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

Date Mailed: August 30, 2019  
MOAHR Docket No.: 19-006685  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Vicki 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 July 31, 2019, from Flint, Michigan. The Petitioner was represented by Authorized Representative, [REDACTED]. The Department of Health and Human Services (Department) was represented by Hearing Facilitator April Nemeck.

The Department submitted 122 exhibits which were admitted into evidence. Petitioner submitted 103 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

### **ISSUE**

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

### **FINDINGS OF FACT**

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

- (1) On [REDACTED] [REDACTED] 2019, Petitioner filed an application for SDA benefits alleging disability.
- (2) On or about June 10, 2019, the Medical Review Team (MRT) denied Petitioner's application for SDA without a physician reviewing the records. [Dept. Exh. pp 9-15].
- (3) On June 19, 2019, the Department sent Petitioner notice that her SDA application was denied.

- (4) On June 27, 2019, Petitioner submitted a Request for Hearing to contest the Department's negative action.
- (5) Petitioner is diagnosed with schizophrenia paranoid type with acute exacerbation, hypertension, arthritis, depression, bronchitis, sinusitis, congestive heart failure, chronic obstructive pulmonary disease, lumbago, bilateral myopia, presbyopia, anemia, heart murmur, congenital leg bone bowing, and possible kidney damage.
- (6) From July 2018 through 2019, Petitioner attended counseling at H [REDACTED] every 2-3 weeks. She was diagnosed with Schizophrenia paranoid type with acute exacerbation. Her psychosocial stressors are due to chronic mental illness and lack of a primary support group. Her GAF is 25 to 30 at best. At the conclusion of the [REDACTED], 2019, session, the counselor opined that Petitioner is at increased risk of psychiatric decompensation due to lack of support, unstable living arrangements, lack of SSDI income and medical health risks. Continued case management and services are needed to monitor and assess psychiatric stability, monitor progress of goals, coordinate care, link, and advocate for services. [Petitioner Exh. pp 1-103].
- (7) Petitioner credibly testified that she had been receiving social security disability since she was [REDACTED] years old. She has been using a cane for the past four years. She has congenital Blount's disease, which is a bone disease that affects her legs. She has had over 10 surgeries, one of which included breaking her legs and resetting them to help her walk straight. She still cannot walk straight. Petitioner also reported that she has problems with her memory, instructions, comprehension and other people.
- (8) Petitioner is a [REDACTED] year-old woman born on [REDACTED], 1971. She is [REDACTED]" tall and weighs [REDACTED] lbs. She completed high school through special education classes. She continues to have problems with math and reading comprehension. She last worked 19 years ago.
- (9) Petitioner was appealing the denial of Social Security disability benefits at the time of the hearing.
- (10) 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 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 defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months (90 days for SDA). 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a

particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and has not worked in 19 years. 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 schizophrenia paranoid type with acute exacerbation, hypertension, arthritis, depression, bronchitis, sinusitis, congestive heart failure, chronic obstructive pulmonary disease, lumbago, bilateral myopia, presbyopia, anemia, heart murmur, congenital leg bone bowing, and possible kidney damage.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner is not disqualified from receipt of SDA 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 been diagnosed with schizophrenia paranoid type with acute exacerbation and depression.

Listing 12.04, Affective Disorders, are characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the medically documented persistence, either continuous or intermittent of depressive syndrome, mania or bipolar disorder result in restrictions on activities of daily living, social functioning, concentration or repeated instances of decompensation.

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate

increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

Petitioner testified to the following symptoms and abilities: crying spells, depression, memory problems, problems being around other people, inability to follow instructions, comprehension problems, sleeping problems, leg swelling and pain due to Blount's disease, and congestive heart failure. Petitioner is unable to climb stairs, requires a cane to ambulate based on balance problems, is able to stand for five minutes without a cane, sit for 30 minutes, and walk a block. She is unable to lift any weight, isolates herself from others, and has paranoid thoughts. Petitioner reports she is homeless and alternately stays with her son and Auntie. Her son does the dishes, laundry, housework, and grocery shopping. Petitioner's daily activities of living are dramatically impacted by her psychological condition. Her psychiatric records demonstrate an ongoing struggle with daily functioning. Her GAF scores are 25 to 30 at best. According to the DSM-IV, 4<sup>th</sup> Ed., a GAF of 25 to 30 indicates that Petitioner's behavior is considerably influenced by delusions or hallucinations. Petitioner has been compliant with psychotropic medications and her condition still hinders her ability to function.

In this case, this Administrative Law Judge finds that Petitioner may be considered presently disabled at the third step. Petitioner appears to meet listing 12.04 or its equivalent. Therefore, the remaining steps need not be considered. Petitioner's testimony and the medical documentation support the finding that Petitioner meets the requirements of a listing.

Therefore, Petitioner is found to be disabled for purposes of the State Disability Assistance program.

### **DECISION AND ORDER**

Accordingly, the Department's determination is REVERSED.

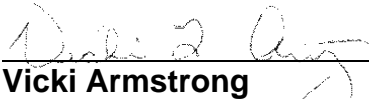
THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. The Department shall process Petitioner's March 12, 2019 SDA application and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in January 2020, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain an updated Psychiatric Evaluation and 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/hb

  
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**Vicki 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**

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