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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: January 2, 2018
MAHS Docket No.: 17-013299
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 [REDACTED] Michigan. Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator. Department Exhibit 1, pp. 1-213 was received and admitted. Petitioner Exhibit A, pp. 1-6 was received and admitted.

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

1. Petitioner applied for SDA on March 30, 2017.
2. The Medical Review Team denied the application on July 14, 2017.
3. Petitioner filed a request for hearing on October 13, 2017, regarding the SDA denial.
4. A telephone hearing was held on December 5, 2017.
5. Petitioner is 5' 2" tall and weighs 121 pounds.

6. Petitioner is 30 years of age.
7. Petitioner's impairments have been medically diagnosed as left shoulder injury, low back pain, foot injury, carpal tunnel syndrome and migraines
8. Petitioner has the following symptoms: pain, fatigue, and headaches.
9. Petitioner completed high school and some college.
10. Petitioner is able to read, write, and perform basic math skills.
11. Petitioner is not working. Petitioner last worked in February 2015 as a retail clerk.
12. Petitioner lives with her two children.
13. Petitioner testified that she cannot perform some household chores.
14. Petitioner takes the following prescribed medications:
 - a. Tylenol-3
 - b. Cyclobenzaprine
 - c. Loratadine
 - d. Megetrol
 - e. Robaxin
 - f. Singulair
 - g. Omeprazole
 - h. Promethazine
 - i. Trazodone
15. Petitioner testified to the following physical limitations:
 - i. Sitting: 60 minutes
 - ii. Standing: 25 minutes
 - iii. Walking: 50 yards
 - iv. Bend/stoop: difficulty
 - v. Lifting: 10-15 lbs.
 - vi. Grip/grasp: no limitations
16. Petitioner testified to experiencing pain, at a high level of 8, on an everyday basis with some pain always present at a low level of 4.
17. An MRI of Petitioner's left shoulder done on [REDACTED], showed the following under IMPRESSION: "Mild supraspinatus tendinopathy." (Ex. 1, pp. 137-138)

18. A Mental Residual Functional Capacity Assessment completed on [REDACTED], found Petitioner to be unimpaired. (Ex. 1, pp. 172-173)
19. On [REDACTED], the Department spoke to Petitioner's treating physician who stated that Petitioner can work. (Ex. 1, p.164)

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. 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 MA-P program. 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.

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age,

education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, Petitioner is not working, therefore, Petitioner is not disqualified at this step in the evaluation.

The second step to be determined in considering whether Petitioner is considered disabled is the severity of the impairment. In order to qualify, the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical, or mental, ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers, and usual work situations; and
6. Dealing with changes in a routine work setting. 20 CFR 416.921(b).

In the third step of the analysis, the trier of fact must determine if 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 does 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. Listings 1.04, and 1.02 were considered.

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. A conclusory statement by a physician, or mental health professional, that an individual is disabled, or blind, is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.927.

The fourth step of the analysis to be considered is whether Petitioner has the ability to perform work previously performed by Petitioner within the past 15 years. The trier of

fact must determine whether the impairment(s) presented prevent Petitioner from doing past relevant work. In the present case, Petitioner's past employment was as a retail worker. Working as a retail worker, as described by Petitioner at hearing, would be considered light exertional work. Petitioner's impairments would NOT prevent her from doing past relevant work. Petitioner's testimony regarding her physical limitations was not supported by substantial medical evidence and was contradicted by the assessment of her treating physician. (Ex. 1, p.164)

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is NOT medically disabled for the purposes of SDA eligibility.

Accordingly, the Department's decision is hereby **AFFIRMED**.

AM/md



Aaron McClintic

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]