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STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

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Date Mailed: July 23, 2018
MAHS Docket No.: 18-003036
Agency No.: 113574503
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 May 17, 2018, from Lansing, Michigan. Petitioner was represented by herself and her husband, ██████████. The Department of Health and Human Services (Department) was represented by Brad Reno, Hearing Facilitator. The record was left open for additional medical evidence that was received on July 18, 2018, and the record was closed.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

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 July 20, 2017, Petitioner applied for SDA.
2. On March 8, 2017, the Medical Review Team (MRT) denied Petitioner's application for SDA per BEM 261 because the nature and severity of Petitioner's impairments would not preclude work activity at the above stated level for 90 days, and she is capable of performing other work under Medical Vocation Grid Rule 202.17 per 20 CFR 416.920(f).
3. On March 12, 2018, the Department Caseworker sent Petitioner a notice that her application was denied.

4. On March 26, 2018, the Department received a hearing request from Petitioner, contesting the Department's negative action.
5. Petitioner is a ■-year old woman whose date of birth is ■■■■■, 1985. Petitioner is ■■■ tall and weighs ■■■ pounds. Petitioner completed the 11th grade of High School. She was special education in high school for Math and Spelling. Petitioner can read and write and do basic math. Petitioner was last employed as a cashier at Home Depot at the light level in 2014. She was also employed as a manager, constituent relations specialist, and debt collector at the sedentary to light level.
6. Petitioner's alleged impairments are stage 4 COPD, polycystic ovarian syndrome, asthma, emphysema, and sleep apnea.
7. Petitioner was discharged in stable condition with a SIMV mode ventilator at 45% from Genesys Health System on February 8, 2018. She was seen for respiratory distress and associated sepsis. Petitioner underwent a tracheotomy because she was difficult to wean. She was treated for community-acquired pneumonia. Department Exhibit 1, pgs. a-f.
8. On February 9, 2018, Petitioner was seen by a specialist based on an admission on February 8, 2018, at Select Specialty Hospital. She has morbid obesity and sleep apnea, but is not compliant with her CPAP machine. She has bilateral lower extremity edema. The assessment was acute on chronic hypoxic, hypercapnic respiratory failure, morbid obesity with obstructive sleep apnea, and obesity hypoventilation syndrome, not compliant with the CPA, status post-tracheostomy. She will continue to be weaned from the ventilator, but the trach will remain for the time being. Department Exhibit 1, pgs. g-h.
9. On January 24, 2018, Petitioner was seen by a specialist at Michigan Lung and Critical Care Specialist. She presented with a complaint of dyspnea and sleep apnea. Petitioner was well-developed and obese. She had a normal chest and lung examination. Petitioner did have 2+ lower extremity pitting edema. She had an essentially normal physical examination except for her edema of the lower extremities. For her COPD, her medication was adjusted medically needed. For her obstructive sleep apnea, she is not using her auto set. The potential benefits were discussed with Petitioner. Diet changes were discussed with her, and instructions to keep a food journal. She was also encouraged to make good choices and walk daily. Department Exhibit 1, pgs. i-m.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of 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.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

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 exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income 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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. 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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If Petitioner does not have a

severe medically determinable impairment or combination of impairments, Petitioner is not disabled. If Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine Petitioner's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the trier must consider all of Petitioner's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether Petitioner has the residual functional capacity to perform the requirements of her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as Petitioner actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If Petitioner has the residual functional capacity to do past relevant work, then Petitioner is not disabled. If Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Petitioner has satisfied requirements as set forth in Steps One and Two of the sequential evaluation. However, Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for Step Three. Therefore, vocational factors will be considered to determine Petitioner's residual functional capacity to do relevant work and past relevant work.

In the present case, Petitioner was discharged in stable condition with a SIMV mode ventilator at 45% from Genesys Health System on February 8, 2018. She was seen for respiratory distress and associated sepsis. Petitioner underwent a tracheotomy because she was difficult to wean. She was treated for community-acquired pneumonia. Department Exhibit 1, pgs. a-f.

