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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 22, 2019
MOAHR Docket No.: 19-006575
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, an in-person hearing was held on August 14, 2019, from Kalamazoo, Michigan. Petitioner, accompanied by her fiancée, [REDACTED] [REDACTED] personally appeared and testified. Petitioner submitted eight exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Hearing Facilitator Amanda Fields, Assistance Payments Worker Josh Gibson and Assistance Payments Supervisor Marcie Thompson. The Department submitted 430 exhibits which were admitted into evidence.

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. Petitioner applied for SDA on [REDACTED] [REDACTED] 2018. [Dept. Exh. 5-24].
2. On May 22, 2019, the Medical Review Team denied Petitioner's application for SDA. [Dept. Exh. 38-44].
3. On May 31, 2019, the Department issued Petitioner a Notice of Case Action informing her that her application for SDA had been denied. [Dept. Exh. 1].

4. On June 12, 2019, Petitioner submitted a Request for Hearing contesting the denial of SDA. [Dept. Exh. 4-5].
5. Petitioner has been diagnosed with lumbar radiculopathy, severe recurrent major depressive disorder, anxiety, bipolar 1 disorder, cerebral aneurysm (2 mm left periophthalmic aneurysm), migraine, posttraumatic stress disorder, Barrett's esophagus, gastric ulcers, gastroesophageal reflux disease, chronic pain, cigarette nicotine dependence with nicotine-induced disorder, asthma, chronic obstructive pulmonary disease, irritable bowel syndrome, hypothyroidism, pulmonary emphysema, insomnia, Hepatitis C infection, right hemiparesis, scoliosis, head injury, memory loss, dizziness, motion sickness, vision abnormalities, nodule of neck, dysphagia, dysphonia, severe De Quervain's tenosynovitis right and right hand paresthesia.
6. On [REDACTED] [REDACTED] 2018, Petitioner presented to the [REDACTED] complaining of depression. Petitioner was observed to have difficulty swallowing. She had a 3 cm, mildly hard, mostly immobile nodule on the right aspect of the neck overlying thyroid cartilage, extremely tender to palpation. Petitioner was slowed and withdrawn. She was diagnosed with a severe episode of recurrent major depressive disorder without psychotic features and nodule of soft tissue. [Dept. Exh. pp 205-214].
7. On [REDACTED] 2019, Petitioner underwent an independent physical evaluation on behalf of the Department. Petitioner's chief complaints were difficulty swallowing, difficulty with speech, "black outs" from aneurysm, double vision, shortness of breath, brain aneurysm, lumbar pain, right wrist pain and decreased mobility. Petitioner reported that she had a total thyroidectomy for goiter in 2011. She then developed difficulty in swallowing and speech. She stated the dysphagia occurs both with liquids and solids. On exam, Petitioner appeared uncomfortable due to left groin pain and had difficulty sitting still. Her speech was difficult to interpret, somewhat rapid, due to her dysphonia, and she appeared somewhat anxious. She had a wide based stumbling gait and was unsteady. Grip strength was 0/5 on the right and +5/+5 on the left. She could not hop, bend or stoop. Sitting for the straight leg raise test was reduced at 10 degrees on both legs. Supine, Petitioner was 0 degrees on both legs. Issues included complaints of lower back pain. Petitioner was diagnosed with:
 - a. DeQuervain's tenosynovitis, right wrist with decreased range of motion of the wrist, hand, and fingers associated with pain;
 - b. Dysphonia and dysphagia – status post total thyroidectomy;
 - c. Lumbar pain with restricted range of motion;
 - d. Periophthalmologic cerebral aneurysm, small;
 - e. Left groin pain – history of nutcracker syndrome (left renal vein entrapment);

- f. Motor imbalance;
 - g. Tobacco abuse/chronic obstructive pulmonary disease;
 - h. Hypothyroidism. [Dept. Exh. 174-183].
8. On [REDACTED], 2019, Petitioner underwent a Functional Assessment which showed:
- a. Limited to less than 2 hours standing and walking due to complaints of lower back pain, imbalance/balance difficulties, decreased range of motion and difficulty with ambulation.
 - b. Maximum sitting capacity would be at least six hours.
 - c. At present she does not use an assistive device, further evaluation needed.
 - d. Maximum lifting and carrying capacity. Limited to less than 10 pounds occasionally and frequency due to right wrist and hand decreased range of motion and pain, also decreased use of the fingers. Petitioner can only use her left arm upper extremity for carrying.
 - e. She is unable to climb, balance, stoop, kneel, crouch or crawl due to postural imbalance and dizziness.
 - f. She is unable to perform reaching, handling, fingerings and feeling due to significant increased range of motion pain in the right wrist, fingers and hands.
 - g. Workplace limitations include heights, heavy machinery, extremes of temperature, chemicals, dust, fumes and gases due to motor imbalance, unsteady gait and sensitivity to inhaled irritants. [Dept. Exh. 174-183].
9. On [REDACTED], 2019, Petitioner underwent a psychological evaluation on behalf of the Department. The psychologist observed that Petitioner had difficulty catching her breath, swallowing, and she had a large lump on the right side of the front of her neck (goiter). Her self-esteem appeared to be low and fragile. She appeared to be poorly motivated, tired and lacking insight. She did not appear to exaggerate or minimize her symptoms. Petitioner was diagnosed with Major Depressive Disorder, Recurrent, Severe without psychotic symptoms and Post Traumatic Stress Disorder and an Unspecified Neurocognitive Disorder. The psychologist noted that Petitioner appeared capable of understanding information but may have difficulty remembering and applying information. Her concentration appeared marginal and she appeared to lack persistence. Her pace appeared slowed. Her social interactions were marginal, and she was clearly having difficulty adapting and managing herself. Prognosis was poor. [Dept. Exh. 186-191].

