



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 3, 2018
MAHS Docket No.: 18-005792
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 July 25, 2018, with the Administrative Law Judge (ALJ) initiating a conference call from Lansing, Michigan. All other parties appeared In-person at the Jackson County Department of Health and Human Services (Department). Petitioner appeared and testified. The Respondent was represented by Tracy Rees, ES and Annette Travis, 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], 2018 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 May 22, 2018 the Medical Review Team (MRT) denied on the basis of 20 CFR 416.920(f), and in the alternative, based on the medical vocational grids.
4. On June 1, 2018 the Department issued notice, and on June 4, 2018 Petitioner filed a timely hearing request.
5. Petitioner has had final determinations by SSA for prior SSI applications. Petitioner currently has another application pending with the SSA.

6. As of the date of application, Petitioner was a [REDACTED]-year-old, standing [REDACTED] tall and weighing [REDACTED] pounds. Petitioner's Body Mass Index (BMI) is 27.1, classifying Petitioner as "overweight" under the BMI Index.
7. Petitioner testified to no alcohol abuse or history. Petitioner testified that she has a history of drug abuse.
8. Petitioner smokes. Petitioner has a nicotine addiction.
9. Petitioner does not have a driver's license "since I was 21." Petitioner was incarcerated for fleeing after being stopped for driving without a license.
10. Petitioner has four years of college in business management.
11. Petitioner is not currently working. Petitioner's work history is sales, farmers markets, and fast food. Petitioner reported to [REDACTED] that she was "too busy with work" while per her own statements on March 14, 2018 she denied working. See Ex. A.21. MRT found Petitioner was not credible.
12. The MRT findings and conclusions are adopted and incorporated by reference herein.
13. MRT concluded in part that Petitioner's condition does result in some limitations but that the condition is not severe enough to keep Petitioner from working. Petitioner can adjust to other work.
14. Petitioner alleges disability based on mental impairments: bipolar, DDD, fibromyalgia, cervical fusion, limited ability to lift, stand, sit and walk; chronic pain.
15. Petitioner testified that she could not do a desk job as she is not trained. Upon inquiry if she were trained, Petitioner stated that she could not sit for any length of time.
16. Petitioner remained seated during the administrative hearing and did not exhibit any signs of discomfort.
17. Petitioner did not indicate that she needs any assistance with her bathroom and grooming needs.
18. Petitioner did not present evidence of exercising.
19. Petitioner did 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 --

- (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.

Here, Petitioner's history of OA as to the spine does indicate a cervical fusion. However, imaging shows that the hardware is intact with satisfactory positioning. Exams find the gait is normal, and normal paraspinal musculature. While there was some tenderness in the right SI area, no spasms were noted and not pain with ROM testing. Strengths negative. Moreover, the neurological exam found no deficits.

Petitioner's migraines, GERD, fibromyalgia and HTN are medically monitored and treated. No end organ damage is noted and thus, these medical issues appear to be non-severe.

Petitioner alleged mental impairments do meet severity but are not significantly limiting as to her ability to work as required by 20 CFR 416.

Moreover, Petitioner's credibility was compromised based on her self-reports to her physicians that she was too busy working while reporting to the Department during the same time period that she was not working. In addition, Petitioner as a witness testified that she cannot sit for any length of time while remaining fully seated during the administrative hearing. Medical evidence indicates that Petitioner can sit for about 6 hours out of an 8-hour workday. See Ex. A.

The MRT conclusion that Petitioner's statements regarding her symptoms cannot be given credible weight is supported by the inconsistency of the medical evidence in conjunction with her description of her symptoms and thus, do not meet the statutory requirements found at 20 CFR 416.927.

As a final note, at Petitioner's 'younger individual' age of [REDACTED] and education, all of the medical vocation grids would require a finding of not disabled.

After a careful review of the substantial and credible evidence of record, the undersigned finds that the MRT denial is supported by credible and substantial evidence of record. Petitioner can return to past relevant work, or, be trained for other work. Under federal law, Petitioner is still considered "a younger individual" at 49. "Some limitations" do not rise to statutory disability.


The overall record does not support that the evidence meets the statutory requirements found regarding corroboration pursuant to 20 CFR 416.929. Claimant further failed to meet the burden of proof required by 20 CFR 416.912(c) and further as required by the sufficiency requirements found at 20 CFR 416.913(b), and .913(d), and .913(e).

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) 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

Denise Croff
301 E. Louis Glick Hwy.
Jackson, MI
49201

Jackson County DHHS- via electronic mail

BSC4- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

Petitioner

[REDACTED]
[REDACTED], MI

Authorized Hearing Rep.

[REDACTED]
[REDACTED], MI