



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: October 18, 2019
MOAHR Docket No.: 19-008916
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 September 18, 2019, from Lansing, Michigan. Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Laurie Williams, Family Independence Manager.

ISSUE

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

FINDINGS OF FACT

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

1. Petitioner was approved for SDA by Medical Review Team (MRT) because she appeared to meet listing 12.04 A and B or its equivalent, with a medical review in November 2018.
2. On July 10, 2019, the MRT denied Petitioner's medical review for SDA stating that Petitioner had medical improvement where she was capable of performing other work under Medical/Vocational Grid Rule 201.25 per 20 CFR 416. 920(f).
3. On July 16, 2019, the Department Caseworker sent Petitioner a notice that she was denied for SDA because she had had medical improvement.
4. On August 2, 2019, the Department received a hearing request from Petitioner, contesting the Department's negative action.

5. Petitioner is a 43-year-old woman whose date of birth is [REDACTED], 1976. Petitioner is 5' 5" tall and weighs 186 pounds. She has completed the 11th grade of high school. Petitioner can read and write and perform basic math except for multiplication and division. The Petitioner was last employed as an assistant manager in 2007, which is her pertinent work history. She was also employed as a caregiver and housekeeper.
6. Petitioner's alleged impairments are back issues, anxiety, bipolar disorder, migraines, and close head injury from an assault.
7. On [REDACTED], 2019, Petitioner underwent a physical examination by an independent medical examiner at [REDACTED]. Her chief complaints were due to asthma, poor balance, poor speech and memory, increase in kidney stones, fatigue, decreased comprehension, migraines, bipolar disorder, and anxiety. Petitioner has a history of asthma where she uses an inhaler. She also smokes a pack of cigarettes a day. Petitioner has a history of poor balance where she uses a cane for balance and support. She stated this is related to the previous head injury where she was assaulted. She had poor speech and memory problems which she states that is related to her previous head injury and she's being seen by a neurologist. She stated that she had chronic fatigue, but the etiology was unclear. Petitioner does take a statin drug. She has a history of migraine headaches which is currently being followed by a neurologist and she is taking medications as needed. She has headaches on a daily basis. Petitioner states that her migraine headaches are related to a previous assault. Petitioner has bipolar disorder and anxiety. She needs a mental health evaluation per DDS. The independent medical examiner found that Petitioner has occasional limitations with standing, walking, stooping, squatting, lifting, bending, climbing ladders, and scaffolding due to findings noted above. She has a limp on the right side. Petitioner uses a four-prong cane for balance and support. She reported problems related to balance with the limp on the right side, inability to do tandem walk, heel walk and toe walk, and decreased range of motion in the right upper extremity 0 to 140. Department Exhibit 1, pages 62-70.
8. On [REDACTED] 2019, Petitioner underwent a mental examination by an independent medical examiner at [REDACTED]. She was alleging disability secondary to a head trauma from a robbery and assault in her 30s. On the day of the exam, Petitioner presented as an extremely poor historian to the point that she could not report if she was receiving SSI or how she was supporting herself. She reported still having seizures. She did not present as cooperative. She was unable to provide even a basic, simple history and did not know if she was receiving disability benefits. She seemed to greatly exaggerate for secondary gain. Her affect was dull, and her mood reserved. The patient was logical. Petitioner denied any suicidal or homicidal ideation, psychosis or paranoia. She did state when asked to describe her mood that she doesn't think right. An accurate assessment of the patient's cognitive function is not possible due to her lack of effort and cooperation and limited ability to provide a history or adequate

description of her daily activities. Other records included with this referral indicated that she would be able to follow at least simple, routine tasks at a sustained pace following simple two or three step directions. She was diagnosed with a history of cannabis abuse, personality disorder, rule out borderline/dependent features, learning disability by report. Her prognosis was guarded. Petitioner cannot manage her funds. Department Exhibit 1, pgs. 52-55.

CONCLUSIONS OF LAW

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.

