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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 4, 2019
MAHS Docket No.: 18-011560
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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. Petitioner personally appeared and testified. Petitioner submitted two exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Hearing Facilitator Richkelle Curney. Ms. Curney testified on behalf of the Department. The Department submitted 320 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 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. Petitioner applied for SDA on [REDACTED] 2018. [Dept. Exh. 3].
2. On [REDACTED], 2018, the Medical Review Team denied Petitioner's application for SDA. [Dept. Exh. 9-15].
3. On October 2, 2018, the Department issued Petitioner a Notice of Case Action informing her that her application for SDA had been denied. [Dept. Exh. 6-7].
4. On October 29, 2018, Petitioner submitted a Request for Hearing. [Dept. Exh. 2-3].

5. Petitioner has been diagnosed with cervicalgia, low back pain, spondylosis, facet hypertrophy, bilateral neuroforaminal narrowing, canal stenosis, and a deformity of the ventral surface of the spinal cord.
6. On [REDACTED] 2018, Petitioner's treating physician signed a Disability Certificate indicating Petitioner was disabled from work from [REDACTED] 2018 through [REDACTED], 2018. [Dept. Exh. 238].
7. On [REDACTED] 2018, Petitioner began attending physical therapy with a diagnosis of cervicalgia and low back pain. [Dept. Exh.175].
8. On [REDACTED] 2018, Petitioner's treating physician completed a Certification of Health care Provider for Employee's Serious Health Condition (Family and Medical Leave Act) on behalf of Petitioner. The physician indicated that Petitioner was unable to lift, bend, twist, or stand and that she was unable to perform her job functions due to her condition. The physician noted that Petitioner would be re-evaluated every 30 days. He also signed a Disability Certificate indicating Petitioner was disabled from work from [REDACTED], 2018 through [REDACTED], 2018. [Dept. Exh. 47-50, 236].
9. On [REDACTED], 2018, Petitioner underwent a lumbar spine MRI which revealed acquired spondylosis at L4-L5 and L5-S1. At L4-L5, there was facet hypertrophy with a 2cm extracanalicular facet joint cyst on the left. At L5-S1, there was a very small disc bulge with at most minimal bilateral neuroforaminal narrowing. [Dept. Exh. 221-222].
10. On [REDACTED] 2018, Petitioner was given a cervical spine MRI. The results showed mild developmental canal narrowing with superimposed acquired spondylosis, which was most pronounced at C4-C5 where there was a central protrusion, moderate canal stenosis and deformity of the ventral surface of the spinal cord. [Dept. Exh. 219-220].
11. On [REDACTED] 2018, Petitioner's treating physician signed a Disability Certificate indicating Petitioner was disabled from work from [REDACTED], 2018 through [REDACTED], 2018. [Dept. Exh. 248].
12. On [REDACTED] 2018, Petitioner underwent major surgery. Petitioner's preoperative diagnosis was neuroforaminal stenosis of lumbar sac spine. During the surgery, a cyst was removed from the L4-L5 facet. [Dept. Exh. 190-218].
13. On [REDACTED] 2018, the results of the pathologic diagnosis of the cyst showed intramuscular myxoma. [Dept. Exh. 223-224].
14. On [REDACTED] 2018, Petitioner's orthopedic surgeon opined that Petitioner was unemployable and status post lumber decompression and fusion. [Dept. Exh. 4].
15. On [REDACTED], 2018, Petitioner underwent an independent psychological assessment on behalf of the Department. Petitioner was on time and was observed to walk slowly toward the exam room from the lobby with the use of a

cane. She reported a back injury subsequent to a motor vehicle accident in [REDACTED] 2018. Petitioner explained that she had surgery in [REDACTED] 2018, which resulted in some permanent damage and had made it difficult for her to balance upon standing or to walk. Petitioner noted that she had chronic pain which added to her restlessness and irritability which also disrupted her sleep. She reported that she has struggled with major depression and had been diagnosed with bipolar disorder. Petitioner reported that she had one past psychiatric hospitalization in 2009 where she was diagnosed with bipolar depression. The psychologist opined that Petitioner had mild limitations in the areas of focus and concentration. Her ability to understand, retain, and execute basic routine tasks was moderately limited. Her ability to appropriately interact with the general public or respond to supervision was mildly limited. [Dept. Exh. 151-154].

16. On [REDACTED] 2018, Petitioner submitted a Disability Form signed by her treating physician indicating that Petitioner is disabled from work from [REDACTED], 2018 through [REDACTED] 2018. [Petitioner's Exh. 1-2].

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 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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

A person is disabled for SDA purposes if he or she:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2015).

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 **or 90 days for the SDA program**. 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 her motor vehicle accident in [REDACTED] 2018. Therefore, she is not disqualified from receiving SDA 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 is defined as 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 being diagnosed with cervicalgia, low back pain, spondylosis, facet hypertrophy, bilateral neuroforaminal narrowing, canal stenosis, and deformity of the ventral surface of the spinal cord.

Petitioner credibly testified that she has a very limited tolerance for physical activities. She is unable to stand more than 10 minutes, unable to walk more than 5-10 feet and can only lift up to 2-3 pounds. She also reported using a cane. Petitioner stated that she is unable to do housekeeping, grocery shopping, or cook her own meals.

Further, Petitioner's treating physician has indicated every month since [REDACTED], 2018, that Petitioner is unable to work. Petitioner's treating physician completed an FMLA form on [REDACTED] 2018, certifying that Petitioner was unable to work for 30 days, and that she would be re-evaluated every 30 days. Petitioner applied for SDA on [REDACTED] 2018. As of [REDACTED], 2018, Petitioner's treating physician continued to report that Petitioner was unable to work from [REDACTED], 2018 through [REDACTED] 2018.

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 90 days; therefore, Petitioner is not disqualified from receipt of SDA 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 cervicalgia, low back pain, spondylosis, facet hypertrophy, bilateral neuroforaminal narrowing, canal stenosis, and a deformity of the ventral surface of the spinal cord.

Listing 1.00 (musculoskeletal system) was considered in light of the objective evidence. Based on the 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, Petitioner's impairments have resulted 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 prescribed use of a cane for more than **90 days**. Further, her treating physician has indicated that Petitioner has not been able to work since [REDACTED] 2018. Accordingly, this Administrative Law Judge finds that Petitioner's impairments meet Listing 1.04 and concludes Petitioner is disabled for purposes of 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, finds Petitioner disabled for purposes of the SDA benefit program.


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 THE ORDER WAS ISSUED:

1. The Department shall process Petitioner's [REDACTED] 2018 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 January 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.

IT IS SO ORDERED.

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

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