



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: February 15, 2018
MAHS Docket No.: 18-000414
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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, an administrative hearing was held on February 14, 2018, with the Administrative Law Judge (ALJ) initiating a conference call from Lansing, Michigan. All other parties appeared in-person at the county Department of Health and Human Services (Department or Respondent). Petitioner appeared and testified. The Respondent was represented by Kimberly Nolan, Hearings Coordinator.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) 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 [REDACTED] 2017, Petitioner applied for SDA with the Michigan Department of Health and Human Services.
2. Petitioner was scheduled for an internal medical exam by the Medical Review Team (MRT) with Michigan Medical Consultants on September 22, 2017, at 12:50 pm. Petitioner confirmed that she would attend the appointment. Petitioner failed to attend the scheduled exam. Exhibit A.3.
3. On November 29, 2017, the MTR denied Petitioner based on 20 CFR 416.912-.919 due to failure to cooperate and insufficient evidence. MRT packet pages 3-6.

4. On December 7, 2017, the Department issued Notice of Case Action denying Petitioner's SDA application due to Petitioner's failure to cooperate and insufficient evidence, and in the alternative, failure to meet the 90 days or more requirement. Exhibit A.358.
5. On January 8, 2018, Petitioner filed a timely hearing request.
6. Petitioner has been denied SSI but brought verification to the administration hearing showing that she has a vocational hearing scheduled for April 24, 2018, with the SSA. While the SOLQ does not show the appeal, based on Petitioner's verification, Petitioner is not jurisdictionally barred on the basis of a denied SSA application.
7. As of the date of application, Petitioner was a 51-year-old, standing 5 feet 3 inches tall and weighing 127 pounds. Petitioner's BMI is considered normal under the Body Mass Index.
8. Petitioner testified that she does not have an alcohol/drug abuse problem or history.
9. Petitioner testified that she does not smoke.
10. Petitioner does a driver's license.
11. Petitioner has 14 years of education.
12. Petitioner testified that she has no income
13. Petitioner is not currently working. Petitioner last worked in 2003 on a road construction crew.
14. Petitioner alleges a disability onset date of 1/1/2010 based on the most recent SOLQ. Petitioner's vocational review with the SSA is from 2003 forward.
15. Petitioner alleges disability on the basis of broken foot and ribs based on MRT packet page 3. Petitioner's alleged impairment of broken foot and ribs do not meet duration.
16. At hearing, Petitioner alleged multiple other medical impairments. Petitioner alleged that her medical packet was incomplete but did not bring and new medical evidence to hearing.
17. The MRT findings and conclusions are adopted and incorporated by reference herein.
18. Petitioner testified that she engages in all activities of daily living and does not need any assistance, including housework.

19. Petitioner testified that she does not need any assistance with her bathroom and grooming needs.
20. Petitioner exercises.
21. Petitioner could not identify any exhibits in her medical packet as medical evidence to support her claim that she cannot work:

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 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.

For the SDA program, the State of Michigan follows the general guidelines with regards to to the MA program to show SDA statutory disability with one major exception: duration for the SDA program is due to a disability which has lasted or can be expected to last for a continuous period of ot less than 90 days. Unless otherwise noted below, the MA regulations, policy and law are followed.

Relevant federal guidelines provide in pertinent part:

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.

Federal regulations require that several considerations be analyzed in sequential order:

We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required.

These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to step 3. 20 CFR 416.909(c).
3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends, and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application, Petitioner has the burden of proof:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required to establish statutory disability. Statements alone made by the applicant and/or the applicant's physician are not sufficient. Rather, regulations require laboratory or clinical medical reports that corroborate an any applicant's or physicians' statements regarding disability. These regulations state in part:

...Medical reports should include:

- (1) Medical history;
- (2) Clinical findings (such as the results. of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms) ... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques.
- (c) **Psychiatric signs** are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception.

They must also be shown by observable facts that can be medically described and evaluated;

- (d) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927.

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug and alcohol addiction. This removal reflects the view of a strong behavioral component. In addition, these behavioral driven impairments are not considered to fall within the category of diseases under consideration of statutory disability under the social security disability program.

Applicable to the case herein, applicants who fail to appear at a consultative examination may be found to be not disabled pursuant to 20 CFR 416.918.

The jurisdiction of an ALJ is to review the action by the Agency and to make a determination if that action is correct under law, policy and procedure. Here, as an applicant, Petitioner has the burden of proof by a preponderance of evidence. After a

review of the evidence of record and applicable law, this reviewing forum finds that Petitioner did not meet her burden for the reasons set forth below.

Applying the sequential analysis herein, Petitioner is not ineligible at the first step as Petitioner is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). Here, based on the medical evidence of record regarding her foot and ribs, Petitioner does not meet duration pursuant to 20 CFR 416.920(b). Thus, statutory disability is not shown.

In addition, Petitioner was scheduled for a consultative examination pursuant to the authority of the MRT and corresponding federal regulations. Petitioner failed to attend. Petitioner alleged that the Department refused to provide her transportation to the appointment. However, the Department indicated that Medicaid beneficiaries are eligible for transportation to medical appointments. Petitioner is a Medicaid beneficiary. Petitioner offered no evidence to support her claim that the Agency refused to provide transportation. Petitioner offered no specifics surrounding any contact(s) with the Agency, or any of its subcontracting transportation providers, any date(s), time(s), correspondence, etc. Petitioner failed to meet her burden to establish good cause for failure to attend a required medical exam pursuant to the federal guideline found at 20 CFR 416.920(b). As such, the MRT found that Petitioner failed to cooperate, and, that the medical file was insufficient, and thus denied.

Petitioner argued at hearing that her file was insufficient but failed to offer good cause for failing to attend the medical appointment. In addition, Petitioner had adequate time and notice that she could and needed to submit any necessary medical evidence 7 days ahead of the administrative hearing but failed to do so.

Based on the record established in this matter and the applicable law, statutory disability is not shown, and thus, the Department's denial must be upheld. Petitioner understands that she may reapply.

DECISION AND ORDER

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

JS/hb



Janice Spodarek
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) 335-6088; 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

Stephanie Mietz
675 E. Cedar Ave Ste. 2
Gladwin, MI 48624

Gladwin County, DHHS

BSC2 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]