



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: August 14, 2019  
MOAHR Docket No.: 19-003912  
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. Petitioner personally appeared and testified. Petitioner submitted 10 exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Assistance Payment Specialist, Kate Jackson. Ms. Jackson testified on behalf of the Department. The Department submitted 311 exhibits which were admitted into evidence.

On May 17, 2019, an Interim Order Extending the Record was issued for an additional 60 days to allow the Department to obtain and submit results of Petitioner's physical and Petitioner's medical records from her oncologist.

### **ISSUE**

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

### **FINDINGS OF FACT**

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

1. On [REDACTED] 2018, Petitioner applied for SDA. [Dept. Exh. 1-8].
2. On [REDACTED] 2018, Petitioner returned to her surgeon after completing chemotherapy and radiation for T2NOMO squamous cell carcinoma of the anal margin. She reported she was doing well with resolution of her pain. She

continued to have some loose stools as a result of her the radiation and had not fully regained her appetite. She requested an evaluation for some residual tissue around her anal margin as well as a few skin lesions in her suprapubic area. Biopsies in both regions were performed. [Dept. Exh. 82-83].

3. On [REDACTED] [REDACTED] 2018, the biopsy results were negative for malignancy. [Dept. Exh. 86-88].
4. On [REDACTED] [REDACTED] 2018, Petitioner presented to her primary care physician for a cough, urinary tract infection and cancer. Associated symptoms included chills, cough, dyspnea and fever. She was undergoing chemotherapy and radiation for colon cancer and has immune suppression. Petitioner was assessed with a viral upper respiratory tract infection and acute cystitis without hematuria. [Dept. Exh. 114-119].
5. On [REDACTED] [REDACTED] 2018, Petitioner saw her primary care physician for urinary complaints beginning three days ago. She reported pain in the abdomen and back. Associated symptoms included dysuria, fever, urinary frequency and urgency. Petitioner was assessed with acute cystitis without hematuria. [Dept. Exh. 110-113].
6. On [REDACTED] [REDACTED] 2018, Petitioner followed up with radiation oncology. Overall, Petitioner was doing well. She reported she continued to have loose bowel movements and has also been battling urinary tract infections which her primary care physician was treating. A biopsy was performed of the anal canal and was negative for malignancy. [Dept. Exh. 149-150].
7. On [REDACTED] [REDACTED] 2018, Petitioner presented to her primary care physician complaining of swelling in her legs. The swelling began six days prior. The swelling was associated with fatigue, generalized weakness and joint pain. She also had a urinary tract infection. Petitioner was assessed with localized edema, dysuria, and a sleep disorder. [Dept. Exh. 105-109].
8. On [REDACTED] [REDACTED] 2018, Petitioner was admitted to the [REDACTED] on an emergency basis for intractable nausea and vomiting. She also had edema in bilateral legs and a poor appetite for the past six weeks. Petitioner's lab results showed significant hypokalemia with potassium 2.6 and hypomagnesemia with magnesium of 1.2. She also had mildly elevated ALT and AST and lipase also slightly elevated at 136. She was diagnosed with pancreatitis and electrolyte abnormality. She was discharged on June 27, 2018. [Dept. Exh. 162-272].
9. On [REDACTED] [REDACTED] 2018, Petitioner followed up with her primary care physician for the swelling in her feet. The swelling was associated with fatigue and numbness. She was prescribed Zofran but was still vomiting. She was schedule to see her oncologist because the tumor was growing again. [Dept. Exh. 101-104].
10. On July 18, 2018, Petitioner followed up with her surgeon for anal discomfort. She had been doing fairly well but had been in the hospital with dehydration and

electrolyte abnormalities a few weeks ago. She was diagnosed with radiation enteritis which was causing multiple frequent stools. [Dept. Exh. 84-85; 273-274].

