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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: November 20, 2019
MOAHR Docket No.: 19-011234
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on November 19, 2019, from Lansing, Michigan. The Petitioner, [REDACTED] was represented by herself. The Department of Health and Human Services (Department or Respondent) was represented by Molly Pixler, Eligibility Specialist, and Leann Lentner, Supervisor.

Respondent's Exhibit a pages 1-749 were admitted as evidence.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the 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 a State Disability Assistance (SDA) benefit recipient.
- (2) On October 20, 2018 Petitioner's SDA benefits were scheduled for redetermination.
- (3) Petitioner receives Medical Assistance (MA) benefits and Food Assistance Program (FAP) benefits.

- (4) On September 24, 2019 the Medical Review Team denied Petitioner's application stating that Petitioner could perform other work.
- (5) On September 30, 2019 the Department's caseworker sent Petitioner notice that the application was denied.
- (6) On October 11, 2019 the Petitioner filed a request for a hearing to contest the Department's negative action.
- (7) On October 25, 2019 the Michigan Office of Administrative Hearings and Rules received a hearing summary and attached documentation.
- (8) On November 19, 2019 the hearing was held.
- (9) Petitioner is a 54-year-old woman whose date of birth is [REDACTED] 1965. She is 5' 4" tall and weighs 220 lbs. Petitioner is a high school graduate.
- (10) Petitioner last worked in 2012. She has worked as a cook, kitchen manager, in retail, as a medical assistant, and a receptionist.
- (11) Petitioner alleges as disabling impairments: blood clot, hypertension, left meniscus tear, arthritis of the right hip, ruptured discs, sciatic nerve pain, right leg numbness, back and knee pain; post traumatic stress disorder; anxiety and depression.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department's decision affecting eligibility, or benefit levels, whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

Department policies are contained in the following Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and 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.

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. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

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).

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913.

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).

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).

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).

In general, Petitioner has the responsibility to prove that he/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).

All medical documentation was considered in making this decision:

A physical residual functional capacity assessment dated September 19, 2019 indicates that Petitioner has primary diagnosis of degenerative disc disease, and osteoarthritis. Petitioner can occasionally carry 20 pounds, and frequently lift or carry 10 pounds. Petitioner can stand or walk at least two hours of an eight-hour workday and sit about six hours in an eight-hour workday. Petitioner has unlimited ability to push or pull. Page 718 states that Petitioner clinically occasionally climb ramps or stairs but never ladders ropes or scaffolds. Petitioner can frequently balance and occasionally stoop, kneel, crouch, and crawl. Page 717 states that Petitioner has no manipulative limitations, no visual limitations, and no communicative limitations. Petitioner has unlimited ability to be exposed to extreme cold, extreme heat, humidity, noise, vibration and fumes and odors. Petitioner should avoid concentrated exposure to wetness, antivibration and hazards like machinery or heights. Page 715

Petitioner has mild degree of limitation and understanding, remember or applying information on interacting with others as well as adapting or managing oneself. She has moderate limitations in the area of concentration, persistence or maintenance of pace. Page 691

A September 20, 2019 mental residual functional capacity assessment indicates that Petitioner is not significantly limited in most areas and only moderately limited in the areas of the ability to understand and remember detailed instructions; the ability to carry out detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to complete a normal workday in work week without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number and length of rest; The ability to interact appropriately with the general public; and the ability to respond appropriately to changes in the work seven. Pages 687-688

The disability determination explanation dated April 4, 2017 indicates that Petitioner alleges back and right hip injury with sciatica; severe anxiety; depression, migraines, irritable bowel syndrome, kidney function, vitamin deficiency, obsessive-compulsive disorder, hypothyroidism and high cholesterol. The assessment of consistency regarding symptom related limitations indicates that consideration was given to the Petitioner's claim is regarding alleged symptoms and effects on functioning. The Petitioner's impairments could reasonably be expected to produce some of the alleged symptoms, but the intensity and effects of functioning are not completely consistent with evidence in the file for example, the severity of the Petitioner's pain and mental impairments are not as severe as alleged. There is no muscle weakness or significant mental disorder. Page 672 states Petitioner is not disabled pursuant to medical vocational rule 202.14 and is able to perform light work. Page 668

