unskilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform light work. State Disability Assistance (SDA) is denied using Vocational Rule 202.17 as a guideline.

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM 261. Because the Claimant does not meet the definition of disabled and because the evidence of record does not establish that the Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 Claimant not disabled for purposes of the State Disability Assistance.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.

KS/nr



Kevin Scully
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]