



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: April 23, 2018
MAHS Docket No.: 18-001665
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 3/21/18 with the Administrative Law Judge (ALJ) initiating a conference call from Lansing, Michigan. All other parties appeared In-person at the Iosco County Department of Health and Human Services (Department). Petitioner appeared and testified. [REDACTED] appeared as a witness. The Respondent was represented by Mary Durussell, APS.

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] Petitioner applied for SDA, a cash benefit program based on disability, with the Michigan Department of Health and Human Services.
2. Petitioner is a beneficiary of the Medicaid program and receives medical benefits under the Healthy Michigan Plan (HMP).
3. On 2/7/18 the Medical Review Team (MRT) denied.
4. On 2/8/18 the Department issued notice, and on 2/12/18 Petitioner filed a timely hearing request.
5. Petitioner has an SSI application pending with the Social Security Administration, with an [REDACTED] application date, and an alleged onset date of disability of 6/18/17.

6. As of the date of application, Petitioner was a 44-year-old, standing 5' 6" tall and weighing 125 pounds.
7. Petitioner is an alcoholic. Petitioner testified that she stopped drinking about the same time that she applied for SDA. Petitioner has a significant alcohol abuse history since she was 15 years old. Petitioner medical records are replete with diagnoses triggered by, compounded by, or as a result of Petitioner's alcoholism.
8. Petitioner smokes. Petitioner has a nicotine addiction.
9. Petitioner has a driver's license and does drive an automobile.
10. Petitioner has a 10-grade level of education.
11. Petitioner is not currently working. Petitioner last worked in 2003, when she had been employed as an automotive assembler full time since 1994. Petitioner testified that she has worked for temp agencies "here and there".
12. Petitioner alleges disability based on physical and mental impairments: depression, alcohol abuse, numbing of the hands. Ex A. Petitioner submitted Ex 1.2 indicating new medical of some autonomic dysfunction in her feet; peripheral neuropathy likely a complication of alcoholism. Not likely to improve but should not progress in future as long as she remains alcohol free. Ex 1.2.
13. The MRT findings of fact are adopted and incorporated by reference herein. The MRT conclusions are not adopted herein.
14. A [REDACTED] Mental Status Exam diagnosed alcohol use disorder, moderate, in early remission; persistent dysthymic disorder. Medical Source Statement: moderate to marked impairment in her ability to understand and remember instructions, locations, and work-like procedures. She can interact appropriately with c-workers and supervision and adhere to basic standards. Petitioner has marked impairment in her ability to concentrate, focus and persist sufficiently to carry out instructions and sustain a normal work routine. Ex A.131.
15. Regarding Petitioner's alleged physical impairments, the conclusion of the [REDACTED] Mental Status Exam stated in part: Might have moderate impairment in her ability to adjust to some physical changes because of her neuropathy. Ex A.131.
16. Petitioner did not present evidence of severe impairments that interfere with the ability to engage with activities of daily living (ADL).
17. Petitioner testified to the ability to fix food, do light housework, laundry.
18. Petitioner complained that she needs to be supervised so she does not fall when engaged in bathroom and grooming needs.
19. Petitioner did not present evidence of exercising.

20. Petitioner could not identify any exhibits in the medical packet as medical evidence to support a claim of disability due to the inability to 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 Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1.

As to the disability assessment, the State of Michigan follows the general guidelines with regards 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 not 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). Monthly income limit for 2017 presumptive SGA for non-blind individuals is \$1,170.00. If the applicant is not engaged SGA or presumptive SGA, 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:

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.

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;

- (c) **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 --

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.

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). This second step is a de minimis standard. Ruling any ambiguities in Petitioner's favor, this Administrative Law Judge (ALJ) finds that Petitioner meets both. The analysis continues.

The third step of the analysis looks at whether an individual meet or equals one of the Listings of Impairments. 20 CFR 416.920(d). Petitioner's mental status exam find Petitioner moderate to marked impairments in her ability to understand and remember instructions; marked impairment in her ability to concentrate, focus and persist sufficiently to carry out instructions and sustain a normal work routine.

Based on the markedly limited findings of the Mental Source Statement, this ALJ finds that Petitioner meets or equals a listing based on her alleged mental status impairment(s). The analysis continues only as to Petitioner's exertional impairments.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Petitioner in the past. 20 CFR 416.920(f).

In this case, this ALJ finds that Petitioner cannot return to past relevant work based on the medical evidence. The analysis continues.

It is noted that MRT found that Petitioner could not return to past relevant work. However, MRT's conclusion was made considering both the physical and mental impairments combined. As noted, the undersigned stopped considering the mental impairments at Step 3 based due to finding that Petitioner meets or equals a Listing. To the extent that the issues and considerations of 20 CFR 416.922 are given substantial weight at this step, that is, combining the mental impairments, this ALJ would agree. Petitioner should be given the benefit of the doubt as she is entitled to have the multiple impairments CFR considered. As such, this ALJ will concur with MRT and find that the fourth step is not met and continue the analysis.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). This step requires the exclusion of any mental impairment. As MRT, this ALJ agrees that the medical vocational grid requires a finding of not disabled as far as Petitioner's exertional impairments. This is consistent with the Mental Status exam which found that Petitioner might be moderately impaired in her ability to adjust to some physical changes because of her neuropathy, which is a medical opinion dealing with exertional abilities. "Moderately" impaired does not rise to statutory disability.

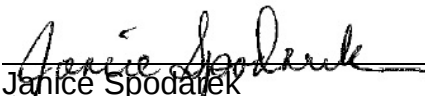
As Petitioner meets statutory disability only as far as her mental impairments are concerned at Step 3, the law and regulations require an assessment as to whether Petitioner's alcoholism is material to the disability pursuant to 20 CFR 416.214, and .935-.941. This ALJ finds that the medical evidence supports finding that alcoholism is material, and thus, statutory disability is not allowed. 20 CFR 416.214, .935-941 do not allow the disability benefits where alcoholism is material.

Based on the record established in this matter and the applicable law, and for the reasons set forth herein, statutory disability is not shown, and thus, the Department's denial must be upheld.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.

JS/nr



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

Barbara Schram
2145 East Huron Road
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Iosco County DHHS- via electronic mail

BSC1- via electronic mail

L. Karadsheh- via electronic mail

Petitioner

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MI