



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 11, 2018
MAHS Docket No.: 18-003287
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 - 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on May 16, 2018, from Lansing, Michigan. Petitioner personally appeared and testified. Petitioner submitted Exhibits A-E which were admitted into evidence.

The Department of Health and Human Services (Department), was represented by Eligibility Specialist Maureen Corran. Ms. Corran testified as a witness on behalf of the Department. The Department submitted 689 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 November 30, 2017, Petitioner applied for SDA.
2. On March 23, 2018, the Medical Review Team (MRT) denied Petitioner's SDA application. [Dept Exh. 7-40].

3. On September 26, 2017, the Department sent Petitioner notice that her application for SDA was denied.
4. On April 5, 2018, Petitioner filed a hearing request to contest the Department's negative action.
5. Petitioner reported a history of diabetes, depression, bipolar disorder manic, posttraumatic stress disorder (PTSD), fibromyalgia, hands clenched and foot neuropathy.
6. Petitioner's medical records indicate she has been diagnosed with pharyngitis, group A streptococcus, B hemolytic pharyngitis, paroxysmal atrial fibrillation, systolic congestive heart failure, hypertension, postoperative cardiac repair, esophageal reflux without esophagitis, urinary tract infection, gross hematuria, stress incontinence, endometrial polyps, exogenous iatrogenic hyperthyroidism, thyroiditis, generalized resistance to thyroid hormone, diabetes mellitus poorly controlled, fibromyalgia, overanxious disorder, chronic pain syndrome, candidiasis, Von Willebrand disease, Hemophilia A, carrier state (factor VIII deficiency), intramural uterine leiomyoma, obesity, major depressive disorder with psychotic features, PTSD, moderate to severe generalized anxiety disorder, affective psychosis, and auditory hallucinations.
7. On December 11, 2017, during the completion of the Medical-Social Questionnaire, the worker observed Petitioner had difficulty with her appearance, drug/alcohol abuse, and memory. Further, the worker indicated Petitioner showed signs of fatigue, pain or distress, and difficulty using either hand. The worker noted that Petitioner had difficulty sitting, standing, understanding and walking. She also appeared withdrawn. Petitioner reported bilateral neuropathy in both arms to hands with pain radiating from her low back and down both legs to her feet. She also had tingling in hands, feet and legs. Petitioner also indicated she had short term memory loss. [Dept. Exh. 50-53].
8. On January 11, 2018, Sarah Gibson, the Office Manager of the Fairview County Home where Petitioner resides, completed the Activities of Daily Living – Third Party on behalf of the Department. Ms. Gibson noted she has known Petitioner for 11 months. Ms. Gibson indicated that Petitioner hears voices, has depression due to her bipolar disorder and does not want to interact with others. Petitioner used to stand longer, be socially interactive, do her crafts and be more patient. Now, Petitioner is constantly sleeping and has a slipped disc where she is unable to move fully and cannot lift over five pounds. Petitioner's routine is that she wakes up, takes her medications or eats her meals, then goes back to bed. Petitioner does not bathe for a week and eats more when she is depressed. Petitioner used to bathe every day. Petitioner needs to be reminded to take her medications. Petitioner used to be able to carry her own groceries, make meals and was able to be independent. Now, others must carry Petitioner's groceries due to the weight limits. Petitioner used to be able to handle her own money, but now gets confused and needs a payee. Petitioner loses concentration after five minutes and goes on

to something else. Petitioner is unable to follow written instructions, unable to follow to follow spoken instructions, and has difficulty keeping appointments. [Dept. Exh. 78-85].

