



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: November 7, 2018
MAHS Docket No.: 18-010317
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 November 1, 2018, with the Administrative Law Judge (ALJ) initiating a conference call from Lansing, Michigan. All other parties appeared in-person at the Department of Health and Human Services (Department or Respondent). Petitioner appeared and testified. Respondent was represented by Linda Brown, Hearings Facilitator.

The Department exhibits include:

- A: Cash Redetermination and Eligibility summary, September 8, 2017.
- B: MRT decision, September 7, 2018.
- C: Medical Records sent to MRT on October 19, 2017.
- D: DHHS-1605 Notice of Case Action, September 21, 2018.

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], 2015, 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 October 7, 2015, the Medical Review Team (MRT) approved Petitioner from July 1, 2015, with a review requested on March 1, 2016.
4. Respondent failed to conduct a review as instructed on March 1, 2016. Petitioner continued to received SDA until September 8, 2017, when the Department discovered its error and forwarded Petitioner's file to MRT for a review.
5. On September 21, 2018, the MRT denied Petitioner continuing SDA.
6. On September 21, 2018, the Department issued notice, and on October 1, 2018, Petitioner filed a timely hearing request. The Department reinstated SDA benefits pending the outcome of the administrative hearing.
7. Petitioner was denied SSI approximately 11 months prior to the review conducted herein. Petitioner reapplied on February 24, 2017. Petitioner's current reapplication with SSI was denied and is in appeal. Petitioner testified that she was not alleging new impairments until 2018. Petitioner had received a final SSI determination at the time that her instant case was reviewed by MRT.
8. As of the date of review, Petitioner was a 51-year-old female, standing [REDACTED] inches tall and weighing [REDACTED] pounds. Petitioner's Body Mass Index (BMI) is [REDACTED] classifying Petitioner as morbidly obese under the BMI Index.
9. Petitioner testified to no alcohol/drug abuse problem or history.
10. Petitioner testified that she quit smoking 10 years ago.
11. Petitioner has a driver's license.
12. Petitioner has a master's degree in Human Resource Management which she obtained in 2015.
13. Petitioner testified that she has no income.
14. Petitioner is not currently working. Petitioner last worked in 2015 in telemarketing. Petitioner's work history includes working as a shift supervisor at [REDACTED] and cook.
15. Petitioner alleges disability based on multiple physical and mental impairments: colitis, GERD, arthritis (feet), arthritis knees, spine, neck, possibly hands, osteoporosis in right hand, insomnia, sleep apnea, restless leg syndrome, possible cataracts, COPD; depression, anxiety. (Petitioner's hearing request.) Petitioner also alleges disability on the basis of morbid obesity. At the administrative hearing Petitioner testified that she is "close to prediabetes, had rotor cuff tear surgery resolved, and had pneumonia in the past."

16. Petitioner's medical file is replete with medical assessments and statements that Petitioner has many obesity related medical issues, has been told to lose weight, has been repeatedly counseled regarding poor dietary habits contributing to colitis and gastro-intestinal problems.
17. The residual functional mental capacity assessment from Petitioner's initial application did not find any severe mental impairment(s). The assessment at review did not find any markedly limited impairment(s).
18. The MRT findings and conclusions are adopted and incorporated by reference herein. MRT found Petitioner's rotor cuff surgery repair, for which she was initially approved on, resolved. MRT concluded that Petitioner was not disabled based on the ability to do light work.
19. Petitioner did not present evidence of severe impairments that interfere with the ability to engage with activities of daily living (ADL).
20. Petitioner lives with her daughter and watches her grandchild a "couple of days a week". As to bathroom and grooming needs, Petitioner complained that she cannot use nail clippers because of torn ligaments in her left hand. Petitioner is right hand dominant. Other than being unable to use nail clippers with her non-dominant hand, Petitioner does not need any assistance with her bathroom and grooming needs.
21. Petitioner did not present evidence of being unable to engage in light housework.
22. Petitioner did not present evidence of exercising.
23. 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:

- (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 --

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.

This case is a review. As such, the federal review standard must be applied. See 20 CFR 416.994. As noted, this case should have been reviewed in March 2016, after Petitioner's expected recovery from shoulder surgery. However, the Department failed to send this case to the MRT until 2017. Petitioner was previously approved for a few months—8 months—due to this surgery. Petitioner was expected to recover from the shoulder surgery by March 2016. Unrefuted evidence of record is that Petitioner did recover, and the issue has been resolved. Thus, under the 7-step review standard found at 20 CFR 416.994, Petitioner has improved. Moreover, medical evidence supports finding that the improvement is related to her ability to engage in SGA. The analysis continues as to the remaining 5 steps under the 7 step review analysis.

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 meets or equals one of the Listings of Impairments. 20 CFR 416.920(d). 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. The medical evidence of record does not support that Petitioner meets or equals a listing, and thus, the analysis continues.

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).