11. On [REDACTED], 2018, Petitioner underwent a psychological evaluation by the [REDACTED]. Petitioner was diagnosed with Adjustment Disorder with Depressed Mood and her prognosis was guarded. [Dept. Exh. 90-95].
12. On January 25, 2019, the Medical Review Team (MRT) denied Petitioner's SDA application. [Dept. Exh. 275-282].
13. On February 11, 2019, the Department sent Petitioner notice that her application was denied. [Dept. Exh. 305-308].
14. On [REDACTED], 2019, Petitioner saw her primary care physician complaining of fatigue and generalized pain. She was scheduled for lab work and an updated CT of the abdomen, pelvis and chest. Petitioner was given dietary instructions for weight gain and instructed to follow up with her oncologist. [Petitioner Exh. 6]
15. On [REDACTED], 2019, Petitioner followed up with her primary care physician regarding her fatigue and skin lesion. The blood work showed that her Vitamin D was low. Petitioner was assessed with hot flashes and a Vitamin D deficiency. She was given dietary instructions for weight gain. [Petitioner's Exh. 7].
16. On [REDACTED], 2019, Petitioner presented to her primary care physician and was assessed with rectal bleeding and referred to a general surgeon for evaluation and treatment. She was also assessed with left lower quadrant pain. Petitioner was counseled regarding her diet for weight gain. [Petitioner's Exh. 8].
17. On April 11, 2019, Petitioner filed a hearing request to contest the Department's negative action. [Dept. Exh. A, p 310].
18. On [REDACTED], 2019, Petitioner was seen by her primary care physician regarding an epidermal cyst on her face. Wound care was applied, and she was to follow up for a recheck. She was also given dietary education for weight gain. [Petitioner's Exh. 9].
19. On [REDACTED], 2019, Petitioner followed up with her primary care physician concerning her epidermal cyst. There were no signs of infection and it appeared to be healing well. She was assessed with lower abdominal pain. Her body mass index (BMI) was 18.78. She weighed [REDACTED] pounds.
20. Petitioner has been diagnosed with a history of anal cancer, colon polyps, gastritis, hemorrhagic colitis, fatigue, dysuria, edema, sleep disorder, hypokalemia, hypomagnesemia, generalized pain, epidural cyst on face, hot flashes, Vitamin D deficiency, left lower quadrant pain, anemia, anxiety, bronchitis, depression, alcohol abuse, GI bleed, high blood pressure, jaundice, melanoma, pancreatitis, pneumonia, acute cystitis, radiation enteritis, and urinary tract infections.

21. Petitioner credibly testified in the above-captioned case that due to the chemotherapy and radiation, she did not lose her hair, but lost all of her teeth. She had GI bleeds, had lost 60 pounds over the past year and was down to 98 pounds, she had neuropathy in her hands and legs and her vision was compromised.
22. On May 17, 2019, an Interim Order Extending the Record was issued to the Department requesting a physical evaluation of Petitioner, and her medical records from her oncologist.
23. As of August 14, 2019, the Department has presented no evidence that the physical evaluation of Petitioner was scheduled or completed, or that Petitioner's medical records from her oncologist were requested.
24. Petitioner is a [REDACTED] year-old woman born on [REDACTED]. She is [REDACTED] and weighs [REDACTED] pounds. She is a high school graduate and last worked in November 2017.
25. Petitioner was appealing the denial of Social Security disability at the time of the hearing.

### **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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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:

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. [SDA = 90-day duration].

[As Judge] We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical

findings and other evidence that support a medical source's statement that you are disabled. 20 CFR 416.927(e).

Petitioner has a history of

In this case, anal cancer, colon polyps, gastritis, hemorrhagic colitis, fatigue, dysuria, edema, sleep disorder, hypokalemia, hypomagnesemia, generalized pain, epidural cyst on face, hot flashes, Vitamin D deficiency, left lower quadrant pain, anemia, anxiety, bronchitis, depression, alcohol abuse, GI bleed, high blood pressure, jaundice, melanoma, pancreatitis, pneumonia, acute cystitis, radiation enteritis, and urinary tract infections.

Petitioner's complaints and allegations concerning her impairments and limitations, when considered in light of all the objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

The credible testimony and medical records submitted at hearing verify Petitioner was legally disabled continuously for a period of 90 days or longer. As such, the Department's denial of SDA pursuant to Petitioner's [REDACTED], 2018 SDA application cannot be upheld.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program.

**DECISION AND ORDER**

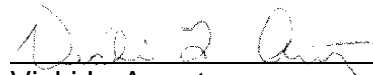
Accordingly, the Department's determination is REVERSED.

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 Petitioner's [REDACTED], 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 August 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



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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

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**Petitioner**

 MI