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GOVERNOR

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

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DIRECTOR

[REDACTED]
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[REDACTED], MI [REDACTED]

Date Mailed: September 19, 2019
MOAHR Docket No.: 19-007772
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 22, 2019, from Lansing, Michigan. Petitioner personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist, Alice Mosley. Ms. Mosley testified on behalf of the Department. The Department submitted 540 exhibits which were admitted into evidence. Petitioner submitted 62 exhibits which were also admitted into evidence.

ISSUE

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

FINDINGS OF FACT

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

1. On [REDACTED] [REDACTED] 2019, Petitioner applied for SDA. [Dept. Exh. pp 10].
2. On June 10, 2019, the Medical Review Team (MRT) denied Petitioner's SDA application. [Dept. Exh. pp 45].
3. On June 14, 2019, the Department mailed Petitioner a Notice of Case Action informing her that her application for SDA was denied. [Dept. Exh. pp 6-9].
4. On July 16, 2019, Petitioner requested a hearing to contest the denial of SDA benefits. [Dept. Exh. pp 3-4].

5. Petitioner is diagnosed with chronic kidney disease, blood clots, lumbar anterior spurring, post-traumatic stress disorder, severe chronic depression, bilateral carpal tunnel syndrome, degenerative disc disease, a closed head injury, fibroid tumors, migraines, spinal fluid leak, gastroesophageal reflux disease, chronic dermatitis and newly diagnosed systemic lupus erythematosus and bilateral pulmonary embolisms.
6. On [REDACTED] [REDACTED] 2018, a transabdominal/transvaginal ultrasound of Petitioner's pelvis revealed multiple uterine fibroids, the largest measuring more than 3 centimeters in diameter, one small cyst on the right ovary and three cysts on the left ovary with the largest also measuring over 3 centimeters. [Dept. Exh. 447].
7. On [REDACTED] [REDACTED] 2019, Petitioner underwent an independent disability examination on behalf of the Department. X-rays of Petitioner's lumbar spine revealed anterior spurring. The examining physician concluded that Petitioner has occasional limitations with standing, walking, lifting and bending, due to chronic back pain, history of lupus, tenderness to palpation in the lower lumbar area and slow execution of tandem walk, heel walk and toe walk. [Dept. Exh. 228-237].
8. On [REDACTED] [REDACTED] 2019, Petitioner underwent a mental status examination on behalf of the Department. The examiner noted that Petitioner received social security disability benefits from 2005 through 2008, as a result of a pedestrian car accident where she received multiple injuries. She also has a history of psychiatric treatment dating back to the age of 18. Previous diagnoses include mood disorder, post-traumatic stress disorder and personality disorder. The examiner noted that Petitioner's symptoms were consistent with an adjustment disorder with disturbance of mood secondary to her situational stressors, as well as medical problems and chronic pain. Petitioner was diagnosed with depression, secondary to her general medical condition and improving adjustment disorder. Her prognosis was listed as fair. [Dept. Exh. 250-254].
9. On [REDACTED] [REDACTED] 2019, Petitioner underwent an MRI of her lumbar spine which revealed multilevel disc degeneration and facet arthropathy, in addition to mild bilateral foraminal narrowing at L4-L5. [Petitioner Exh. 30-31].
10. On [REDACTED] [REDACTED] 2019, subsequent to hospitalization, Petitioner was diagnosed with systemic lupus erythematosus and bilateral pulmonary embolism. [Petitioner Exh. 45].
11. Petitioner's lab results from [REDACTED] [REDACTED] 2019 through [REDACTED] [REDACTED] 2019 were abnormal in that they showed Petitioner has chronic kidney disease, a mild elevation of muscle enzyme CK, an elevated homocysteine of 12 which if elevated can cause blood clots and the rheumatoid factor. She does not have rheumatoid arthritis. [Petitioner Exh. 3-12].

12. 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 September 2018 as a truck driver.
13. Petitioner was appealing the denial of Social Security disability at the time of the hearing.

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. (Emphasis added).

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905.