The Department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. BEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, 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).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under **"SSI TERMINATIONS," INCLUDING "MA While Appealing Disability Termination,"** does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See **"Medical Certification of Disability"** below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**

- .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as "special education" as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit BEM, Item 261, pp. 1-2.

"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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable

phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine –

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

In general, Petitioner has the responsibility to prove that she is disabled. Petitioner's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the petitioner has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

Step 1

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the Petitioner is not engaged in substantial gainful activity and has not worked since 2007. Therefore, Petitioner is not disqualified from receiving disability at Step 1.

Step 2

In the second step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Petitioner's medical record will not support a finding that Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that Petitioner's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, Petitioner is disqualified from receiving disability at Step 2.

Step 3

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the Petitioner was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Petitioner's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the Petitioner's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

On [REDACTED] 2019, Petitioner underwent a physical examination by an independent medical examiner at [REDACTED]. Her chief complaints were due to asthma, poor balance, poor speech and memory, increase in kidney stones, fatigue, decreased comprehension, migraines, bipolar disorder, and anxiety. Petitioner has a history of asthma where she uses an inhaler. She also smokes a pack of cigarettes a day. Petitioner has a history of poor balance where she uses a cane for balance and support. She stated this is related to the previous head injury where she was assaulted. She had poor speech and memory problems which she states that is related to her previous head injury and she's being seen by a neurologist. She stated that she had chronic fatigue, but the etiology was unclear. Petitioner does take a statin drug. She has a history of migraine headaches which is currently being followed by a neurologist and she is taking medications as needed. She has headaches on a daily basis. Petitioner

states that her migraine headaches are related to a previous assault. Petitioner has bipolar disorder and anxiety. She needs a mental health evaluation per DDS. The independent medical examiner found that Petitioner has occasional limitations with standing, walking, stooping, squatting, lifting, bending, climbing ladders, and scaffolding due to findings noted above. She has a limp on the right side. Petitioner uses a four-prong cane for balance and support. She reported problems related to balance with the limp on the right side, inability to do tandem walk, heel walk and toe walk, and decreased range of motion in the right upper extremity 0 to 140. Department Exhibit 1, pages 62-70.

On [REDACTED] 2019, Petitioner underwent a mental examination by an independent medical examiner at [REDACTED]. She was alleging disability secondary to a head trauma from a robbery and assault in her 30s. On the day of the exam, Petitioner presented as an extremely poor historian to the point that she could not report if she was receiving SSI or how she was supporting herself. She reported still having seizures. She did not present as cooperative. She was unable to provide even a basic, simple history and did not know if she was receiving disability benefits. She seemed to greatly exaggerate for secondary gain. Her affect was dull, and her mood reserved. The patient was logical. Petitioner denied any suicidal or homicidal ideation, psychosis or paranoia. She did state when asked to describe her mood that she doesn't think right. An accurate assessment of the patient's cognitive function is not possible due to her lack of effort and cooperation and limited ability to provide a history or adequate description of her daily activities. Other records included with this referral indicated that she would be able to follow at least simple, routine tasks at a sustained pace following simple two or three step directions. She was diagnosed with a history of cannabis abuse, personality disorder, rule out borderline/dependent features, learning disability by report. Her prognosis was guarded. Petitioner cannot manage her funds. Department Exhibit 1, pgs. 52-55.

This Administrative Law Judge finds that Petitioner has not had medical improvement. She still has mental and physical limitations from her previous assault resulting in a close head injury and a right-sided limp. The objective medical evidence on the record does not adequately demonstrate her ability to perform work when she is unable to provide a history or cooperate with the examination. The independent medical examiner did state that she is unable to manage her own funds. She is taking medications and in therapy for her mental impairments. At the hearing, she had just started with Jewish Family Services so there were no records to be submitted. There was no evidence of a severe thought disorder or risk factors. Based on her independent psychological evaluation, she would be capable of performing simple, unskilled work. At Step 3, this Administrative Law Judge finds that Petitioner does not have medical improvement related to Petitioner's ability to perform substantial gainful activity. As a result, Petitioner is not able to perform simple and unskilled, light work. Therefore, Petitioner is not disqualified from receiving disability at Step 3.

