



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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

Date Mailed: June 12, 2019
MOAHR Docket No.: 19-003836
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 May 16, 2019 from Lansing, Michigan. The Petitioner personally appeared and testified. She also submitted five exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Assistance Payment Supervisor Jennifer Meyers and Medical Contact Worker, Rashawn Young. The Department submitted 236 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. The Petitioner applied for SDA on [REDACTED] 2018. [Dept. Exh. 2-31].
2. On February 19, 2019, the Medical Review Team denied the Petitioner's SDA application. [Dept. Exh. 35-41].
3. The Petitioner alleged disability for depression, anxiety, diabetes, asthma, sciatica, amputation of third toe due to infection, torn tendon in left foot, chronic back pain, neuropathy and incontinence.

4. On [REDACTED] [REDACTED] 2018, the Petitioner met with a psychiatrist and reported low mood, anhedonia, isolation, low energy, worthlessness, poor concentration and passive suicidal ideation. She also indicated she had two previous suicide attempts. It was recommended that she get a full trial of antidepressants and other SNRI that could potentially help with her mood and anxiety. [Dept. Exh. 200-203].
5. On [REDACTED] [REDACTED] 2018, the Petitioner followed up with her primary care physician regarding her chronic shoulder pain. X-rays showed no evidence for large full-thickness or retracted rotator cuff tear. The X-rays also revealed focal severe tendinosis with mild thickening of the subacromial, subdeltoid bursa without convincing impingement. [Dept. Exh. 172-175].
6. On [REDACTED] [REDACTED] 2018, the Petitioner presented to her podiatrist with a swollen toe with a small wound. She reported being scared of having another infection after already losing one toe to infection and subsequent amputation. She was prescribed antibiotics for the soft tissue infection and referred for X-rays. X-rays revealed a healed third metatarsal amputation site and mild soft tissue swelling of the great toe. There was no osteomyelitis found in the great toe. An old posttraumatic deformity of the fifth metatarsal was also viewed. [Dept. Exh. 161-165].
7. On [REDACTED] [REDACTED] 2018, the Petitioner met with her therapist. She reported the main symptom she struggled with was insomnia. She was tearful when talking about her living and financial situation. She reported sciatic pain and pain in her right shoulder. [Dept. Exh. 147-153].
8. On [REDACTED] [REDACTED] 2018, the Petitioner presented to her therapist. She was cheerful and laughing despite talking about her recent Achilles tendon injury and need to walk with crutches. She was visibly excited when she talked about her daughter's pregnancy and upcoming birth of her first child. She reported that she would have to find another place to live and both of her children would be welcoming. She was still waiting to hear about SSI disability. Finding a job that would not require the Petitioner to walk or do physical labor was also discussed. The Petitioner did not feel she could do those types of jobs. Her severe depression and anxiety were improving since she had restarted her medications and was following with [REDACTED] [REDACTED] at the [REDACTED] [REDACTED] [Dept. Exh. 139-146].
9. On [REDACTED] [REDACTED] 2018, an MRI of the Petitioner's lower left extremity revealed a partial tear of the Achilles tendon and muscle strain. She was prescribed a CAM walker. [Dept. Exh. 126-132].
10. On [REDACTED] [REDACTED] 2018, the Petitioner underwent an eye examination. She was diagnosed with background diabetic retinopathy. [Dept. Exh. 123-125].
11. On [REDACTED] [REDACTED] 2019, the Petitioner followed up with [REDACTED]. The Petitioner has a history of depression, anxiety and a history of trauma (physical and emotional

abuse). She has been attending the program since January 2018. The Petitioner expressed sadness and fatigue with excessive anxiety and worry. She had difficulty controlling the worry. She was easily fatigued and had sleep disturbances. [Dept. Exh. 110-115].

12. On [REDACTED] [REDACTED] 2019, the Petitioner was evaluated at the [REDACTED]. The examining doctor noted her past medical history was notable for type 2 diabetes mellitus with the use of insulin. The Petitioner was initially diagnosed with gestational diabetes over 26 years ago. There was a lapse in insurance coverage, and she did not have access to insulin. She was admitted to the [REDACTED] [REDACTED] in August 2018 because of osteomyelitis on the right third toe and she underwent amputation of the right third toe. She had a partial Achilles tendon tear from six weeks ago. She continued to show poor control of the diabetes. She had background retinopathy and foot pain. In January 2018, she was diagnosed with severe neuropathy in both feet. Her feet were numb at the time of the examination. She was using a CAM walker for the partial Achilles injury. She requested to be out of the CAM walker as soon as possible. The Petitioner was assessed with poorly controlled diabetes mellitus, diabetic peripheral neuropathy, status post non-traumatic lower extremity amputation, with partial tear of the left Achilles tendon (recovering) with possible new onset DVT. [Dept. Exh. 103-109].
13. On [REDACTED] [REDACTED] 2019, an ultrasound of the Petitioner's lower left extremity found no evidence of deep vein thrombus. A thrombus within the mid to distal left peroneal veins could not be ruled out due to vessel depth and pain. An enlarged lymph node in the left groin was observed and follow-up with her primary care physician was advised. [Dept. Exh.102].
14. The Petitioner is diagnosed with atherosclerosis of native arteries of extremities with rest pain in both legs, subacute osteomyelitis of the right foot, background diabetic retinopathy, morbid obesity due to excess calories, chronic left shoulder pain, chronic bilateral low back pain with sciatica, severe neuropathy due to type 2 diabetes mellitus, essential hypertension, hypercholesterolemia, severe episode of recurrent major depressive disorder, mild intermittent asthma without complication, hyperlipidemia, mood disorder, myocardial hypertrophy, pyelonephritis, uncontrolled type 2 diabetes with hyperglycemia with long-term use of insulin, tobacco abuse, gastroesophageal reflux disease, insomnia, microscopic hematuria, chronic rhinitis, stress incontinence and obstructive sleep apnea.
15. 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 and last worked in [REDACTED] 2017.
16. Based on Petitioner's age, education and employment history, Petitioner meets statutory disability on the basis of Medical/Vocation Grid Rule footnote 201.12 as a guide.

