



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 22, 2018
MAHS Docket No.: 18-007172
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 August 14, 2018, from Lansing, Michigan. Petitioner was represented by herself. The Department of Health and Human Services (Department or Respondent) was represented by Jodi O'Neal, Eligibility Specialist.

Respondent's Exhibit A pages 1-1705 were admitted as evidence.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

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 filed an application for SDA benefits alleging disability.
- (2) Petitioner receives Medical Assistance (MA) benefits.
- (3) On May 30, 2018, the Medical Review Team denied Petitioner's application stating that Petitioner has a non-exertional impairment.

- (4) On June 5, 2018, the Department caseworker sent Petitioner notice that the application was denied.
- (5) On July 9, 2018, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On July 25, 2018, the Michigan Administrative Hearing System received a hearing summary and attached documentation.
- (7) On August 14, 2018, the hearing was held.
- (8) Petitioner is a [REDACTED]-year-old woman whose date of birth is [REDACTED] 1965. She is [REDACTED]' [REDACTED]" tall and weighs [REDACTED] lbs. Petitioner has a GED.
- (9) Petitioner last worked 10 years ago at a doctor's office as an assistant.
- (10) Petitioner alleges as disabling impairments: three herniated discs; interstitial cystitis; lupus; chronic obstructive pulmonary disease (COPD); degenerative disc disease (DDD); Traumatic Brain Injury (TBI); Attention Deficit Disorder (ADD); anxiety; depression; and a learning disability.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

Department policies are contained in the following Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and 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 of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance 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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

...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 blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

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.

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

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

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 416.920(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? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(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. 20 CFR 416.920(e).
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? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Petitioner is not engaged in substantial gainful activity and has not worked since 2008. Petitioner is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates:

Petitioner testified on the record that she lives alone in a house. She is single with no children under 18 and no income. She receives MA benefits. Petitioner stated that she does not have a driver's license. Petitioner two times per week and makes food in the crockpot. Petitioner stated that she can stand for 30 minutes and can sit for one hour.

She can walk 40 feet. She can shower and dress herself. Petitioner is unable to touch her toes. Petitioner can carry 15-20 pounds. Her pain is a 7 out of 10 with no pain medication. With pain medication her pain is a 6. Petitioner smokes. Her doctor has told her to quit. She is not in a smoking cessation program. She cares for her dogs.

This Administrative Law Judge did consider the entire record in making this decision.

Medical documentation indicates a non-severe condition.

A Disability Determination Explanation dated [REDACTED], 2018 indicates that Petitioner has alleged disabling conditions as lupus, COPD, interstitial cystitis, three herniated discs, DDD, a closed head injury, filled learning disability, Post-Traumatic Stress Disorder (PTSD), anxiety, and ADD. Petitioner can perform light work and is not disabled, pursuant to medical vocational rule 202.13. The disability determination service indicated that Petitioner's condition results in some limitations in her ability to perform work related activities. They determined that her condition was not severe enough to keep her from working. They considered the medical and other information, her age and education in determining how her condition affects her ability to work. They did not have sufficient vocational information to determine whether Petitioner could perform any of her past relevant work. However, based on the evidence in the file, they determined that Petitioner can adjust to other work. But a residual functional capacity assessment indicates that Petitioner can occasionally carry 20 pounds and frequently carry 10 pounds. She can sit, stand or walk about 6 hours in an 8-hour work day. She can push or pull in unlimited manner. She can climb stairs, climb ladders, stoop, kneel, crouch, and crawl. The disability determination service cited a [REDACTED] 2017, MRI which shows some minor degenerative changes, facet arthropathy. MRI of the brain was negative. A [REDACTED], 2018, report indicates that Petitioner was moving all four extremities normally neurologically intact. She was diagnosed with chronic obstructive pulmonary disorder exacerbation and x-ray of her ribs was negative. Lungs had coarse breath sounds throughout, diffuse rhonchi, and expiratory wheezing. A mental residual functional capacity assessment indicates that Petitioner is moderately limited in the ability to understand and remember detailed instructions; the ability to carry out detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to interact appropriately with the general public; the ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes; and the ability to respond appropriate to changes in the work setting. She is not significantly limited in other areas. (Respondent's Exhibit Pages 52-71)

A [REDACTED], 2018 medical examination report indicates Petitioner is a smoker of ¼ of a pack a day for 20 years. Her blood pressure was 127/93, respirations 18, pulse 111, height [REDACTED]' [REDACTED]" tall, weight was [REDACTED] pounds. Petitioner was alert and oriented times three and no acute distress. Her pulse oximetry was 97% on room air. Her hearing was normal, and speech was clear. Petitioner has a limp to the right that is mild in nature and is able to ambulate without the use of any assist devices. Petitioner has crackles in the lungs. In the cardiac area she had normal S1 and S2. No murmurs, clicks, or rubs were heard. The heart did not appear to be clinically enlarged. Cranial nerves 2

through 12 are grossly intact. Manual muscle testing revealed strength of 5/5 throughout reflexes are symmetric. Sensation is intact. No atrophy of the musculature was seen and there were fasciculations or fibrillations. Petitioner presents with chronic obstructive pulmonary disease. The doctor opined that the patient needs to quit smoking. The patient had degenerative disc disease as well. She seems to have pretty good strength. She needs to be seen by a spine surgeon and have a more current MRI scan. (Respondent's Exhibit Pages 805-809)

