



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: January 11, 2019
MAHS Docket No.: 18-010325
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

AMENDED 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 December 6, 2018, from Lansing, Michigan. The Petitioner personally appeared and testified. She submitted 20 exhibits which were admitted into evidence.

The Michigan Department of Health and Human Services (Department) was represented by Eligibility Specialist Veronica Bracey. Ms. Bracey testified on behalf of the Department. The Department submitted 1,337 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) benefit 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 MA. [Dept. Exh. 36].
2. On September 18, 2018, the Medical Review Team (MRT) denied Petitioner's application for MA. [Dept. Exh. 36-42].
3. On [REDACTED], 2018, the Department sent Petitioner notice that her application was denied.
4. On [REDACTED], 2018, Petitioner filed a hearing request to contest the Department's negative action.

5. Petitioner has a history of pulmonary embolisms, pulmonary hypertension, deep vein thrombosis, chronic obstructive pulmonary disease, hepatitis B, depression, a compression fracture of the spine and avascular necrosis of the hip, stage II.
6. On [REDACTED], 2018, Petitioner was admitted to the hospital through the emergency department. A CT showed bilateral pulmonary emboli. She underwent pulmonary arteriography with initiation of a catheter directed ultrasound assisted thrombolytic therapy for her submassive bilateral pulmonary emboli with right heart strain. On [REDACTED], 2018, a repeat CTS of the chest showed a partial improvement of bilateral pulmonary emboli following thrombolytic infusion with improvement in right heart strain. [Dept. Exh. 60-64].
7. On [REDACTED], 2018, the Department mailed Petitioner a Services Approval Notice. The Notice informed Petitioner that her Home Help Services payments were increased because travel time had been added to shopping and laundry, in addition to an allotment for mobility, transferring and toileting. [Petitioner's Exh. 8].
8. On [REDACTED], 2018, Petitioner underwent an MR lumbar spine without contrast. The results showed degenerative disc dislocation at L5-S1 with grade 1 spondylolisthesis of L5 in relation to S1 vertebra secondary to degenerative hypertrophic facet joints. Asymmetric broad-based right posterolateral disc herniation extending to neural foramina along with listhesis and hypertrophy of the facet joint causing severe compromise right L5 neural foramina and moderate compromise of left L5 neural foramina. [Petitioner's Exh. 1].
9. On [REDACTED], 2018, Petitioner was evaluated by a Sports Orthopedic Specialist for right hip pain. Petitioner used a walker for ambulation. Petitioner was diagnosed with avascular necrosis. [Petitioner's Exh. 4-6].
10. On [REDACTED], 2018, Petitioner's nurse practitioner completed a letter indicating that Petitioner was unable to work. [Petitioner's Exh. 3].
11. Petitioner is a [REDACTED]-year-old woman born on [REDACTED]. She is [REDACTED] and weighs [REDACTED] pounds. She has a high school education. She last worked as a customer service representative in May 2017.
12. Petitioner is scheduled for a January 16, 2019, Social Security disability hearing.
13. Petitioner's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

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.

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). 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 his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If

a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and testified that she has not worked since May 2017. Therefore, she is not disqualified from receiving MA benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleges disability due to a history of pulmonary embolisms, pulmonary hypertension, deep vein thrombosis, chronic obstructive pulmonary disease, hepatitis B, depression, a compression fracture of the spine and avascular necrosis of the hip, stage II.

Petitioner credibly testified that she has a very limited tolerance for physical activities and is unable to stand, sit or walk for more than 5 minutes. She reported using a walker. Petitioner stated that she is unable to do housekeeping or cooking. Further, Petitioner is provided with Home Help Services for shopping, laundry, mobility, transferring and toileting.

The MRI of Petitioner's lumbar spine dated [REDACTED] 2018, shows degenerative disc dislocation at L5-S1 with grade 1 spondylolisthesis of L5 in relation to S1 vertebra secondary to degenerative hypertrophic facet joints. Also viewed was asymmetric broad-based right posterolateral disc herniation extending to the neural foramina along with listhesis and hypertrophy of the facet joint causing severe compromise of the right L5 neural foramina and moderate compromise of the left L5 neural foramina. Neural foraminal compromise is the narrowing of the spinal column that causes nerve compression in the affected areas.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that she does have physical limitations on her ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted continuously for more than 12 months; therefore, Petitioner is not disqualified from receipt of MA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Petitioner has alleged physical disabling impairments due to pulmonary embolisms, pulmonary hypertension, deep vein thrombosis, chronic obstructive pulmonary disease, hepatitis B, depression, a compression fracture of the spine and avascular necrosis of the hip, stage II.

Listing 1.00 (musculoskeletal system) was considered in light of the objective evidence. Based on Listing 1.04, Petitioner's impairments are severe, in combination, if not singly, (20 CFR 404.15.20 (c), 416.920(c)), in that Petitioner is significantly affected in her ability to perform basic work activities (20 CFR 404.1521(b) and 416.921(b)(1)).

Listing 1.04 requires a disorder of the spine such as a herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture, resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With evidence of nerve root compression characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine) and lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

As indicated by Petitioner during her testimony, and supported by the medical evidence in the file, the MRI indicates nerve root compression, resulting in limitation of motion of the spine, motor loss, muscle spasms, radiculopathy and associated muscle weakness displayed by Petitioner's weakness and inability to stand for long periods of time or walk long distances and her use of a walker. Accordingly, this Administrative Law Judge finds that Petitioner's impairments meet Listing 1.04 and concludes the Petitioner is disabled for purposes of the MA program.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall process Petitioner's [REDACTED], 2018 MA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The Department shall review Petitioner's medical condition for improvement in [REDACTED] 2020, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

VLA/nr



Vicki L. Armstrong
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

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI
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Saginaw County DHHS- via electronic
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BSC4- via electronic mail

D. Smith- via electronic mail

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Petitioner

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