17. The Petitioner was appealing the denial of Social Security disability at the time of the hearing.
18. The 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, 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 (7/1/2014).

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).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and testified that she has not worked since May 2017. Therefore, she is not disqualified from receiving 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 means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;

3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. *Id.*

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

In the present case, Petitioner has been diagnosed with atherosclerosis of native arteries of extremities with rest pain in both legs, subacute osteomyelitis of the right foot, background diabetic retinopathy, morbid obesity due to excess calories, chronic left shoulder pain, chronic bilateral low back pain with sciatica, severe neuropathy due to type 2 diabetes mellitus, essential hypertension, hypercholesterolemia, severe episode of recurrent major depressive disorder, mild intermittent asthma without complication, hyperlipidemia, mood disorder, myocardial hypertrophy, pyelonephritis, uncontrolled type 2 diabetes with hyperglycemia with long-term use of insulin, tobacco abuse, gastroesophageal reflux disease, insomnia, microscopic hematuria, chronic rhinitis, stress incontinence and obstructive sleep apnea.

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 some medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities, based on her numerous diagnoses. 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 has alleged depression, anxiety, diabetes, asthma, sciatica, torn tendons in left foot, and amputation of her third toe due to a blister on her toe that became infected due to her diabetes.

Petitioner has the burden of establishing her disability. The record evidence was insufficient to meet a listing. While there was evidence of uncontrolled diabetes, severe neuropathy, depression and anxiety, there was no evidence that her uncontrolled diabetes, severe neuropathy, depression and anxiety were severe enough to meet a listing. Therefore, the analysis continues to Step 4.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the petitioner's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the petitioner's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Based on the record evidence, Petitioner has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a). In making this finding, the Administrative Law Judge considered all Petitioner's symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence.

Petitioner testified that she had uncontrolled diabetes, severe neuropathy, severe depression, anxiety and panic attacks. She stated that she stays in her room until her sister goes to work. She stated that she is in chronic pain from the neuropathy and her diabetes is uncontrolled.

After considering the evidence of record, the Administrative Law Judge finds that Petitioner's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that the Petitioner's statements concerning the intensity, persistence and limiting effects of these symptoms are partially credible.

Next, the Administrative Law Judge must determine at step four whether the 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 the 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 disability must be established. In addition, the work must have lasted long enough for the petitioner to learn to do the job and have been substantial gainful activity (SGA). (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Petitioner has the residual functional capacity to do her past relevant work, 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 and last step.

The Petitioner's past relevant employment was as a caregiver for over 25 years. The demands of the Petitioner's past relevant work exceed the residual functional capacity. Therefore, the analysis continues to Step 5.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the Petitioner is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the Petitioner is able to do other work, he/she is not disabled. If the Petitioner is not able to do other work and meets the duration requirements, he/she is disabled.

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 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 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 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 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, the burden of proof shifts to the Department to establish that Petitioner does have residual function capacity. 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. See discussion at Step 2 above.

In this case, Petitioner alleged depression, anxiety, diabetes, asthma, sciatica, torn tendons in left foot, and amputation of her third toe due to a blister on her toe that became infected due to her diabetes. No evidence was presented indicating that the Petitioner was unable to work. However, the medical evidence did support the Petitioner's uncontrolled diabetes and severe neuropathy.

Based upon the Medical-Vocational guidelines, the Petitioner is qualified to receive SDA disability at Step 5. Under the Medical-Vocational guidelines, an individual approaching advanced age 50 – 54 (Petitioner is ■ years of age), with a high school education and an unskilled or limited work history who can perform even only sedentary work is considered disabled pursuant to Medical-Vocational Rule 201.12.

DECISION AND ORDER

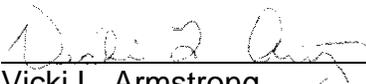
Accordingly, the Department's determination is REVERSED.

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

1. The Department shall process the Petitioner's December 28, 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 the Petitioner's medical condition for improvement in June 2020, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from the 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 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

Jeanenne Broadnax
25637 Ecorse Rd.
Taylor, MI
48180

Wayne 18 County DHHS- via electronic
mail

BSC4- via electronic mail

L. Karadsheh- via electronic mail

Petitioner

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