



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: May 8, 2019
MAHS Docket No.: 18-013477
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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, an in-person hearing was held on March 19, 2019, from Lansing, Michigan. The Petitioner was represented by herself with her mother, [REDACTED] and father, [REDACTED]. The Department of Health and Human Services (Department) was represented by Kimberly Reed, Lead Worker.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) 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 SDA.
2. On October 26, 2018, the Medical Review Team (MRT) denied Petitioner's application for SDA per BEM 261 because the nature and severity of the Petitioner's impairments would not preclude work activity at the above stated level for 90 days and is capable of performing other work under Medical Vocation Grid Rule 204.00 per 20 CFR 416.920(f).
3. On October 30, 2018, the Department Caseworker sent Petitioner a notice that her application was denied.
4. On December 21, 2018, the Department received a hearing request from Petitioner, contesting the Department's negative action.

5. Petitioner is a [REDACTED]-year-old woman whose date of birth is [REDACTED], 1983. Petitioner is [REDACTED]' [REDACTED]" tall and weighs [REDACTED] pounds. Petitioner completed High School with a Bachelor of Arts in Music, and a Master's in Biblical Literature. Petitioner can read and write and do basic math. Petitioner was last employed as a secondary high school teacher the sedentary level in June 2017. She was also employed as a teacher at the primary and secondary level, editor, and administrative assistant.
6. Petitioner's alleged impairments are Lyme Disease and two car accidents in 2011 and 2015 where she had whiplash and ligament stretch in the neck and back.
7. Petitioner was seen by her pain specialist at [REDACTED] on February 22, 2019. Petitioner was a new patient seen for low back pain radiating to sometimes down the leg. The pain has been present since the year 2000 and has had a gradual onset and is not the result of an injury or accident. Petitioner rates her pain as a three on a scale of 0 to 10 where she described it as dull, aching, throbbing, cramping, sharp, burning, shooting, stabbing, and tingling and is constantly present. The pain is made worse by physical activity and is elevated by rest, heat, cold, changing positions, massage, stretching, and medications. Her neck pain was rated as a four – six on a scale of 0 to 10 it is neck pain that radiates to her head and has been present since 2006 – 2007. Petitioner is a well-developed and well-nourished female in no distress. She was oriented to person, place, and time. Mood was appropriate, but affect was flat. Gait is non-antalgic unassisted. Muscle tone was normal. She had trigger point tenderness in the lumbar region, but lordosis was normal. She was diagnosed with sacroiliitis, Lyme arthritis, spondylosis of the lumbar without myelopathy, low back pain, and spondylosis of the cervix called without myelopathy. The plan was to start her on injections at half during in her low back to see how she responds. She would like to try aqua therapy first and get back to us. The Petitioner has had numerous injections that failed and is not interested in this type of therapy. No procedures were performed today. She was cautioned against excessive physical activity, lifting, twisting, and bending, especially in the day of the procedure. She is also been cautioned against driving a motor vehicle, operating heavy machinery, or signing legal documents for at least 12 hours after receiving the IV conscious sedation. There were no adjustments made to the Petitioner's current medication regimen. Petitioner's Exhibit 1, pgs. a-21 to a-24.
8. On January 15, 2019, Petitioner was seen by her behavioral medicine specialists from [REDACTED]. Her treating specialist wrote a letter on her behalf stating that she's been seeing Petitioner as a patient since August 2018 where she sought an accurate diagnosis for what appears to be limbic system damage. Petitioner has had to motor vehicle accidents and has been diagnosed with Lyme disease. Her symptoms include severe fatigue and decreased energy, light/sound/smell/temperature/food sensitivities that cause dizziness and balance issues, chronic pain of migraines, head, neck, muscle

tension, gastrointestinal pain and upset, confusion, difficulty concentrating, memory issues, balance problems, comprise immune system, anxiety and depression related to her physical limitations and say of going out in public, guilt about being a burden to others, and difficulty sleeping. Petitioner has become increasingly isolated due to protective efforts and fear of triggering a physical reaction. She has great anxiety about potentially picking up germs from public places. Petitioner wears a mask when going out in public due to compromised immune function and frequent sickness. She feels overwhelmed and freezes when it she encounters typical daily stresses. It affects her ability to communicate clearly and she becomes agitated and unable to think clearly. She would have difficulty functioning in the workplace due to these limitations. Petitioner's Exhibit 1, pg. f.

