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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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[REDACTED], MI [REDACTED]

Date Mailed: September 26, 2019
MOAHR Docket No.: 19-007996
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 August 29, 2019, from Lansing, Michigan. The Petitioner personally appeared and testified. She also submitted nine exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Assistance Payment Supervisor, Tasha Merlington, and Assistance Payment Worker, Holly Schafer. The Department submitted 268 exhibits which were admitted into evidence. The Administrative Law Judge numbered and admitted 21 documents from the Department's submitted packet of evidence that were unnumbered. 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 March 19, 2019. [Dept. Exh. 263-268].
2. On June 13, 2019, the Medical Review Team denied the Petitioner's SDA application. [Dept. Exh. 15-19].

3. On June 17, 2019, the Department mailed Petitioner a Notice of Case Action informing Petitioner that her application for SDA had been denied. [ALJ Exh. 5-7; Dept. Exh. 8-11].
4. On [REDACTED] [REDACTED] [REDACTED] Petitioner submitted a hearing request contesting the Department's denial. [ALJ Exh. 1-4; Dept. Exh. 4-7].
5. Petitioner is diagnosed with depression, anxiety, post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), facial fractures, and a concussion.
6. On December 31, 2018, Petitioner underwent an inpatient psychiatric admission assessment. She was admitted to the Hickory Unit at the Pine Rest Christian Mental Health Services in Grand Rapids, Michigan. Petitioner was admitted for depression, anxiety and passive suicidal ideation which had been worsening over the past year, following three motor vehicle accidents from December 2016 to February 2018. Petitioner was discharged on January 7, 2019. [Dept. Exh. 231-254].
7. On January 8, 2019, Petitioner was admitted to the adult partial program at Pine Rest Christian Mental Health Services in Grand Rapids, Michigan. At the time of admission, her estimated length of stay was 1-5 days. Petitioner underwent a neurological evaluation while she was an inpatient. Assessment findings showed low average to average intellectual functioning. The delayed memory index was in the impaired range. The MCMI-IV profile showed depression, anxiety and post-traumatic stress disorder. Significant anxiety was noted may have affected her performance adversely on cognitive measures. The psychiatrist opined that Petitioner's employment difficulties and fear of driving were largely related to her PTSD symptoms from her motor vehicle accidents. Another factor to consider is that the MCMI-IV shows pronounced dependent personality characteristics, which would suggest that her functional difficulties are also largely related to a tendency to regress into dependency as a primary coping skill. She was diagnosed with Rule out G31.84 mild neurocognitive disorder due to traumatic brain injury, PTSD, anxiety and depressive disorder. She was discharged on January 17, 2019 with moderate improvement. [Dept. Exh. 221-230].
8. On January 21, 2019, Petitioner returned to Pine Rest for follow-up after her hospitalization in December 2018. Petitioner presented with symptoms of anxiety, worry, trouble sleeping, no energy, lack of interest, depressed mood, fears and trouble remembering things. The psychologist opined that Petitioner was predisposed to her current symptoms due to a history of concussions, recent discharge from inpatient hospital and her history of mental health issues. Her presentation to therapy was precipitated by an inpatient hospital stay after a period of depression and suicidal thoughts, a recent move and quitting her job. Her symptoms were perpetuated by trouble keeping a job, ongoing issues from a concussion and a fear of driving. The psychologist recommended weekly outpatient individual psychotherapy sessions. [Dept. Exh. 216-220].

9. On March 4, 2019, Petitioner's primary care physician, completed a Medical Needs form on Petitioner's behalf. Petitioner was diagnosed with post-concussion syndrome, post-traumatic stress disorder, severe anxiety and depression. The physician indicated that it was a chronic ongoing illness and that Petitioner would require lifetime treatment. The physician noted that Petitioner had a medical need for assistance with her personal care activities. The physician opined that Petitioner could not work at her usual occupation or at any other job. [ALJ Exh. 8-9].
10. On June 4, 2019, Petitioner underwent an outpatient Neuropsychological Evaluation regarding her cognitive functioning secondary to concussions. A review of Petitioner's medical history showed that on February 18, 2018, Petitioner underwent a post-concussion clinic evaluation. Petitioner performed below the formal cut-off on performance validity testing, though her scores on cognitive screening measures were within normal limits. The examining physician believed that Petitioner's exacerbated symptoms of depression and anxiety were prolonging her concussion recovery. Reviewing the records, Petitioner last had a psychoeducational evaluation on September 28, 2009. At that time, Petitioner was 16-years old and her IQ score was below the average range. She received special education starting in seventh grade. During the evaluation, Petitioner reported that her cognitive functioning had been progressively declining following her most recent concussion. Cognitively, Petitioner reported short-term memory problems. Petitioner had been unable to maintain steady employment since her motor vehicle accident. She had held six different jobs since February 2018. Her symptoms of depression became more severe in late 2018, which led to a one-week hospitalization at Pine Rest on December 31, 2018, after she experienced suicidal thoughts (no previous attempts). The evaluation showed Petitioner's memory functioning was characterized by impaired encoding (impacting later retrieval), and a tendency to be relatively conservative when discriminating information. When Petitioner was left to independently problem-solve novel situations, she would become overwhelmed and attempt to solve it without taking the time necessary to think through potential strategies. In addition, negative feedback regarding her performance (i.e. many consecutive "incorrect" responses) likely exacerbated her emotional reactivity. The examining psychologist opined that Petitioner's significant PTSD, anxiety, depression and sleep difficulties negatively impacted her cognitive functioning by taking away valuable cognitive space and energy needed to attend to the world fully. This contributed to her concentration difficulties and later her memory problems. The psychologist noted that, PTSD in particular negatively impacts cognitive functioning through hyperarousal, distracting thoughts about anxiety/driving, and a tendency to suppress or avoid negative thoughts or memories. The psychologist opined that at this time, it is unlikely that Petitioner would be able to maintain competitive employment given her significant depression, anxiety and PTSD symptoms. Final diagnoses, PTSD, generalized anxiety disorder and major depressive disorder, recurrent, severe without psychotic features. [ALJ Exh. 13-21].

