



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR



Date Mailed: March 4, 2019
MAHS Docket No.: 19-000223
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; and 45 CFR 205.10. After due notice, a telephone hearing was held on February 5, 2019, from Lansing, Michigan. Petitioner represented herself. The Department was represented by Amanda Tchorzynski.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that Petitioner did not meet the disability standard for State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing State Disability Assistance (SDA) recipient.
2. The Disability Determination Service (DDS) denied Petitioner's claim of disability on December 28, 2017, finding that she was capable of performing other work but due to Department error, the case was listed as an approval.
3. On July 9, 2018, the Department initiated a review of Petitioner's continued eligibility to receive benefits and determine if there has been medical improvement.
4. On December 12, 2018, the Disability Determination Service (DDS) determined that Petitioner did not meet the disability standard for State Disability Assistance (SDA) because it determined that Petitioner's condition had improved and that she is capable of performing other work.

5. On January 3, 2019, the Department notified Petitioner that it would close her State Disability Assistance (SDA) benefits as of February 1, 2019, due to the determination of the Disability Determination Service (DDS).
6. On January 1, 2019, the Department received Petitioner's hearing request, protesting the denial of disability benefits.
7. Petitioner is a [REDACTED] old woman whose birth date is [REDACTED] [REDACTED] 1971.
8. Petitioner is [REDACTED] tall and weighs [REDACTED] pounds.
9. Petitioner attended school through the 10th grade.
10. Petitioner is able to read and write and does have basic math skills.
11. Petitioner was not engaged in substantial gainful activity at any time relevant to this matter.
12. Petitioner has past relevant work experience as a receptionist where she was required to file paperwork, work with a computer, and answer a telephone.
13. Petitioner alleges disability due to back surgeries, sacroiliac joint fusion surgery, chronic back pain, and depression.
14. Petitioner has been diagnosed with mild mental impairments that do not prevent her from performing work-related activities.
15. Petitioner suffered an accidental fall in 2017 and was diagnosed with sacroiliac joint dysfunction, which was treated by a steroid sacroiliac joint injection.
16. Petitioner has experienced three surgical procedures on her back since 2008, including one for minimally invasive sacroiliac joint fusion surgery in 2017, and she experienced facetogenic pain following surgery.
17. Petitioner has been diagnosed with herniated discs, degenerative discs, and arthritis.
18. Petitioner was diagnosed on [REDACTED] [REDACTED] 2018, with left-sided disc herniation at L5-S1, postoperative change L4-L5, no high-grade spinal canal stenosis, and left sacroiliac joint fusion at I4-I5 joint fusion surgery.
19. A consultative physician determined that Petitioner is capable of lifting 20 pounds occasionally, 10 pounds frequently, and standing and/or sitting for 6 hours in an 8-hour workday. The consultative physician rated Petitioner's strength in her lower extremities at 4+/5 on the right and 3+/5 on the left.
20. Petitioner's treating physician determined that she can lift about five pounds, sit for about an hour, stand for ten minutes, and is not capable of walking at all

without pain. Petitioner experienced pain during a straight-leg test, and significant limitation of her range of motion was observed in the lumbar region.

21. Petitioner testified that she suffers from extreme pain that is only partially alleviated by medication, and that this pain limits her sleeping to no more than three hours at a time. Petitioner testified that the pain medication causes fatigue and lightheadedness as a side effect.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (October 1, 2018), pp 1-48.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance (MA) and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. In this case, since disability benefits were granted in error after a finding that Petitioner was capable of performing other work, Petitioner's impairments will be evaluated as an application for benefits and not a case of medical improvement. 20 CFR 416.994(3)(b)(iv).

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At Step 1, a determination is made on whether Petitioner is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

Petitioner testified that she has not been employed since approximately April of 2017 and is not currently engaged in substantial gainful activity, which was not disputed by the Department during the hearing. Therefore, this Administrative Law Judge finds that Petitioner is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 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 not disabled.

At Step 2, a determination is made whether Petitioner has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921). If Petitioner does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Petitioner has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months, or result in death.

Petitioner is a [REDACTED] old woman whose birth date is [REDACTED] [REDACTED] 1971. Petitioner is [REDACTED] tall and weighs [REDACTED] pounds. Petitioner alleges disability due to back surgeries, sacroiliac joint fusion surgery, chronic back pain, and depression.

The objective medical evidence indicates the following:

Medical records indicate that Petitioner suffered an accidental fall in 2017 and her employment ended shortly after that. Petitioner was diagnosed with sacroiliac joint dysfunction. Petitioner received a steroid sacroiliac joint injection in 2017.

Petitioner has a history of surgical procedures on her back with one in 2008, one in 2017, and one in 2019. Petitioner has been diagnosed with herniated discs, degenerative discs, and arthritis. Petitioner was diagnosed on [REDACTED] [REDACTED] 2018, with left-sided disc herniation at the L5-S1 level, postoperative change was observed at the L4-L5 level, no high-grade spinal canal stenosis was observed, and she has undergone left sacroiliac joint fusion at the I4-I5 level.

A consultative physician determined that Petitioner is capable of lifting 20 pounds occasionally, 10 pounds frequently, and standing and/or sitting for 6 hours in an 8-hour workday. The consultative physician rated Petitioner's strength in her lower extremities at 4+/5 on the right and 3+/5 on the left.

Petitioner's treating physician determined that she can lift about five pounds, sit for about an hour, stand for ten minutes, and is not capable of walking at all without pain. Petitioner experienced pain during a straight-leg test, and significant limitation of her range of motion was observed in the lumbar region.