9. On January 7, 2019, Petitioner was seen for a physical therapy evaluation. Her assessment was vertigo, dizziness and giddiness, and poor balance. Petitioner presents with nonspecific dizziness was symptom of exacerbation since August 2015. The tests performed on Petitioner were negative. The symptoms do not appear to be ontological in nature and nor are fitting into a hypofunctional vestibulopathy currently. It can be indicative of persistent postural perceptual dizziness or migrainous in nature and she will benefit from skilled vestibular rehabilitation therapy. Her rehab potential was seen as good. Petitioner would benefit from further therapy to achieve stated goals. It was recommended continued treatment for two days a week for six weeks. Petitioner's Exhibit a-25 to a-31.
10. On December 13, 2018, Petitioner was seen by her treating specialist at [REDACTED]. She was seen for a second opinion of tinnitus. Petitioner had a normal physical examination. A discussion was had about cervical traction at home. They also discussed physical therapy, chiropractic, acupuncture to help with migraines. In addition, they discussed trigeminal nerve causing headaches and ear pain. They also discussed that her dizziness was not from ears or balance issues. The plan was for migraine without aura, not intractable without status migrainosus. She was to follow up with the vertigo in three months. She was given a referral to adjustable therapy for postography testing only, vestibular therapy; Greenville, and neurology; [REDACTED]. Petitioner's Exhibit, pgs. X-Z.
11. On September 12, 2018, Petitioner's physician's assistant at [REDACTED] Health Care Clinic submitted a letter on behalf of Petitioner. She has been a patient in the office since October 26, 2017. She was diagnosed with Lyme disease in 2005. Petitioner has reported multiple sequelae in regards to her health post Lyme disease diagnosis. In my medical opinion and given her chronic symptoms, I believe Petitioner is unable to work as she would find extreme difficulty maintaining consistent or permanent employment without excessive absences. Department Exhibit, pg. 99.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services 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.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. 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 are 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

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, Appendix 1, 12.00(C).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b). Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment

or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Petitioner does not have a severe medically determinable impairment or combination of impairments, the Petitioner is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Petitioner’s residual functional capacity. 20 CFR 404.1520(e). An individual’s residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the trier must consider all of the Petitioner’s impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner has the residual functional capacity to do past relevant work, then the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual’s residual functional capacity is considered in determining whether disability exists. An individual’s age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Petitioner has satisfied requirements as set forth in steps one and two of the sequential evaluation. However, Petitioner’s impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for step 3. Therefore, vocational factors will be considered to determine the Petitioner’s residual functional capacity to do relevant work and past relevant work.

In the present case, Petitioner was seen by her pain specialist at [REDACTED] Greenville on February 22, 2019. Petitioner was a new patient seen for low back pain radiating to sometimes down the leg. The pain has been present since the year 2000 and has had a gradual onset and is not the result of an injury or accident. Petitioner rates her pain as a three on a scale of 0 to 10 where she described it as dull,

aching, throbbing, cramping, sharp, burning, shooting, stabbing, and tingling and is constantly present. The pain is made worse by physical activity and is elevated by rest, heat, cold, changing positions, massage, stretching, and medications. Her neck pain was rated as a four – six on a scale of 0 to 10 it is neck pain that radiates to her head and has been present since 2006 – 2007. Petitioner is a well-developed and well-nourished female in no distress. She was oriented to person, place, and time. Mood was appropriate, but affect was flat. Gait is non-antalgic unassisted. Muscle tone was normal. She had trigger point tenderness in the lumbar region, but lordosis was normal. She was diagnosed with sacroiliitis, Lyme arthritis, spondylosis of the lumbar without myelopathy, low back pain, and spondylosis of the cervix called without myelopathy. The plan was to start her on injections at half during in her low back to see how she responds. She would like to try aqua therapy first and get back to us. The Petitioner has had numerous injections that failed and is not interested in this type of procedure. No procedures were performed today. She was cautioned against excessive physical activity, lifting, twisting, and bending, especially in the day of the procedure. She is also been cautioned against driving a motor vehicle, operating heavy machinery, or signing legal documents for at least 12 hours after receiving the IV conscious sedation. There were no adjustments made to Petitioner's current medication regimen. Petitioner's Exhibit 1, pgs. a-21 to a-24.