A mental status evaluation from September 4, 2019 indicates that petitioner is in contact with reality and she is struggling with a harsh reality. She has demonstrated the ability to be independent and self-supporting. Since she has been diagnosed with disc problems and arthritis, she has used poor judgment about self-care. She is gained approximately hundred pounds, which will almost certainly exacerbate her problem. Her thinking is logical and relevant. Her thoughts are not fragmented. Her speech is not pressured but she expresses a lot of anxiety. She was attentive and responded simultaneously to the interview questions. Petitioner was limping heavily but not using a cane. She is very distressed and uses a lot of negative self-talk. She was oriented times three. Petitioner is passive and dependent on her relationship with her brother. Her self-neglect has been psychologically functional. Her diagnosis is dependent personality disorder; major depression, recurrent, severe and anxiety due to her deteriorating medical condition. She can manage benefit funds. The reviewer did not see evidence of deficits that would interfere with successful employment. Pages 605-609

An August 23, 2019 pain consultant report indicates that petitioner was 64 inches tall and 200 pounds. Calculated body mass index is 34.45. Patient's temperature is 98.2°. Her pulse was 78 bpm and regular and rhythm. Her breathing was 18 respirations per

minute and oxygen saturation was 97% on room air. A standard blood pressure was taken at 149/96. Petitioner's overweight and well-nourished and moderate distress. She was oriented to person, place and time. Mood was appropriate. Affect was flat. Her pupils were round and reactive. Skin was warm and dry. No jaundice. Her heart had regular rate and rhythm. Bilateral lower extremity pulses were normal. Lumbar had modest tenderness to palpation throughout. Right hip is modestly painful with internal and external rotation. Left hip normal. Fibromyalgia tender points are negative. Her gait was normal and non-antalgic and tandem. 4/5 right plantar dorsiflexion, remaining strength bilateral lower extremities normal. Sensory deficit to light touch lateral right foot. Reflexes symmetric at knee and ankle all 2/5. No clonus either lower extremity, negative Babinski bilateral lower extremities. Right hamstrings are tight compared to left and do produce some back pain. Romberg's negative. Page 597

A December 12, 2017 radiology MRI indicates stable lumbar spine with multilevel degenerative changes, most pronounced at L5/S1 where there is associated facet arthrosis and disc bulge with an annular tear of mildly narrowing to the right lateral recess and neural foramen similar to the previous exam. No disc herniations, significant stenosis or convincing evidence of neural element impingement otherwise. Page 593

A physical examination dated March 15, 2017 indicates that Petitioner had headaches for which she was given thyroid stimulating hormone; she was diagnosed with essential hypertension, arthralgia of temporomandibular joint and morbid obesity. Page 529

The rest of the medical reports in the file were from 2017 back to 2015 and are too old for current consideration of disability.

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 2012.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii).

The objective medical evidence in the record indicates that Petitioner's condition has improved from 2008 when her Axis GAF was assessed at 40 (Page 2372); and her condition has improved from 2012. (Pages 2476-2866)

At Step 2, Petitioner's impairments do not equal or meet the severity of an impairment listed in Appendix 1.

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.

In the instant case, this Administrative Law Judge finds that Petitioner does have medical improvement and the medical improvement is related to the Petitioner's ability to perform substantial gainful activity. Petitioner has not established that she lacks residual functional capacity at Step 5.

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.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the Petitioner's current impairment(s) is 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 at least sedentary or light work even with her impairments. Her impairments are no longer as severe as they once were.

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 he/she has done in the past. In this case, this Administrative Law Judge finds that Petitioner could probably perform past work at Walmart.

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 the 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 the Petitioner's vocational profile of **a person aged (age 54), with a high school education and an unskilled work history who is limited to light or sedentary work is not considered disabled**. SDA is denied using Vocational Rule 204.00 as a guide. Petitioner can perform other work in the forms of light work per 20 CFR 416.967(b). 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 cancel the State Disability Assistance benefits based upon medical improvement.

It should be noted that Petitioner continues to smoke despite the fact that the doctor has told Petitioner to quit. Petitioner is not in compliance with the treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the Petitioner does not meet the definition of disabled under the Medical Assistance program and because the evidence of record does not establish that Petitioner is unable to work for a period exceeding 90 days, the Petitioner does not meet the disability criteria for State Disability Assistance benefits either.

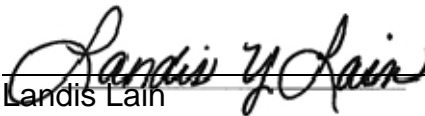
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Petitioner was no longer eligible to receive State Disability Assistance based upon disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner has a medical improvement, and that the Department has appropriately established on the record, that it was acting in compliance with the Department policy when it denied Petitioner's application for State Disability Assistance benefits. The Petitioner should be able to perform a wide range of light or sedentary work even with her impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is AFFIRMED based upon the substantive information contained in the file.

LL/nr



Landis Lain

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

Kimberly Kornoelje
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BSC3- via electronic mail

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Petitioner

 MI