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

At step one, the Administrative Law Judge must determine whether Petitioner is engaging in substantial gainful activity. (20 CFR 404.1520(b) and 416.920(b)). Substantial Gainful Activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA. (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether Petitioner has a medically determinable impairment that is "severe" or a combination of impairments that is "severe." (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. (20 CFR 404.1521 and 416.921; Social

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

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

Medical reports should include –

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

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

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include –

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

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

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

At step three, the Administrative Law Judge must determine whether Petitioner's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1. (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If Petitioner's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, (20 CFR 404.1509 and 416.909), Petitioner is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine Petitioner's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of Petitioner's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether Petitioner has the residual functional capacity to perform the requirements of his/her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as Plaintiff actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for Petitioner to learn to do the job and have been SGA. (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If Petitioner has the residual functional capacity to do his/her past relevant work, Petitioner is not disabled. If Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)) and 416.920(g)), the Administrative Law Judge must determine whether Petitioner is able to

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

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

At Step 1, Petitioner is not engaged in substantial gainful activity and testified that she has not worked since September 2018. Therefore, Petitioner is not disqualified from receiving disability at Step 1.

At Step 2, in considering Petitioner's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Petitioner's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Petitioner's symptoms to determine the extent to which they limit Petitioner's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

The objective medical evidence of record shows Petitioner is diagnosed with chronic kidney disease, blood clots, lumbar anterior spurring, post-traumatic stress disorder, severe chronic depression, bilateral carpal tunnel syndrome, degenerative disc disease, lumbar spine pain, closed head injury, fibroid tumors, migraines, spinal fluid leak, gastroesophageal reflux disease, chronic dermatitis, systemic lupus erythematosus, and bilateral pulmonary embolisms.

As previously noted, the Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Based on the medical evidence, Petitioner has presented some medical evidence establishing that she does have some mental and physical 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 the Petitioner's basic work activities. Further, the impairments have lasted continuously for 90 days; therefore, Petitioner is not disqualified from receipt of SDA benefits under Step 2.

At Step 3 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.

Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, the trier of fact must determine if Petitioner has the residual functional capacity (RFC) to perform the requirements of Petitioner's past relevant work. 20 CFR 416.920(a) (4) (iv).

The term past relevant work means work performed (either as Petitioner actually performed it, or as it is generally performed in the national economy) within the last fifteen years or fifteen 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 substantially gainfully employed (20 CFR 416.960 (b) and 416.965.) If Petitioner has the residual functional capacity to do Petitioner's past relevant work, Petitioner is not disabled. 20 CFR 416.960(b)(3). If Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

Petitioner was employed as a truck driver and still has a CDL license and is able to drive. While Petitioner indicates that she is no longer able to drive a truck based on her current diagnoses and back problems, the evidence indicates that she has some physical limitations, but no documentary evidence that she is unable to drive a truck. The recent diagnoses of chronic kidney disease, lupus and bilateral pulmonary embolisms, may change her ability to perform certain jobs, but at the time of application, those diagnoses did not exist. Based on the evidence submitted at the time of application, Petitioner has no limitations of performing her past employment.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Petitioner has the residual functional capacity to perform other jobs.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c). Heavy work

involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment(s) prevent Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite his/her limitations. 20 CFR 416.966.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience are considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Petitioner was 55 years old and was, thus, considered to be approaching advanced age for MA-P purposes. Petitioner has a high school education and a commercial driver's license. Disability is found if an individual is unable to adjust to other work. *Id.*

At this point in the analysis, the burden shifts from the Petitioner to the Department to present proof that the Petitioner has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, Petitioner testified that she is unable to stay on task and is on blood thinners. She stated that she was diagnosed with lupus in March 2019. Petitioner reported that she is currently in physical therapy and seeing a pain specialist for her back pain. No evidence was submitted in support of these claims. She stated that she can stand for five minutes before she is in pain and that she can sit for half an hour at before her hands and legs go numb. Petitioner testified that she is able to drive but needs to sit on a stool to cook. Her daughter helps Petitioner with grocery shopping. Petitioner testified that it is tiring to dress and climb stairs and she does not shower

every day. She also reported crying daily and of being confined to the house. Petitioner's testimony is partially supported by the evidence.


In light of the foregoing, it is found that Petitioner maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.16, it is found that Petitioner is not disabled for purposes of the SDA program at Step 5.

DECISION AND ORDER

Therefore, the Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds Petitioner not disabled for purposes of the SDA benefit program.

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

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
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Petitioner

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