



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: February 14, 2018
MAHS Docket No.: 17-015979
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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, an administrative hearing was held on January 23, 2018, with the Administrative Law Judge (ALJ) initiating a conference call from Lansing, Michigan. All other parties appeared in-person at the county Department of Health and Human Services (Department or Respondent). Petitioner appeared and testified. [REDACTED] Home Care Services Worker appeared as a witness on behalf of Petitioner. The Respondent was represented by Haysem Hosny, Hearings Coordinator.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) 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 applied for SDA with the Michigan Department of Health and Human Services.
2. On November 20, 2017, the Medical Review Team (MRT) denied Petitioner's application.
3. On November 27, 2017 the Department issued a notice.
4. On December 11, 2017, Petitioner filed a timely hearing request.

5. Petitioner has an SSI application pending with the Social Security Administration, with a [REDACTED] 2017, application date and July 22, 2016, alleged onset date.
6. As of the date of application, Petitioner was a 28-year-old female, standing 5 feet 1 inch tall and weighing 160 pounds. Petitioner's BMI is 30.2, classifying Petitioner as obese on the Body Mass Index.
7. Petitioner testified that she does not have an alcohol/drug abuse problem or history.
8. Petitioner testified that she does not smoke.
9. Petitioner does have a driver's license and does drive.
10. Petitioner has 14 years of education. Petitioner is a Licensed Practical Nurse (LPN).
11. Petitioner testified that she has no income.
12. Petitioner is not currently working. Petitioner last worked on July 22, 2016, when Petitioner suffered a work-related injury due to lifting a patient. Petitioner collected Workmen's Compensation, recently discontinued.
13. Petitioner has a disability application pending with the Social Security Administration. (SSA.)
14. Petitioner alleges disability due to lumbar disc displacement of L3-4 and L4-5 with annular disc tear L45 with stenosis L3-5 with right greater than left radiculopathy. Petitioner's condition worsened with physical therapy, suffers from chronic pain, reports exercise intolerance, back pain, muscle aches, muscle weakness, and numbness. Petitioner testified that she is not a candidate for surgery due to auto immune system problems.
15. Petitioner's treating physician states that Petitioner has been disabled and continues to be disabled.
16. Petitioner testified that she is not able to do many activities of daily living, including food preparation, housework, grocery shopping. Petitioner currently must rest and lay down throughout the day. Petitioner testified that she does not need assistance with bathroom and grooming needs.
17. Petitioner has home help services 5 hours per day, 7 days per week.
18. Petitioner testified that due to her auto immune issues she contracted MERSA; Petitioner has scars on her body that non-healing wounds.
19. Petitioner uses a cane for ambulation.

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.

For the SDA program, the State of Michigan follows the general guidelines with regards to to the MA program to show SDA statutory disability with one major exception: duration for the SDA program is due to a disability which has lasted or can be expected to last for a continuous period of ot less than 90 days. Unless otherwise noted below, the MA regulations, policy and law are followed.

Relevant federal guidelines provide in pertinent part:

Disability" is:

...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.

Federal regulations require that several considerations be analyzed in sequential order:

We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past

work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required.

These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f).
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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends, and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application, Petitioner has the burden of proof:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required to establish statutory disability. Statements alone made by the applicant and/or the applicant's physician are not sufficient. Rather, regulations require laboratory or clinical

medical reports that corroborate an any applicant's or physicians' statements regarding disability. These regulations state in part:

...Medical reports should include:

- (1) Medical history;
- (2) Clinical findings (such as the results. of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms) ... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques.
- (c) **Psychiatric signs** are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated;
- (d) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.),

roentgenological studies (X-rays), and psychological tests.
20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927.

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug and alcohol addiction. This removal reflects the view of a strong behavioral component. In addition, these behavioral driven impairments are not considered to fall within the category of diseases under consideration of statutory disability under the social security disability program.

Applying the sequential analysis herein, Petitioner is not ineligible at the first step as Petitioner is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a de minimis standard. This Administrative Law Judge (ALJ) finds that Petitioner meets both duration and severity. The analysis continues.

The third step of the analysis looks at whether an individual meet or equals one of the Listings of Impairments. 20 CFR 416.920(d). Petitioner does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Petitioner in the past. 20 CFR 416.920(f).

In this case, this ALJ finds that Petitioner cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Medical Vocation Grid Rule 201.28 as well as 201.29 are not applicable pursuant to Footnote Rule 201.00(h). Under 201.00, Petitioner could not do a full range of sedentary work presently due to her inability to take care of her own ADLs.

In reaching this conclusion, it is noted that Petitioner claims "I am not going to get better" on the basis "my discs are gone, there is no recovery, and I am not a candidate for surgery due to my auto-immune problems." This ALJ concurs but only to the extent that currently, Petitioner needs daily in-home assistance, which she has, 5 hours per day, 7 days per week. Petitioner also needs to lay down and rest at unpredictable times. However, the medical evidence does not contain sufficient medical evidence to indicate that Petitioner will not improve with time, and/or with some life style changes, will improve. Clearly Petitioner's obesity, as with any person, puts an extra-ordinary strain on any back issue; it may also be related to Petitioner's immune issues. Should Petitioner modify her life style choices and modify her weight, she may very likely affect her prognosis. In addition, the failure to follow recommended treatment may trigger case closure pursuant to the requirements found at 416.930.

Based on the record established in this matter and the applicable law, statutory disability is shown, and thus, the Department's denial cannot be upheld.

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. Review whether Petitioner meets the non-medical disability eligibility criteria, if not already done, and
2. If eligible, open an SDA case from the date of application and issue any supplemental benefits to Petitioner as allowed under policy and procedure, and
3. Review this SDA case in June 2018, which is one year from Petitioner's application.

JS/hb


Janice Spodarek
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

Vivian Worden
41227 Mound Rd.
Sterling Heights, MI 48314

Macomb County (District 36), DHHS

BSC4 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]