



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 18, 2019
MAHS Docket No.: 18-012013
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 19, 2018, from Lansing, Michigan. Petitioner personally appeared and testified. Petitioner submitted 56 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 82 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 competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] [REDACTED] 2018, Petitioner applied for SDA. [Hearing Summary].
2. On July 23, 2018, a Disability Examiner of the Medical Review Team (MRT) denied Petitioner's application for SDA. A physician's certification was not included with the MRT's decision as required on behalf of Title XIX applicants. [Dept. Exh. 6-12].

3. On August 31, 2018, the Department issued Petitioner a Notice of Case Action informing her that her SDA application had been denied effective June 1, 2018, ongoing. [Dept. Exh. 78-82].
4. On November 5, 2018, Petitioner submitted a Request for Hearing to the Department contesting the negative action. [Dept. Exh. 2-3].
5. Petitioner has been diagnosed with rheumatoid arthritis with a positive rheumatoid factor, fibromyalgia, inflammatory arthritis, anxiety, a Bartholin cyst, depression, fatigue, major depressive disorder, post-traumatic stress disorder, insomnia, bilateral lower extremity numbness, bilateral carpal tunnel disease, restless leg syndrome, fibromyalgia, cervicgia, and tobacco use.
6. On [REDACTED] [REDACTED] 2017, Petitioner's Rheumatologist at [REDACTED], wrote that Petitioner has inflammatory arthritis which affects her joints. She has pain, stiffness and swelling of her joints. She is undergoing treatment and it is recommended that she not lift, push or pull anything over 15-20 pounds, or bend, twist or kneel, due to her condition. [Dept. Exh. 27].
7. On [REDACTED] [REDACTED] 2018, Petitioner met with her psychiatrist. She was diagnosed with major depressive disorder and post traumatic stress disorder. The psychiatrist noted that Petitioner was totally disabled and unable to do any work. [Dept. Exh. 37].
8. On [REDACTED] [REDACTED] 2018, Petitioner's primary care physician indicated that Petitioner was diagnosed with Rheumatoid Arthritis and was treating with a Rheumatologist. The physician opined that Petitioner was unable to work due to the condition. [Petitioner's Exh. 29].
9. On [REDACTED] [REDACTED] 2018 through [REDACTED] [REDACTED] 2018, Petitioner saw her psychiatrist regarding her insomnia, loss of concentration and difficulties participating in other activities due to her depression. The psychiatrist indicated that Petitioner was totally disabled and unable to work. [Dept. Exh. 41-46].
10. On [REDACTED] [REDACTED] 2018, Petitioner underwent an independent medical assessment on behalf of the Department. Petitioner complained of stiffness, joint pain, neck pain, back pain, and a gait abnormality. During the physical exam, the examining physician noted she had tenderness at the cervical and lumbar spine, decreased flexion, decreased extension and decreased lateral bending. Petitioner's right hip had pain with decreased flexion, decreased abduction, decreased external rotation, decreased internal rotation and pain with internal rotation. She had pain in her left hip with decreased flexion, decreased extension, decreased abduction, decreased external rotation, decreased internal rotation and an abnormal stance with an inability to turn quickly. In addition, Petitioner's tandem walking was unsteady. She had abnormal heel walking, toe walking, and coordination. She was assessed with pain in left knee, restless leg syndrome, fibromyalgia, cervicgia and tobacco use. The examining physician opined that Petitioner had

daily physical limitations due to an abnormal gait and chronic constant pain. She had difficulty bending, tying shoes, dressing and undressing, rising from a squatting position, getting on and off the exam table and climbing stairs. [Dept. Exh. 29-35].