9. On March 8, 2018, Petitioner underwent an independent psychological evaluation on behalf of the Department. The psychologist noted that Petitioner had fair grooming. She was cooperative, yet depressed, and had shoulder and back pain with tingling in the hands and feet. She had limited range of motion in her hands which were held in a fist position. Her attitude was fair to poor and her insight was limited. She did not seem to exaggerate or minimize her symptoms. Her attitude was subdued. The psychologist diagnosed Petitioner with Bipolar I Disorder Most Recent Episode Depressed Moderate to Severe; Generalized Anxiety Disorder; Posttraumatic Stress Disorder; and Unspecified Sedative, Hypnotic, or Anxiolytic-Related Disorder in Sustained Remission. The psychologist opined that Petitioner's prognosis is guarded to serious. Petitioner continues to benefit from her medication regimen and from outpatient mental health services. Ongoing medical care is recommended for her health issues. Petitioner reports, and observations suggest, that she has a mood disorder. She seemed depressed and overwhelmed by her psychiatric symptoms during the evaluation. Her psychiatric health issues are her primary concern. The psychologist stated that the pressure of employment would be a major factor in decompensation on her part and she does not present as a viable candidate for employment. She is homeless and in need of housing. [Dept. Exh. 99-102].
10. Petitioner is a [REDACTED]-year-old woman born on [REDACTED] 1968. She is [REDACTED] and weighs [REDACTED] pounds. She has a high school education. She reported working 3 months in the past 15 years.
11. Based on Petitioner's age, education and employment history, Petitioner meets statutory disability on the basis of Medical/Vocation Grid Rule footnote 201.12 as a guide.
12. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
13. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

"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.
[SDA = 90 day duration].

The test for receiving SDA is whether a person is unable, due to a medically determinable physical or mental impairment, to do any substantial gainful activity for a continuous period of not less than 90 days.

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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and credibly testified that she has only worked three months in the past 15 years. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleges disability due to pharyngitis, group A streptococcus; B hemolytic pharyngitis, paroxysmal atrial fibrillation, systolic congestive heart failure, hypertension, postoperative cardiac repair, esophageal reflux without esophagitis, urinary tract infection, gross hematuria, stress incontinence, endometrial polyps, exogenous iatrogenic hyperthyroidism, thyroiditis, generalized resistance to thyroid hormone, diabetes mellitus poorly controlled, fibromyalgia, overanxious disorder, chronic pain syndrome, candidiasis, Von Willebrand disease, Hemophilia A, carrier state (factor VIII deficiency), intramural uterine leiomyoma, obesity, major depressive disorder with psychotic features, PTSD, moderate to severe generalized anxiety disorder, affective psychosis, and hears voices.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that she does have physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

Listing 1.00 (musculoskeletal system), Listing 4.00 (cardiovascular system), Listing 9.00 (endocrine disorders – adult), and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Petitioner's impairments do not meet the intent and severity requirement of a listed impairment; therefore, Petitioner cannot be found disabled at Step 3. Accordingly, Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Petitioner testified that she can walk a block, sit for 20 minutes, stand for 5 minutes and carry 2 ½ pounds. The objective medical evidence notes difficulties with hearing voices, depression, social isolation, taking medication without reminders, confusion, lack of concentration and problems with memory. In consideration of Petitioner's testimony and evidence of record, Petitioner has no past relevant work. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Petitioner was 50-years-old and was, thus, considered to be approaching advanced age for MA-P purposes. Petitioner has a high-school education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P

are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

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 Petitioner meets statutory disability using Medical/Vocational Grid Rule 201.12 as a guide.

In reaching this conclusion, evidence in the file indicates the psychologist, on behalf of the Department opined, "that the pressure of employment would be a major factor in decompensation on her part and she does not present as a viable candidate for employment."

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Inasmuch as Petitioner has been found "disabled" for purposes of MA, she must also be found "disabled" for purposes of SDA benefits. Consequently, the Department's denial of her November 30, 2017, SDA application 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, finds Petitioner disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED**.

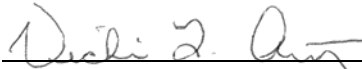
THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. The Department shall process Petitioner's November 30, 2017 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 June 2019, unless her Social Security Administration disability status is approved by that time.

3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, psychiatrists, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.

VLA/hb



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) 763-0155; 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

Pam Farnsworth
903 Telegraph
Monroe, MI 48161

Monroe County, DHHS

BSC4 via electronic mail

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Petitioner