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as good. Petitioner would benefit from further therapy to achieve stated goals. It was recommended continued treatment for two days a week for six weeks. Petitioner's Exhibit a-25 to a-31.

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On September 12, 2018, Petitioner's physician's assistant at [REDACTED] submitted a letter on behalf of Petitioner. She has been a patient in the office since October 26, 2017. She was diagnosed with Lyme disease in 2005. Petitioner has reported multiple sequelae in regards to her health post Lyme disease diagnosis. In my medical opinion and given her chronic symptoms, I believe Petitioner is unable to work as she would find extreme difficulty maintaining consistent or permanent employment without excessive absences. Department's Exhibit, pg. 99.

This Administrative Law Judge finds that Petitioner is not physically limited but may be mentally limited. Her symptoms may affect her ability to work on a continued basis. She is actively pursuing treatment options with limited success.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that Petitioner testified that she does perform some of her daily living activities. Petitioner does feel that her condition has stayed the same. Petitioner stated that she does have mental impairments where she is not taking medication, but in therapy at Michigan Pain Consultants. Petitioner does not or has ever smoked cigarettes. She stopped drinking in 2015, where before she drank a glass of wine every two weeks. She does not or has ever used illegal and illicit drugs. Petitioner did not feel there was any work she could do.

At Step 4, this Administrative Law Judge finds that Petitioner has established that she cannot perform any of her prior work. She was previously employed as a secondary high school teacher the sedentary level in June 2017. She was also employed as a teacher at the primary and secondary level, editor, and administrative assistant. Petitioner is not taking medication for her mental impairments, but in therapy. Therefore, Petitioner is not disqualified from receiving disability at Step 4. Petitioner is not capable of performing her past work. However, the Administrative Law Judge will still 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.

The objective medical evidence on the record is insufficient that Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. Petitioner's testimony as to her limitation indicates her limitations are non-exertional.

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).

In the instant case, Petitioner testified that she has Lyme disease resulting in mental symptoms. Petitioner is not taking medication for her mental impairments, but in therapy. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. She does have symptoms that affect her ability mentally to be gainfully employed.

In the final step of the analysis, the trier of fact must determine if the Petitioner's impairment(s) prevent the Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite her limitations. 20 CFR 416.966.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, Petitioner cannot meet the physical requirements of sedentary work, based upon Petitioner's physical abilities. Under the Medical-Vocational guidelines, a younger aged individual with a high school education and more, and a skilled, semi-skilled and unskilled work history, who is limited to sedentary work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 201.29. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as side effects of Lyme disease. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to Petitioner's mental impairments, the Administrative Law Judge finds that Petitioner could not perform sedentary work and that Petitioner does meet the definition of disabled under the SDA program.

DECISION AND ORDER


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 disabled for purposes of the SDA benefit program. The Petitioner could not perform sedentary work and that the Petitioner does meet the definition of disabled under the SDA program.

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING 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. Initiate a redetermination of Petitioner's eligibility for SDA retroactive to her SDA application dated [REDACTED], 2018, with a medical review required May 2020.
2. Based on policy, the Department should provide Petitioner with written notification of the Department's revised eligibility determination.
3. Issue Petitioner any retroactive benefits she/he may be eligible to receive, if any.

CF/hb



Carmen G. Fahie
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Kimberly Reed
609 North State Street
PO Box 278
Stanton, MI 48888

Montcalm County, DHHS

BSC3 via electronic mail

L. Karadsheh via electronic mail

Authorized Hearing Rep.

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

Petitioner

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