A [REDACTED], medical report indicates that Petitioner was treated in the emergency room for acute chronic obstructive pulmonary disease exacerbation, right rib pain, and normo-tension. An x-ray of the ribs noted a slight contour deformity at the anterior aspect of the 9th rib, suspicious of a nondisplaced fracture. No other acute fracture of the right ribs is demonstrated. (Respondent's Exhibit Page 955)

A [REDACTED], 2017, mental health progress report indicates Petitioner was anxious with logical/coherent thought process. Her appearance and affect were appropriate, and her speech was normal. No homicidal or suicidal ideation. (Respondent's Exhibit Page 1548)

A [REDACTED] 2017, Community Mental Health Report indicates that Petitioner's parole officer referred Petitioner for her mental health. The report indicates that Petitioner has an extensive substance abuse history (alcohol and drug) and admission to rehabilitation for drug and alcohol addiction. (Respondent's Exhibit Pages 1540-1547)

An [REDACTED], 2017, report indicates that Petitioner search probation because she was charged with two felonies for selling the medication to someone who was working with SANE. She gave him four Norco's, Klonopin, and Fentanyl patches. Petitioner has a history of DUIs having received three within 18 months. (Respondent's Exhibit Page 844)

A [REDACTED], 2017, report indicates that Petitioner was refer to community mental health from jail. Petitioner commented to the nurse that she would kill herself if she did not get released with a tether early. She was put on suicide watch. (Respondent's Exhibit Page 837)

A [REDACTED], 2016, report indicates that Petitioner has a normal evaluation and was counselled with smoking cessation. (Respondent's Exhibit Pages 1576-1577)

An [REDACTED], 2016 medical examination report indicates an assessment of routine history and physical with abnormal findings: umbilical hernia without obstruction or gangrene, chronic PTSD, sciatic neuritis and sciatica. (Respondent's Exhibit Page 156)

A [REDACTED], 2016, x-ray of the abdomen indicated a recurrent left pleural effusion, by history secondary to rib fractures which were noted to be healed involving ribs T8 and T9. (Respondent's Exhibit Page 160)

A [REDACTED], 2012, operative report indicates Petitioner underwent a cystoscopy with hydrodistension of bladder. Postoperative diagnosis was interstitial cystitis/painful bladder syndrome. Petitioner had installation of intravesical dimethyl sulfoxide (DMSO). (Respondent's Exhibit Page 1335)

At Step 2, Petitioner has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Petitioner suffers a severely restrictive physical or mental impairment. Petitioner has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by Petitioner. There are insufficient laboratory or x-ray findings listed in the file which support Petitioner's contention of disability. The clinical impression is that Petitioner is stable. There is no medical finding that Petitioner has any muscle atrophy or trauma, abnormality, or injury that is consistent with a deteriorating condition. In short, Petitioner has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Petitioner has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that Petitioner has a severely restrictive physical impairment.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating Petitioner suffers severe mental limitations. There is a mental residual functional capacity assessment in the record which indicates that Petitioner is markedly limited in most areas. However, there is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was oriented to time, person and place during the hearing. Petitioner was able to answer all the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that Petitioner suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Petitioner has failed to meet her burden of proof at Step 2. Petitioner must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If Petitioner had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Petitioner's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

At Step 3, the medical evidence of Petitioner's condition does not give rise to a finding that Petitioner would meet a statutory listing in the code of federal regulations. This Administrative Law Judge finds that Petitioner's medical record does not support a finding that 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.

If Petitioner had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that Petitioner is unable to perform work in which she has been engaged in the past. Therefore, if Petitioner had not already been denied at Step 2, she would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Petitioner has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the Department to establish that Petitioner does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Petitioner has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Petitioner's activities of daily living do not appear to be very limited and she

should be able to perform light or sedentary work even with her impairments. Petitioner has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. Petitioner's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was able to answer all the questions at the hearing and was responsive to the questions. Petitioner was oriented to time, person and place during the hearing. Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to Petitioner's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that Petitioner has no residual functional capacity. Petitioner is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, an individual (age [REDACTED]), with a less than high school education and an unskilled work history who is limited to light work, is not considered disabled.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Petitioner's testimony and the information indicate that Petitioner has a history of tobacco, drug, or alcohol abuse. Applicable herein is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Petitioner does not meet the statutory disability definition under the authority of the DA&A Legislation because Petitioner's substance abuse is material to the alleged impairment and alleged disability.

It should be noted that Petitioner continues to smoke (cigarettes), despite the fact that the doctor has told Petitioner to quit. Petitioner is not in compliance with the treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Careful consideration has been given to Petitioner's allegations and symptoms. Petitioner has established that her mental condition could cause problems with daily and work functioning. However, the totality of the evidence does not support total disability. Petitioner's medically determinable impairments could reasonably be expected to produce alleged symptoms, Petitioner's statements concerning the intensity, persistence and limiting effects of these symptoms do not result in disability when compared to the limitations suggested by the objective medical evidence contained in the file.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was not eligible to receive State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied Petitioner's application for State Disability Assistance benefits based upon disability. Petitioner should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

LL/bb



Landis Lain
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

Sarah Johnson
2229 Summit Park Dr.
Petoskey, MI 49720

Charlevoix County, DHHS

BSC1 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]
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