11. On [REDACTED] [REDACTED] 2018, Petitioner met with her rheumatologist regarding her rheumatoid arthritis with a positive rheumatoid factor, fibromyalgia, bilateral lower extremity numbness and bilateral carpal tunnel disease. Petitioner complained that she was doing worse since her last visit. Petitioner's past medical history was reviewed and listed: anxiety, a Bartholin cyst, constipation, depression, fatigue, fibromyalgia, and rheumatoid arthritis. Petitioner was assessed with Rheumatoid arthritis involving multiple sites with positive rheumatoid factor and Fibromyalgia. [Petitioner's Exh. 17-22].
12. On [REDACTED] [REDACTED] 2018, Petitioner's psychiatrist indicated that he had been treating Petitioner since [REDACTED] [REDACTED] 2017. The psychiatrist requested that Petitioner be placed on a no-work restriction due to her mental and physical condition. The psychiatrist noted that Petitioner was being treated for major depression, stress and anxiety and opined that her prognosis was poor. [Petitioner's Exh. 6].
13. Petitioner is a [REDACTED] year-old woman born on [REDACTED] [REDACTED] [REDACTED]. She is [REDACTED] and weighs [REDACTED] pounds. She has a high school education.
14. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
15. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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 is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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.

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 [90 days for SDA]. 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).

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 credibly testified that she has not worked since 2017. Therefore, she is not disqualified from receiving disability 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 mean 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 claimant's age, education, or work experience, the impairment would not affect the claimant'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 rheumatoid arthritis with a positive rheumatoid factor, fibromyalgia, inflammatory arthritis, anxiety, Bartholin cyst, constipation, depression, fatigue, major depressive disorder, post-traumatic stress disorder, insomnia, bilateral lower extremity numbness, bilateral carpal tunnel disease, restless leg syndrome, fibromyalgia, cervicalgia, and tobacco use.

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 twelve months; therefore, Petitioner is not disqualified from receipt of MA-P 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's Rheumatologist in ██████ 2017, noted that Petitioner had inflammatory arthritis, which resulted in pain, stiffness and swelling of her joints. She was undergoing treatment and it was recommended that she not lift, push or pull anything over 15-20 pounds, or bend, twist or kneel, due to her condition.

In ██████ 2018, Petitioner's primary care physician noted that Petitioner was diagnosed with Rheumatoid Arthritis and was treating with a Rheumatologist. The physician opined that Petitioner was unable to work due to her condition.

In ██████ 2018, Petitioner underwent an independent medical examination. The examining physician noted that Petitioner had tenderness at the cervical and lumbar spine, decreased flexion, decreased extension and decreased lateral bending. Petitioner's right hip had pain with decreased flexion, pain with abduction, pain with decreased external rotation, pain with decreased internal rotation and pain with internal rotation. She had pain in her left hip with decreased flexion, decreased extension, decreased abduction, decreased external rotation, and decreased internal rotation. She also had an abnormal stance and an inability to turn quickly. She had difficulty bending, tying shoes, dressing and undressing, rising from a squatting position, getting on and off the exam table and climbing stairs. In addition, Petitioner's tandem walking was unsteady. She had abnormal heel walking, toe walking, and coordination. The physician opined that Petitioner had daily physical limitations due to an abnormal gait and chronic constant pain.

In ██████ 2018, Petitioner's psychiatrist noted that she had been undergoing treatment for major depression, stress and anxiety since ██████ 2017. The psychiatrist opined that Petitioner's prognosis was poor and requested that Petitioner be placed on a no-work restriction.

Listing 1.00 (Musculoskeletal System), 12.00 (Mental Disorders) and Listing 14.00 (Immune System Disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Petitioner's combined impairments, meet the intent and severity requirements of a listed impairment; therefore, Petitioner is found to be disabled at Step 3. Consequently, the Department's denial of Petitioner's May 11, 2018 SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Petitioner is not currently disabled for SDA eligibility purposes.

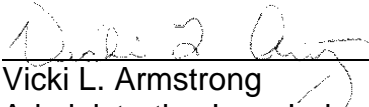
Accordingly, the Department's decision is **REVERSED**, and it is Ordered that:

1. The Department shall process Petitioner's May 11, 2018 SDA 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 2019, 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 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 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

Tara Roland 82-17
8655 Greenfield
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