Regarding Petitioner's alleged mental impairments, Petitioner complains of many symptoms which could reasonably be caused by Petitioner's diagnoses. However, the undersigned agrees with MRT that the intensity of the symptoms and their impact on functioning are not consistent with the preponderance of the evidence in the file.

Further, as noted in the Findings of Fact, the mental residual functional capacity assessment did not score Petitioner as having markedly limiting impairments. Thus, Petitioner is not disabled at Step 4 as to her alleged mental impairments. Ruling the ambiguities in Petitioner's favor at Step 4 as to the alleged physical impairments, the analysis continues as to the physical impairments only.

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).

After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge concurs with the MRT in finding that the medical vocational grids require a finding of not disabled pursuant to medical vocational grid rule 201.14 and alternatively, 201.15 a finding of not disabled is required.

In reaching this conclusion, it is noted that the law does not classify Petitioner advanced age at 51, but rather, closely approaching advanced age. Petitioner's education is a master's degree. Under these parameters, a finding of not disabled is required and is supported by the great weight of the medical evidence of record.

It is further noted that Petitioner's obesity analogies to smoking are the "individual responsibility" types of behaviors reflected in the *Sias v Secretary of Health and Human Services*, 861 F2d 475 (6th Cir 1988) decision. In *Sias*, the Petitioner was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised Petitioner to reduce his body weight. The court said in part:

...The Petitioner's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening situation. The Petitioner admitted to the ALJ he was at least 40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the Petitioner in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *Sias*, supra, p. 481.

In *Sias*, the Petitioner was found not truly disabled because the secretary disregarded the consequences resulting from the Petitioner's unhealthy habits and lifestyles—including the failure to stop smoking. *Awad v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6th Cir 1984).

Statutory disability does not recognize many behaviors as statutorily disabling where behavioral driven treatment will remove or reduce the severity or complaint. Among

others, this includes complaints such as drug and alcohol addiction, obesity, and *smoking*. *Issues related to these problems often result from life style choices*. In addition, many heart problems, type 2 diabetes, neuropathy, and high cholesterol have been significantly correlated with many life style behaviors. In such instances, the symptoms and problem are treatable--obesity is treatable with weight loss, diet and exercise; alcoholism and drug addiction with abstinence; lung/breathing related medical issues are treatable with cessation from smoking. As with the congressional mandate denying statutory disability for alcohol and drug addiction, individual behaviors that drive medically related complaints and symptoms are not considered under the federal social security law as "truly disabling". See *Sias, supra*. In most instances, standard medical protocol is to instruct the individual to stop consuming alcohol, stop the drug addiction, stop smoking, and to lose weight. In fact, 20 CFR 416.930 requires a finding of not disabled where an individual fails to follow the recommended or prescribed treatment program.

Here, Petitioner is morbidly obese with a BMI 44. Petitioner's medical files are replete with references to her many complaints and symptoms being obesity related problems. Using the same analysis required under the drug and alcohol legislation enacted by congress, as well as the Congressional removal of the obesity criteria from the Listings of Impairments, Petitioner did not meet the burden to show that if the obesity behaviors were removed that the medical would still show with substantial and credible evidence statutory disability as defined under federal and state law.

Petitioner does have medically determinable impairments that would reasonably cause some of the alleged symptoms. However, the intensity, persistence, or alleged functionally limiting effects of pain or other symptoms are not altogether substantiated by objective medical evidence.

Petitioner's conditions result in some limitations on her ability to perform work related activities. However, the evidence does not support that Petitioner's conditions are severe enough to keep her from working. While Petitioner may not be able to return to past relevant work, based on the evidence of record, the medical vocational grid requires a finding that Petitioner can adjust to other work.

It is also noted that Petitioner's testimony exaggerated or simply mis-stated her medical conditions. Petitioner stated that she was alleging disability based on past pneumonia, rotor cuff surgery, being "close to being diagnosed with prediabetes" and on her hearing summary, having "possible cataracts." Petitioner presented no law or authority that would allow her to prevail based on past resolved medical issues, and/or possible medical impairments which she 'might' be diagnosed with in the future. Arguably the countless numbers of individuals could be diagnosed with multiple medical problems some day in the future; such would not make them disabled today based on such a future possibility.

Petitioner's complaints and symptoms are not recognized as statutorily disabling absent corroboration requirements 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). In addition, Petitioner's complaints and descriptions of symptoms are not consistent with

the great weight of the objective medical evidence pursuant to the requirements found at 20 CFR 416.9139(b), .913(d), and .913(e).

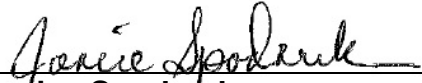
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner not disabled for purposes of the SDA benefit program.

It should be noted in the alternative that Petitioner received a final SSI determination 11 months prior to the review conducted herein. In the alternative, it can be argued that Petitioner is barred from proceeding where she has had a final determination within the last 12 months.

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) 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

Lauren Casper
27690 Van Dyke
Warren, MI 48093

Macomb County (District 20), DHHS

BSC4 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]