



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 13, 2018
MAHS Docket No.: 18-003027
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 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on May 17, 2018, from Lansing, Michigan. Petitioner personally appeared and testified. Jasmine Ali, Petitioner's case manager, also appeared and testified.

The Department of Health and Human Services (Department) was represented by Family Independence Manager, Melissa Johnstone. Ms. Johnstone testified on behalf of the Department. The Department submitted 430 exhibits which were admitted into evidence.

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 December 1, 2017, Petitioner applied for SDA. [Dept. Exh. 1-31].
2. On January 30, 2018, the Medical Review Team denied Petitioner's application for SDA. [Dept. Exh. 62-68].
3. On February 8, 2018, the Department issued Petitioner a Notice of Case Action informing her that her SDA had been denied.

4. On March 30, 2018, Petitioner submitted a Request for Hearing, contesting the negative actions.
5. Petitioner has been diagnosed with asthma, depression, mild alcohol abuse disorder, suicidal ideations, borderline personality disorder, adjustment disorder, anxiety, posttraumatic stress disorder, gastroesophageal reflux disease, pain in her legs, anemia, irritable bowel syndrome and an ulcer.
6. On [REDACTED], Petitioner was voluntarily admitted to the psychiatric unit at St. Joseph Mercy Chelsea, due to worsening depression and a recent overdose on medication (trazodone). She reported her mood was depressed with associated hopelessness, low energy, poor appetite, initial/middle insomnia and difficulties with focus. She reported that for the past 2 weeks she had been feeling increasingly down with passive suicidal thoughts. She reported having intermittent visual hallucinations (black shadows on walls – occurred once in past week) and auditory hallucinations (voice like someone is there, she cannot make out what it is saying). She did not appear to be responding to internal stimuli. Petitioner also had one previous psychiatric hospitalization at Allegiance in Jackson, Michigan, after a likely black out and laceration to her right arm requiring 29 stitches. Petitioner was discharged on July 26, 2017, with diagnoses of Adjustment Disorder, Suicidal Ideations, Alcohol Use Disorder, Psychosocial Stressors and Borderline Personality Traits. [Dept. Exh. 303-322].
7. On [REDACTED], Petitioner was seen by her primary care physician for a hospital follow-up. Petitioner had been recently discharged from inpatient behavioral health at St. Joseph Mercy Chelsea for worsening depression and an overdose. Petitioner had a history of alcohol abuse. She had recently been drinking a pint to a fifth of liquor daily. She drank this along with Trazadone. She took extra doses of trazadone but stated it was not intentional. Petitioner was diagnosed with an episode of recurrent major depressive disorder, unspecified depression episode severity, and alcohol abuse. [Dept. Exh. 109-112; 241-243].
8. On [REDACTED], Petitioner presented to the emergency room with suicidal ideation and chest pain. She appeared younger than her stated age. She had a facial rash, possibly neurodermatitis. She appeared sad and projected helplessness. She had been hospitalized in late July 2017 but had not gotten any better. She stated she felt an overwhelming desire to overdose on her medications. She stated she would have definitely overdosed at home if her son had not brought her in. The examining physician opined Petitioner was not safe at home. [Dept. Exh. 291-295].
9. On [REDACTED], Petitioner was admitted to St. Joseph Mercy Chelsea for a relapse due to alcohol use and suicidal ideation. This was Petitioner's third psychiatric admission. On admission she appeared depressed with some mild alcohol withdrawal. She had poor hygiene and grooming. Her face appeared puffy and she had some areas of excoriation on her facial skin. Her mood was depressed and anxious, while her affect was constricted and dysthymic. Her

insight and judgment were poor to fair. She was moderately insightful and seeking addiction treatment. She had severe psychosocial stressors (poverty, crowded living situation, loss of significant other, loss of adult child, history of childhood trauma) and alcoholism. She was admitted through the emergency room with worsening suicidal ideation. She reported a history of numerous suicide attempts via overdose going back years, suggesting that this is a chronic problem for her rather than related solely to recent losses. Given her history of childhood trauma and impaired ability to cope with distress, there was a high likelihood that she had either borderline personality disorder or traits. She had turned to drinking and prescription pill use as her coping mechanism, which was now causing her health issues as well as intoxication, increasing her risk for suicide. Petitioner was discharged on [REDACTED] with a diagnosis of suicidal ideation; alcohol use disorder, mood disorder; borderline personality traits and severe psychosocial stressors. [Dept. Exh. 276-290].