Step 4

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to Petitioner's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has not been medical improvement where she can perform work.

At Step 4, Petitioner testified that she does not perform any of her daily living activities. Petitioner testified that her condition has gotten worse because she is meaner. She does have mental impairments and is taking medications and in therapy. Petitioner's medical records were not in the file where she testified that she was seeing a neurologist and had a treating physical physician. Petitioner does smoke $\frac{1}{2}$ a pack of cigarettes a day. She does not use illegal or illicit drugs for several years where before she ate edibles. She stopped drinking alcohol in her 20s where before she drank on the weekends. Petitioner did not think that there was any work that she could perform.

This Administrative Law Judge finds that Petitioner has not had medical improvement related to her ability to do work. Petitioner cannot perform at least simple and unskilled work. She had physical examination that noted the limp on her right side and use of a cane with physical limitations. She is in treatment and taking medications for her mental impairments. She does have physical limitations related to her assault resulting in a closed head injury. Therefore, Petitioner is not disqualified from receiving disability at Step 4 where Petitioner cannot perform simple and unskilled, light work. If there is a finding of medical improvement related to Petitioner's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

Step 7

In the seventh step of the sequential evaluation, the trier of fact is to assess a Petitioner's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the Petitioner's current residual functional capacity based on all current impairments and consider whether the Petitioner can still do work she has done in the past.

At Step 7, Petitioner was last employed as an assistant manager in 2007, which is her pertinent work history. She was also employed as a caregiver and housekeeper.

In this case, this Administrative Law Judge finds that Petitioner cannot perform simple and unskilled, light work. Petitioner is not capable of performing past, relevant work at the skilled to unskilled level because it involved the care of other people, which she may not be able to perform with her mental and physical impairments. See Steps 3 and 4. Therefore, Petitioner is not disqualified from receiving disability at Step 7 where Petitioner is not capable of performing her past, relevant work.

Step 8

The objective medical evidence on the record is insufficient that Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. However, the Department has the burden with a medical review to compile the objective medical evidence to determine medical improvement or the requirement for continued disability. Petitioner's testimony as to her limitation indicates her limitations are exertional and non-exertional.

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, App. 1, 12.00(C).

In the instant case, Petitioner testified that she has a closed head injury, bipolar disorder, and anxiety. Petitioner is taking medication and in therapy for her mental impairments. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. Petitioner completed the 11th grade of high school. She had a guarded prognosis and was unable to manage her own benefit funds. Petitioner is not capable of performing work.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether Petitioner can do any other work, given Petitioner's residual function capacity and Petitioner's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon Petitioner's vocational profile of a younger age individual, with a limited education and more, and a history of unskilled and skilled work, MA-P is denied using Vocational Rule 202.21 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as closed head injury, bipolar disorder, and anxiety. 20 CFR 404, Subpart P, Appendix 2, Section 200.00.

This Administrative Law Judge finds that Petitioner does not have medical improvement in this case and the Department has not established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it proposed to close Petitioner's SDA case based upon medical improvement. She was previously approved due to a mental impairment. Petitioner continues to be in therapy and take medications for her mental impairments. There was no evidence of a serious thought disorder or risk factors. She has physical limitations due to a physical assault in her 30s. Because Petitioner does meet the disability criteria for SDA, she has not had medical improvement making her capable of performing simple and unskilled, light work. 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 medical review of SDA benefit programs.

DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED**.

Petitioner is eligible for SDA retroactive to her old medical review date of November 2018 with a new medical review date of November 2020, within 10 days of the date of mailing of this decision and order of initiating a redetermination of Petitioner's eligibility for SDA.

Based on policy, the Department should provide Petitioner with written notification of the Department's revised eligibility determination and issue Petitioner any retroactive benefits she may be eligible to receive, if any.

CF/hb



Carmen G. Fahie
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

Tara Roland 82-17
8655 Greenfield
Detroit, MI 48228

Wayne County (District 17), DHHS

BSC4 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]
[REDACTED], MI [REDACTED]