11. 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 December 2018.
12. The Petitioner was appealing the denial of Social Security disability at the time of the hearing.
13. 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.

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).

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).

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 December 2018. 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 mean 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 depression, anxiety, post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), facial fractures, and a concussion. 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 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 more than 90 days; 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, PTSD, TBI, facial fractures, and a concussion.

Petitioner has the burden of establishing her disability. The record evidence was insufficient to meet a listing. While there was evidence of depression, anxiety, PTSD, TBI, facial fractures, and a concussion, there was no evidence that her depression, anxiety, PTSD, TBI, facial fractures, and concussion are 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).

Petitioner testified that she had depression, anxiety, PTSD, TBI, facial fractures, and a concussion as a result of a motor vehicle accident. Since the accident in which she received the facial fractures and concussion, she has been experiencing cognitive and memory issues. As a result of the continuing issues, Petitioner was admitted to Pine Rest for a week in December 2008. She is no longer able to drive and spends her days at home, unable to get of bed some days.

Petitioner's mother testified that Petitioner was in special education from the seventh grade on to graduation due to Petitioner's comprehensive and cognitive issues. Now, Petitioner needs medication reminders, reminders to do the laundry and is no longer allowed to cook because she forgets there is something on the stove.

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

Petitioner has no prior relevant employment. Since the motor vehicle accident in February 2018, she has held six different jobs and due to her symptomology, she has been unable to keep any. Therefore, the analysis continues to Step 5.

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.

The medical information indicates that Petitioner suffers from depression, anxiety, post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), facial fractures, and a concussion. Petitioner credibly testified that she cannot drive due to her anxiety, and some days she has problems getting out of bed. She also suffers from insomnia. Petitioner stays at home except for her weekly appointments with her therapist.

Since February 2018, Petitioner has held six different jobs and has been unable to hold a job due to her symptoms from well documented diagnoses of depression, anxiety, post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), facial fractures, and a concussion. As a result of her depression, anxiety and passive suicidal ideation she was voluntarily admitted into Pine Rest on December 31, 2018. She was discharged on January 7, 2019.

On January 8, 2019, Petitioner was admitted into the adult partial program at Pine Rest. Her estimated length of stay was 1-5 days at admission. She was discharged on January 17, 2019, nine days later. While at Pine Rest, Petitioner underwent a neurological evaluation. The psychiatrist opined that Petitioner's employment difficulties and fear of driving were largely related to her PTSD symptoms from her motor vehicle accidents.

On March 4, 2019, Petitioner's primary care physician completed a Medical Needs evaluation. Petitioner was diagnosed with post-concussion syndrome, post-traumatic stress disorder, severe anxiety and depression. The physician indicated that this is a chronic ongoing illness and that Petitioner will require lifetime treatment. The physician noted that Petitioner has a medical need for assistance with her personal care activities. The physician opined that Petitioner cannot work at her usual occupation or at any other job.

On June 4, 2019, Petitioner underwent outpatient neuropsychological evaluation regarding her cognitive functioning secondary to concussions. The examining psychologist opined that Petitioner's significant PTSD, anxiety, depression and sleep difficulties negatively impacted her cognitive functioning by taking away valuable cognitive space and energy needed to attend to the world fully. This contributed to her concentration difficulties and later her memory problems. PTSD in particular, negatively impacts cognitive functioning through hyperarousal, distracting thoughts about anxiety/driving, and creates a tendency to suppress or avoid negative thoughts or memories. The psychologist opined that at this time, it is unlikely that Petitioner would be able to maintain competitive employment given her significant depression, anxiety and PTSD symptoms.

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. This is supported by three independent physicians.

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. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as disabled for purposes of the SDA 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 the Petitioner's March 19, 2019 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 October 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
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Petitioner

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