



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: July 3, 2018
MAHS Docket No.: 18-004018
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 June 6, 2018, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Laura Bensinger Hearing Facilitator. Department Exhibit 1, pp. 1-701 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 July 24, 2017.
2. The Medical Review Team denied the application on March 2, 2018.
3. Petitioner filed a request for hearing on April 20, 2018, regarding the SDA denial.
4. A telephone hearing was held on June 6, 2018.
5. Petitioner is 5' 1" tall and weighs [REDACTED] pounds having gained 10 pounds in the last year.
6. Petitioner is [REDACTED] years old.

7. Petitioner's impairments have been medically diagnosed as back pain, carpal tunnel syndrome, hiatal hernia, thyroid nodules and depression.
8. Petitioner has the following symptoms: pain, fatigue, insomnia, crying spells, and panic attacks.
9. Petitioner completed a GED and some college.
10. Petitioner is able to read, write, and perform basic math skills.
11. Petitioner is not working. Petitioner last worked in June 2017 as a customer service representative.
12. Petitioner lives with her adult children.
13. Petitioner testified that she cannot perform some household chores.
14. Petitioner takes the following prescribed medications:
 - a. Prevacid
 - b. Norco
 - c. Xanax
 - d. Endocylamin
 - e. ibuprofen
15. Petitioner testified to the following physical limitations:
 - a. Sitting: 20 minutes
 - b. Standing: 10 minutes
 - c. Walking: 2-3 feet
 - d. Bend/stoop: difficulty
 - e. Lifting: 10 lbs.
 - f. Grip/grasp: difficulty
16. A CT of Petitioner's lumbar spine from June 26, 2015, showed the following under IMPRESSION: "1. There is a 16-degree dextrocurvature of the lumbar spine with apex at L2-L3 with right side down pelvic tilt. 2. Mild disc height loss at L4-5 and L5-S1. 3. Mild to moderate lower lumbar facet osteoarthritis, most pronounced on the right at L4-L5."
17. An MRI of Petitioner's thoracic spine completed on September 29, 2017, showed the following under IMPRESSION: "No significant spinal canal stenosis or neural foraminal narrowing is noted of the thoracic spine. 2. Heterogeneous nodules within the thyroid gland are noted as discussed above. 3. Degenerative disc disease predominantly at the L4-L5 disc space levels." (Exhibit 1, p. 65)

18. Petitioner testified to experiencing pain at a high level of 9 on an every day basis with some pain always present at a low level of 5.
19. In June 2015, Petitioner was found to have a GAF score of 49. (Exhibit1, p. 178)
20. Petitioner was not active with her mental health treatment at the time of hearing.
21. Petitioner provided a Verification of Disability completed by Physician Assistant [REDACTED] that found that Petitioner met criteria of being disabled pursuant to MSHDA rules. (Exhibit 1, p. 571)

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, the Petitioner is not working. Therefore, the Petitioner is not disqualified at this step in the evaluation.

The second step to be determined in considering whether the 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 this case, the Petitioner's medical evidence of record supports a finding that Petitioner has significant physical and mental limitations upon Petitioner's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that the Petitioner has an impairment (or combination of impairments) that has more than a minimal effect on the Petitioner's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysis, the trier of fact must determine if the 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 the Petitioner's medical record does not support a finding that the 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 12.04 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 the Petitioner has the ability to perform work previously performed by the Petitioner within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Petitioner from doing past relevant work. In the present case, the Petitioner's past employment was as a customer service representative. Working as a customer service representative, as described by Petitioner at hearing, would be considered sedentary work. The Petitioner's impairments would not prevent Petitioner from doing past relevant work. Petitioner's testimony regarding her physical limitations was not supported by substantial medical evidence. Petitioner failed to present substantial medical evidence that she has an ongoing psychological impairment that is significantly limiting. The disability criteria utilized by MSHDA is substantially different than the criteria utilized by the Department therefore the assessment completed by Petitioner's physician's assistant was given little weight. (Ex. 1, p.571)

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/bb



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) 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

Laura Bensinger
1050 Independence Blvd
Charlotte, MI 48813

Eaton County, DHHS

BSC2 via electronic mail

L. Karadsheh via electronic mail

Petitioner

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