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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: February 14, 2020
MOAHR Docket No.: 19-013155
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 January 16, 2020, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Brian Roedema, Assistance Payments Supervisor and Patricia Besteman, Eligibility Specialist.

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 the Medical Review Team (MRT) on July 11, 2018, with a medical review in October 2019 due to a physical impairment with her heart.
2. On November 12, 2019, the MRT denied Petitioner's medical review for SDA per BEM 261 because the nature and severity of Petitioner's impairments would not preclude work activity at the above stated level for 90 days and is capable of performing other work under Medical Vocation Grid Rule 201.27 per 20 CFR 416.920(f).
3. On November 27, 2019, the Department Caseworker sent Petitioner a notice that she was denied for continued SDA because of medical improvement.

4. On November 27, 2019, the Department received a hearing request from Petitioner, contesting the Department's negative action.
5. Petitioner is a [REDACTED]-year-old woman whose date of birth is [REDACTED], 1974. Petitioner is [REDACTED]" tall and weighs [REDACTED] pounds. She has completed high school and completed an associate degree in medical office management. Petitioner can read and write and perform basic math. Petitioner was last employed as a personal care assistant at the heavy level on December 2016. She was also employed as a direct support specialist in a facility, medical coordinator, driver, crew member at [REDACTED], and salesperson.
6. Petitioner's alleged impairments are depression and anxiety, open heart surgery in November 2017, osteoarthritis right knee, asthma, congestive heart abnormality, chronic low back pain, and edema in feet.

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 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, Petitioner is not engaged in substantial gainful activity and has not worked since December 2016. 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 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 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 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 August 22, 2019, Petitioner was seen by her treating physician at [REDACTED]. Her chief complaint was dyspnea and cough. She had a body mass index of 51.25 KG/M. She also had issues with anxiety/depression, congenital heart disease (partial AV canal defects with partial ASVD, status post complete repair of partial AV canal and closure of PFO November 2017) now with normal biventricular systolic function and only trivial residual mitral regurgitation. She was initially referred in May 2019 for exertional dyspnea. She gets fatigue when walking and feels like she is wheezing. After exertion, she will undergo a coughing fit. She continues to have a hoarse voice and fullness in the back of her throat. Coughing spells are worse with high emotions and high smells. Her symptoms are improved at rest. She was also started on Lasix for lower extremity swelling, which has improved. Respiratory, she was positive for cough, wheezing, shortness of breath, and sputum production. Cardiovascularly, she was positive for chest pain, orthopnea, and leg swelling. Musculoskeletally, Petitioner was positive for muscle pain and edema. She was also positive for adenopathy for Endo/heme/allergy. She was positive for depression, anxiety, and sleep disturbance for psychiatric/behavioral. She had diminished heart sounds from body habitus. Her PFTs were stable to improved with decrease FEV1 and FVC suggestion restriction. She had an abnormal LV diastolic function in her imaging results. She was diagnosed with pulmonary emboli. Her symptoms were multi-factorial from vocal cord dysfunction and deconditioning from obesity for her dyspnea on exertion. For her pulmonary embolism, she is attending the anticoagulation clinic where her INR has therapeutic and she is currently on warfarin. She was in deep stated on the importance of weight loss where she is trying with diet and exercise. Department Exhibit 1, pgs. 434-446.

On July 29, 2019, Petitioner was seen by her treating specialist at [REDACTED]. She was seen for a medication review. Her medical history included depression disorder, chronic pain, chronic low back pain, chest wall pain, left atrial dilation, right ventricular hypertrophy, right atrial enlargement, cleft leaflet of mitral valve, morbid obesity, moderate major depression, hypertensive disorder, and history of pulmonary embolism. She reported weight gain and malaise. Petitioner reported sinus problems, chest pain non-exertional and, and leg swelling, cough, wheezing, and shortness of breath. She reported muscle aches and muscle weakness. She also reported dizziness and frequent or severe headaches. She reports depression, with no anxiety or suicidal thoughts. Her medication was reviewed and renewed as medically required. Department Exhibit 1, pgs. 454-477.

This Administrative Law Judge finds that Petitioner has had medical improvement. She was approved by the MRT because of her recent surgery heart surgery and pulmonary embolism. Petitioner has completed treatment where she has recovered substantially even though she has some deconditioning resulting in wheezing, shortness of breath, and coughing. On her most recent medical examination, she had an essentially normal

physical examination considering her past surgery and treatment. She was advised to lose weight and exercise because she was deconditioned. She is taking medication for her mental impairments. There was no evidence of a severe thought disorder and risk factors. At Step 3, this Administrative Law Judge finds that Petitioner does have medical improvement and her medical improvement is related to the Petitioner's ability to perform substantial gainful activity. As a result, Petitioner is able to perform light to sedentary work. Therefore, Petitioner is 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 been medical improvement where she can perform work. See Step 3.

At Step 4, Petitioner testified that she does perform most of her daily living activities. The Petitioner testified that her condition has gotten worse because of the increase in her health conditions. She does have mental impairments where she is taking medications, but not in therapy. The Petitioner does not or has ever smoked cigarettes or use illegal or illicit drugs. She occasionally drinks alcohol. Petitioner did not think that there was any work that she could perform.

This Administrative Law Judge finds that Petitioner's medical improvement is related to her ability to do work. Petitioner should be able to perform at least light to sedentary work. She had an essentially normal physical examination. She is taking medications for her mental impairments. She does have physical limitations related to her cardiac condition where she has coughing, wheezing, shortness of breath on exertion assertion. Therefore, Petitioner is disqualified from receiving disability at Step 4 where Petitioner can perform light to sedentary 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 6

In the sixth step of the sequential evaluation, the trier of fact is to determine whether Petitioner's current impairment(s) is not severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a Petitioner's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds Petitioner can perform light to sedentary work. See Steps 3 and 4. She was given an essentially normal physical examination. She is taking medications for her mental impairments. She is physically limited because of her cardiac condition where she has wheezing, coughing, and shortness of breath upon exertion. Therefore, Petitioner is not disqualified from receiving disability at Step 6 where Petitioner passes for severity.

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 Petitioner's current residual functional capacity based on all current impairments and consider whether Petitioner can still do work she has done in the past.

At Step 7, Petitioner was last employed as a personal care assistant at the heavy level on December 2016. She was also employed as a direct support specialist in a facility, medical coordinator, driver, crew member at [REDACTED], and salesperson. In this case, this Administrative Law Judge finds that Petitioner should be able to perform light to sedentary work, but not her previous work. She might have a difficult time performing her previous work at the heavy level because of her dyspnea at exertion of wheezing, coughing, and shortness of breath. 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. 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 anxiety and depression. Petitioner is taking medication for her mental impairments. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. Petitioner should be capable of performing work. She has a high school diploma and an associate degree in medical office management.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the 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 high school education and more, and a history of unskilled work, MA-P is denied using Vocational Rule 202.20 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as anxiety and

depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. This Administrative Law Judge finds that Petitioner does have medical improvement in this case and the Department has 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. Petitioner does not meet the disability criteria for SDA, she has had medical improvement making her capable of performing sedentary to 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 not disabled for purposes of the medical review of SDA benefit programs.

DECISION AND ORDER

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

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

Kent County via electronic mail

BSC3 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED], MI [REDACTED]