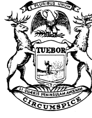

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

, MI

Date Mailed: July 12, 2018
MAHS Docket No.: 18-004285
Agency No.:
Petitioner:

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. After due notice, a telephone hearing was held on June 19, 2018, from Lansing, Michigan. Petitioner and her mother, , both appeared and testified. Petitioner submitted six exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist Karen Testerline. Ms. Testerline testified on behalf of the Department. The Department submitted 336 exhibits which were 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 the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On February 21, 2018, Petitioner applied for SDA. [Dept. Exh. 333].

2. On April 13, 2018, Petitioner's SDA application was denied by a disability examiner of the Medical Review Team. There is no evidence that Petitioner's application was reviewed by a physician. [Dept. Exh. 327-333].

3. Petitioner is diagnosed with degenerative disc disease, lumbar lordosis, chronic pain, spondylolisthesis, grade 2 anterolisthesis, severe bilateral foraminal stenosis,

posterior lateral endplate spurring and disc bulges, cervicalgia, chronic obstructive pulmonary disease (COPD), dyspnea, sinusitis, hypothyroidism, paresthesia of the skin and gastroesophageal reflux disease.

4. On April 27, 2018, Petitioner submitted a Request for Hearing. [Dept. Exh. 335].

5. On April 15, 2016, Petitioner underwent an MRI of the lumbar spine that revealed chronic bilateral L5 spondylolisthesis, isthmic type grade 1 bordering on grade 2, anterolisthesis of L5 on S1 measuring up to 8-9 mm. The MRI also showed a diffuse type II Modic endplate change throughout the left side of the endplates at the L5-S1 level. The conus medullaris terminated at the L2 level. [Petitioner Exh. F].

6. On , Petitioner was seen, treated and discharged from the Emergency Department with a diagnosis of mild bronchitis and a tiny band of atelectasis in the superior segment of the right lower lobe. [Dept. Exh. 97-100].

7. On , Petitioner presented to the Emergency Department and was diagnosed with COPD. She was treated and released. [Dept. Exh. 80-96].

8. On September 19, 2017, Petitioner underwent a lumbar spine MRI which revealed spondylolysis with grade 2 anterolisthesis of the L5-S1 and severe bilateral foraminal stenosis. [Dept. Exh. 201].

9. On , Petitioner presented to the Emergency Department and was diagnosed with dyspnea. She was treated and discharged. [Dept. Exh. 64-79].

10. On September 22, 2017, Petitioner had an abnormal pulmonary function study which found a mild obstructive lung defect with no evidence of response to bronchodilators. There was also a decrease in the diffusing capacity. [Dept. Exh. 202-203].

11. On , Petitioner went to the Emergency Department and was diagnosed with neck pain. She was treated and released. [Dept. Exh. 56-63].

12. On , Petitioner presented to the Emergency Department. Petitioner underwent an MRI of her cervical spine which showed mild multilevel degenerative disc disease with posterior lateral endplate spurring and disc bulges. The results revealed moderate left and mild right foraminal stenosis at C4-C5, as well as mild right foraminal stenosis at C3-C4, and mild bilateral foraminal stenosis at C5-C6. The MRI also showed Grade 1 anterior spondylolisthesis of C3 on C4 and C4 on C5. Petitioner was diagnosed with radiculopathy in the cervical region. [Dept. Exh. 39-55; 198].

13. On December 12, 2017, Petitioner had an appointment at the Michigan Spine and Pain clinic. Petitioner had straightening of cervical lordosis. Her range of motion

was limited in all planes. She had pain with all motion. Tenderness was present with spinal palpation and bilateral tenderness present on paraspinal palpation. She had back tenderness with straight leg raise on the left and the Patrick's sign was also positive on the left. Babinski downward bilaterally. Petitioner was assessed with radiculopathy of the lumbosacral region and paresthesia of the skin. The physician noted that the electrodiagnostic study did not show evidence for lumbar radiculopathy. However, Petitioner had radicular symptoms. This implicated a preganglionic sensory radiculopathy. The physician opined that Petitioner may benefit from transforaminal lumbar injections if she is not getting those. She may be a good candidate for a spinal cord stimulator trial, but funding may be an issue. [Petitioner Exh. A-E].