Petitioner testified that she suffers from extreme pain that is only partially alleviated by medication, and that this pain limits her sleeping to no more than three hours at a time. Petitioner testified that the pain medication causes fatigue and lightheadedness as a side effect.

Petitioner testified that she does not suffer from mental impairments that limit her ability to work. The objective medical evidence indicates that Petitioner suffers from mild mental impairments.

The evidence on the record indicates that Petitioner's was been diagnosed with chronic back pain requiring sacroiliac joint fusion surgery by a treating physician, which has resulted in significant impairments to her spine.

This Administrative Law Judge finds a physical impairment that has more than a de minimus effect on Petitioner's ability to perform work activities. Petitioner is not disqualified from receiving disability benefits at step 2 and the analysis will continue.

STEP 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? If no, the analysis continues to Step 4.

At Step 3, a determination is made whether Petitioner's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If Petitioner's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), Petitioner is disabled. If it does not, the analysis proceeds to the next step.

Petitioner's impairment does not meet the listing for 1.04 Disorders of the Spine because the objective medical evidence does not demonstrate nerve root compression, spinal arachnoiditis, or lumbar spinal stenosis resulting in pseudo-claudication manifested by chronic non-radicular pain and weakness, and resulting in inability to ambulate effectively. Inability to ambulate effectively means an extreme limitation of the ability to work or having insufficient lower extremity functioning to permit independent ambulation without the use of a walker, two crutches or two canes, and the inability to walk a block at a reasonable pace.

Petitioner testified that she does not suffer from mental impairments that limit her ability to work. The objective medical evidence indicates that Petitioner suffers from mild mental impairments that do not meet or medically equal the criteria of a mental impairment listing.

The medical evidence of Petitioner's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

Can the client do the former work that she performed within the last 15 years? If yes, the client is not disabled.

Before going from Step 3 to Step 4, an assessment of residual functional capacity is made. The residual functional capacity assessment is used at the fourth step of the sequential evaluation process to determine if you can do your past relevant work and again at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can adjust to other work. 20 CFR 416.920.

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).

To determine the skills required in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. These terms have the same meaning as defined in. 20 CFR 416.968.

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs. 20 CFR 416.968(a).

After careful consideration of the entire record, this Administrative law Judge finds that Petitioner does not have the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567 and 416.967. The objective medical evidence indicates that medical records support a finding that Petitioner is not capable of lifting more than 5 pounds, sitting for more than an hour, standing for more than 10 minutes, or walking without pain. Other evidence suggesting that Petitioner is capable of performing light work is not supported by treatment records, or the treating physician's recommendation to undergo spinal fusion surgery, and does not account for a period of recovery from that surgical procedure.

Next, a determination is made on whether Petitioner has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as Petitioner actually performed it or as it is generally performed in the national economy) within the last 15 years, or 15 years prior to the date that the disability must be established. In addition, the work must have lasted long enough for Petitioner to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If Petitioner has the residual functional capacity to do her past relevant work, Petitioner is not disabled. If Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

Petitioner has past relevant work experience as a receptionist in an office environment where she was required to perform filing, use a computer, use a copier, and answer a telephone. As a receptionist, Petitioner would reasonably be expected to sit for extended periods of time, and she would be occasionally expected to stand and lift light objects.

The hearing record supports a finding that Petitioner is unable to perform work substantially similar to work she had performed in the past and the analysis will continue.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that Petitioner has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

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? If yes, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether Petitioner is able to do any other work considering her residual functional capacity, age, education, and work experience. If Petitioner is able to do other work, she is not disabled. If Petitioner is not able to do other work and meets the duration requirement, she is disabled.

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).

Petitioner was able to answer all the questions at the hearing and was responsive to the questions. Petitioner was oriented to time, person and place during the hearing.

When determining eligibility for disability benefits, all symptoms will be considered, including pain to the extent that the symptoms can reasonably be accepted as consistent with the objective medical evidence. 20 CFR 416.929.

Petitioner has a history of spine impairments requiring multiple surgeries and treatments over the course of years. Petitioner continues to suffer severe pain requiring medication and additional surgery. The medical evidence does support a finding that Petitioner's spinal impairments would reasonably be expected to produce the symptoms she described on the record. These pain symptoms, supported by the objective medical records of a treating physician, could be expected to severely impair Petitioner's ability to perform work-related activities such as standing, sitting, and lifting.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Petitioner is ■■■■■ old, a younger person (under age 50), with a limited education, and a history of unskilled work. Based on the objective medical evidence of record Petitioner lacks the residual functional capacity to perform even sedentary work. If Petitioner had the residual functional capacity to perform a full range of sedentary work, considering Petitioner's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.18.

However, Petitioner's physical impairments and the pain symptoms she suffers from narrow the range of work she might otherwise perform so that a finding of "disabled" is appropriate under the framework of this rule.

A person is disabled for SDA purposes if he or she is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability. Department of Health and Human Services Bridges Eligibility Manual (BEM) 261 (April 1, 2017), pp 1-2.

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 State Disability Assistance (SDA) benefits.


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 State Disability Assistance (SDA) eligibility purposes.

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

1. The Department shall initiate a determination of Petitioner's eligibility for State Disability Assistance (SDA) benefits as of February 1, 2019, 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. Issue Petitioner any retroactive benefits State Disability Assistance (SDA) may be eligible to receive, if any, effective February 1, 2019.
3. The Department shall review Petitioner's medical condition for improvement as of February 1, 2020.

KS/dh



Kevin Scully
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

Brenda Kann
200 W. 5th
P.O. Box 849
Mio, MI 48647

Oscoda County, DHHS

BSC1 via electronic mail

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Petitioner

 MI