On February 9, 2018, Petitioner was seen by a specialist based on an admission on February 8, 2018 at Select Specialty Hospital. She has morbid obesity and sleep apnea, but is not compliant with her CPAP machine. She bilateral lower extremity

edema. The assessment was acute on chronic hypoxic, hypercapnic respiratory failure, morbid obesity with obstructive sleep apnea and obesity hypoventilation syndrome, not compliant with the CPA, status post tracheostomy. She will continue to be weaned from the ventilator, but the trach will remain for the time being. Department Exhibit 1, pgs. g-h.

On January 24, 2018, Petitioner was seen by a specialist at Michigan Lung and Critical Care Specialist. She presented with a complaint of dyspnea and sleep apnea. Petitioner was well-developed and obese. She had a normal chest and lung examination. Petitioner did have 2+ lower extremity pitting edema. She had an essentially normal physical examination except for her edema of the lower extremities. For her COPD, her medication was adjusted medically needed. For her obstructive sleep apnea, she is not using her auto set. The potential benefits were discussed with Petitioner. diet changes were discussed with her, and instructions to keep a food journal. She was also encouraged to make good choices and walk daily. Department Exhibit 1, pgs. i-m.

This Administrative Law Judge finds that Petitioner was essentially normal and noncompliant with her sleep apnea regiment in January of 2018 and previously. She was limited to light work by MRT, which is keeping with the objective medical evidence on the record. In late January of 2018, she took a turn for the worse requiring hospitalization, tracheotomy, and a ventilation. There were no additional medical records to see if she met duration. She was discharged to wean herself off of the ventilator on February 8, 2018, where it seemed she was sent to a rehab facility for continued treatment. There is no subsequent verification that she was severely impaired for the three-month duration for SDA approval.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical, and psychological findings, that Petitioner testified that she does not perform any of her daily living activities. This level of impairment is not supported by the objective medical evidence on the record. Petitioner does feel that her condition has worsened because of sleep apnea and trach in her throat. Petitioner stated that she does not have any mental impairments. Petitioner testified that does not or has never smoked cigarettes. However, her objective medical record states that she is a former smoker, where she smoked one half to one pack of cigarettes a day for 10 years, where she stopped in 2013. Department Exhibit 1, pgs. i-m. She stopped drinking a couple years ago, where before she drunk occasionally. She does not or has never used illegal and illicit drugs. Petitioner did not feel there was any work she could do.

At Step Four, this Administrative Law Judge finds that Petitioner has not established that she cannot perform any of her prior work. She was previously employed as a cashier at Home Depot at the light level in 2014. She was also employed as a manager, constituent relations specialist, and debt collector at the sedentary to light level. She has had some breathing difficulties that required a ventilator and tracheotomy, which may limit her to light to sedentary work. Therefore, Petitioner is disqualified from receiving disability at Step Four. Petitioner is capable of performing her

past work at the light to sedentary level. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not Petitioner has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

The objective medical evidence on the record is insufficient that Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. Petitioner's testimony as to her limitation indicates her limitations are exertional.

In the final step of the analysis, the trier of fact must determine if Petitioner's impairment(s) prevent Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon Petitioner's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which Petitioner could perform despite her limitations. 20 CFR 416.966.

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.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step Five, Petitioner can meet the physical requirements of light to sedentary work, based upon Petitioner's physical abilities. Under the Medical-Vocational guidelines, a younger aged individual with a limited education, and a semi-skilled and unskilled work history, who is limited to light work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 201.25 and 202.18. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to Petitioner's physical impairments, the Administrative Law Judge finds that Petitioner could perform sedentary to light work and that Petitioner does not meet the definition of disabled under the SDA program.

DECISION AND ORDER

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 not disabled for purposes of the SDA benefit program. Petitioner could perform sedentary to light work, and Petitioner does not meet the definition of disabled under the SDA program.

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

CF/dh



Carmen G. Fahie
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