10. On November 9, 2017, Petitioner underwent a psychiatric evaluation. Petitioner has a history of three lifetime inpatient psychiatric admissions, including two recent admissions at St. Joseph's Hospital. Petitioner was diagnosed with asthma, unspecified depressive disorder, mild alcohol abuse disorder, suicidal ideations, borderline personality disorder, adjustment disorder, anxiety, and posttraumatic stress disorder. [Dept. Exh. 101-108].
11. On January 23, 2018, Petitioner underwent a psychological assessment on behalf of the Department. The examining psychologist also reviewed Petitioner's psychiatric evaluation dated August 23, 2017, which described a 2-day psychiatric hospitalization due to alcohol dependence, suicidal ideation and adjustment disorder with depressed mood. She was also noted to have an alcohol-induced anxiety disorder. Petitioner was also admitted the previous month for five days. A review of the discharge summary dated [REDACTED], indicated she had been hospitalized for alcohol dependence, suicidal thinking and recurrent thoughts of her son's passing and the passing of her boyfriend. The examining psychologist opined that Petitioner appeared capable of understanding and remembering information, but she appeared to have difficulties applying information. She was clearly severely depressed. Her concentration was poor, and she lacked persistence. Her pace seemed slowed. Her social interactions were marginal and clearly impacted by her symptoms and alcohol use. She clearly had difficulty adapting or managing herself. Based on Petitioner's presentation, along with the historical information, Petitioner was diagnosed with Alcohol Use Disorder, Severe; Posttraumatic Stress Disorder; and Major Depressive Disorder, Severe without Psychotic Symptoms. Prognosis is poor. [Dept. Exh. 212-217].
12. Petitioner is a 51-year-old woman born on [REDACTED], 1966. She is [REDACTED] and weighs [REDACTED] pounds. She completed the ninth grade and has not worked in over ten years.
13. Petitioner was appealing the denial of Social Security disability at the time of the hearing.

14. 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 is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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 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 [90 days for SDA]. 20 CFR 416.905(a). 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 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

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 not worked in over 10 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 asthma, depression, mild alcohol abuse disorder, suicidal ideations, borderline personality disorder, adjustment disorder, anxiety, posttraumatic stress disorder, gastroesophageal reflux disease, pain in her legs, anemia, irritable bowel syndrome and an ulcer.

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 some 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 12.00 (mental disorders), was 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.

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR

416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Petitioner has not worked in the past 10 years. In light of Petitioner's testimony, and based on the evidence of record, Petitioner has no previous work to evaluate and the analysis continues to Step 5.

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 51-years-old and was, thus, considered to be approaching advanced age for MA-P purposes. Petitioner has a ninth-grade 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). 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 201.09 as a guide.

In reaching this conclusion, evidence in the file indicates that the psychological assessment of Petitioner on January 23, 2018, noted that Petitioner appeared capable of understanding and remembering information, but had difficulties applying the information. She was clearly severely depressed. Her concentration was poor, and she lacked persistence. Her pace seemed slowed. Her social interactions were marginal and clearly impacted by her symptoms and alcohol use. She clearly had difficulty adapting or managing herself. Based on Petitioner's presentation, along with the historical information, Petitioner's prognosis is poor.

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. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. 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 December 1, 2017, SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Petitioner is not currently disabled for SDA eligibility purposes.

Accordingly, the Department's decision is REVERSED, and it is Ordered that:

1. The Department shall process Petitioner's December 1, 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 of 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, 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

Denise Croff
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Petitioner

[REDACTED]