10. During the in-person hearing on August 14, 2019, Petitioner was using a cane for ambulation. She was very hard to understand and pushed on her neck in order to talk more clearly. While answering questions, Petitioner had difficulty catching her breath and spoke in a raspy whisper. She also had difficulty staying on task. Petitioner appeared to be in pain while sitting and was constantly repositioning herself. She was noticeably very anxious and tearful throughout the hearing.
11. On August 14, 2019, both Ms. Fields and Ms. Thompson, Department representatives, testified that Petitioner's health had noticeably declined since she had submitted her request for a hearing in June 2019. They also noticed that Petitioner would turn blue when she was answering questions, apparently from the lack of oxygen.
12. Petitioner credibly testified on August 14, 2019 that she has had health problems since she was a teenager. She reported that she had her thyroid removed in 2011, but when they cut off her insurance, it grew back making it hard for her swallow solids or liquids. She also has nodules in her sinuses which need surgery to help her breathe as she feels they are suffocating her, but she reported that no doctor will do the surgery because of her aneurysm. She reported that she is in constant pain. She testified that she stays inside her house because she is afraid to be around other people.
13. Petitioner is a [REDACTED] year-old woman born on [REDACTED] [REDACTED] [REDACTED]. She is [REDACTED]" and weighs [REDACTED] pounds. She completed the eighth grade and has a sparse work history. She last worked in 2018 when she was fired due to her health problems.
14. Petitioner had reapplied for 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, 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. (Emphasis added).

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.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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. 20 CFR 416.905.

A set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that Petitioner is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine 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 he/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, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine 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; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If Petitioner does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

At step three, the Administrative Law Judge must determine whether Petitioner's impairment or combination of impairments meets or medically equals 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 meets or medically equals 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.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine 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 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).

Next, the Administrative Law Judge must determine at step four whether Petitioner has the residual functional capacity to perform the requirements of his/her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as Plaintiff 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 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 his/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.

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 Petitioner is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If Petitioner is able to do other work, he/she is not disabled. If Petitioner is not able to do other work and meets the duration requirements, he/she is disabled.

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).

Applying the sequential analysis herein, Petitioner is not ineligible at the first step as Petitioner is not currently working and has no past relevant work history. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a *de minimus* standard. Ruling any ambiguities in Petitioner's favor, this Administrative Law Judge (ALJ) finds that Petitioner meets both. The analysis continues.

The third step of the analysis looks at whether a person meets, or equals, one of the Listings of Impairments according to the Social Security Laws. 20 CFR 416.920(d). Petitioner does not. The analysis continues.

Before considering step 4, Petitioner's residual functional capacity to do physical and mental working activities on a sustained basis despite her limitations based on her impairments must be determined. The evidence shows Petitioner is markedly limited in her ability to walk or stand for more than two hours, lift, reach, carry, climb, balance, stoop, kneels, crouch, crawl or handle based on her physical limitations. Petitioner also has marked problems speaking and she is very difficult to understand.

Based on her psychological evaluation, Petitioner is markedly limited in her ability to understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; and respond appropriately to change in the work setting.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Petitioner in the past. 20 CFR 416.920(f). Petitioner has no past relevant work. Accordingly, Step 5 of the sequential analysis is required.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Petitioner reaches Step 5 in the sequential review process, Petitioner has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Petitioner has the residual functional capacity for substantial gainful activity.

The medical information indicates that Petitioner suffers from lumbar radiculopathy, severe recurrent major depressive disorder, anxiety, bipolar 1 disorder, cerebral aneurysm (2 mm left periophthalmic aneurysm), migraine, posttraumatic stress disorder, Barrett's esophagus, gastric ulcers, gastroesophageal reflux disease, chronic pain, cigarette nicotine dependence with nicotine-induced disorder, asthma, chronic obstructive pulmonary disease, irritable bowel syndrome, hypothyroidism, pulmonary emphysema, insomnia, Hepatitis C infection, right hemiparesis, scoliosis, head injury, memory loss, dizziness, motion sickness, vision abnormalities, nodule of neck, dysphagia, dysphonia, renal nutcracker syndrome, severe De Quervain's tenosynovitis right and right hand paresthesia.

Petitioner credibly testified that she has never had a driver's license and will never have one due to her aneurysm. She has a severely limited tolerance for physical activities and is unable to stand or ambulate without a cane due to her unsteadiness and recurrent falls. Petitioner reported that she needs surgery to remove the nodules in her sinuses which are interfering with her ability to breathe, but no doctor will do the surgery because of the aneurysm. She reported that she is in constant pain and is afraid to be around other people. Also, her recurrent goiter makes it difficult for her to breathe, talk or swallow.

Petitioner is ■ years old with an eighth-grade education. Petitioner's medical records are consistent with her testimony that she is unable to engage in even a full range of sedentary work on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

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.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days.

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 December 11, 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 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



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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