14. On [redacted], Petitioner presented to the emergency department with neck pain that radiated to the left ear, left shoulder, left arm and left side of face. There were no neurological deficits found during the examination. A CT of the cervical spine revealed a reversal of the normal lordosis related to positioning or spasm. There was no fracture. The spine demonstrated mild degenerative changes at multiple levels. She was diagnosed with a strain of muscle – fascia and tendon at neck level. She was treated and released. [Dept. Exh. 2-38].

15. On March 28, 2018, Petitioner had an appointment with her pain management specialist. He noted that her December 12, 2017, EMG lumbar and lower limbs showed a bilateral Peroneal sensory neuropathy. A nerve conduction study on the upper limbs was completed and showed it was normal. [Dept. Exh. 234-235; 246-248].

16. On March 22, 2018, Petitioner complained of chronic back pain shooting down into the legs. She described it as aching and burning. She had lumbar spine tenderness and decreased range of motion with shooting pain to both legs. The MRI showed bilateral foramen stenosis at L5-S1. [Dept. Exh. 191-192].

17. On March 28, 2018, Petitioner consulted with a pulmonary disease specialist. The specialist reviewed Petitioner's pulmonary function test for September 2017 and it showed no evidence of obstruction. There was isolated reduction in the diffusing capacity, which the specialist opined was due to her body habitus. The specialist found that the Dulera she had been on was an adequate treatment for bronchial asthma. [Dept. Exh. 248-250].

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the

collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 impariment 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.

A person is disabled for SDA purposes if he or she:

> •Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
>
> •Resides in a qualified Special Living Arrangement facility, or

•Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.

•Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2014).

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 CRF 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).

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).

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 she has not worked since 2005. 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 petitioner's age, education, or work experience, the impairment would not affect Petitioner's ability to work. *Salmi v Sec of Health and Human Services,* 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner has been diagnosed with degenerative disc disease, cervical lordosis, lumbar lordosis, chronic pain, spondylolisthesis, grade 2 anterolisthesis, severe bilateral foraminal stenosis, posterior lateral endplate spurring, disc bulges, cervicalgia, radiculopathy in the cervical region, bilateral peroneal sensory neuropathy, chronic obstructive pulmonary disease (COPD), a mild obstructive lung defect, dyspnea, sinusitis, hypothyroidism, paresthesia of the skin and gastroesophageal reflux disease.

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 physical 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 SDA 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. Petitioner has been diagnosed with degenerative disc disease, cervical lordosis, lumbar lordosis, chronic pain, spondylolisthesis, grade 2 anterolisthesis, severe bilateral foraminal stenosis, posterior lateral endplate spurring, disc bulges, cervicalgia, radiculopathy in the cervical region, bilateral peroneal sensory neuropathy, chronic obstructive pulmonary disease (COPD), a mild obstructive lung defect, dyspnea, sinusitis, hypothyroidism, paresthesia of the skin and gastroesophageal reflux disease.

Listing 1.00 (musculoskeletal system) was considered in light of the objective evidence. Based on the Listing 1.04, Petitioner's impairments are severe, in combination, if not singly, (20 CFR 404.15.20 (c), 416.920(c)), in that Petitioner is significantly affected in her ability to perform basic work activities (20 CFR 404.1521(b) and 416.921(b)(1)).

Listing 1.04(A) requires a disorder of the spine such as a herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda

equine) or the spinal cord. Evidence of nerve root compression is characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine).

As indicated by Petitioner during her testimony, and supported by the medical evidence in the file, Petitioner is unable to move her neck and has chronic back pain radiating down her legs and to her feet. Accordingly, this Administrative Law Judge finds Petitioner's impairments meet or equal Listing 1.04(A) and concludes Petitioner is disabled for purposes of 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 disabled for purposes of the SDA benefit program.

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 February 21, 2018 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 July 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

Julie Claffey
725 Richard Drive
Harrison, MI 48625

Clare County, DHHS

BSC2 via electronic mail

L. Karadsheh via electronic mail

Petitioner

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[redacted], MI [redacted]