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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]
[REDACTED]
[REDACTED]

Date Mailed: January 22, 2020
MOAHR Docket No.: 19-012421
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 via 3-way telephone conference on December 18, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearing Facilitator.

ISSUE

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

FINDINGS OF FACT

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

1. On April 23, 2019, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On November 4, 2019, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 12-18).
3. On November 6, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 6-10).
4. On November 18, 2019, the Department received Petitioner's timely written Request for Hearing (Exhibit A, pp. 4-5).

5. Petitioner alleged disabling impairment due to adrenal insufficiency, immune compromise, lack of stamina, depression and mood disorder.
6. On the date of the hearing, Petitioner was 60 years old with a January 14, 1959 birth date; she is 5'4" in height and weighs about 135 pounds.
7. Petitioner graduated from high school and has a college bachelor's degree.
8. At the time of application, Petitioner was not employed but was engaged in a paid training program through AARP.
9. Petitioner has an employment history of work as a medical assistance.
10. Petitioner has a pending disability claim with the Social Security Administration.

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 Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR

416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner testified that, prior to the hearing, she had started a paid training program sponsored by AARP where she was paid minimum wage for working 20 hours per week. However, this activity was recently acquired and there was no evidence that Petitioner had worked from the time of application until the training program commenced. Furthermore, Petitioner testified that the training program was limited term and she was unsure what employment she would have, if any, after the short-term program ended. Because there is insufficient evidence to establish that Petitioner is engaged in SGA, she is not ineligible under Step 1, and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking,

standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the de minimis standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

The medical evidence presented at the hearing was reviewed and is summarized below.

Petitioner had a longstanding history of Cushing's syndrome of unknown etiology and underwent a bilateral adrenalectomy in 1997. (Exhibit A, pp. 62, 114.) She developed Addison's disease and has been on replacement medication since then (Exhibit A, p. 256).

On June 17, 2013, Petitioner went to the hospital emergency department, complaining of dehydration, potentially due to adrenal insufficiency after she ran out of her medication. She was treated, given a prescription and discharged in stable condition (Exhibit A, pp. 256-287). At a November 21, 2013 exam, Petitioner reported no problems (Exhibit A, pp. 256-257). On December 8, 2013, Petitioner went to the emergency department complaining of a cough. A chest x-ray showed as normal. Petitioner was diagnosed with a virus and discharged after treatment (Exhibit A, pp. 288-312). On December 10, 2013, Petitioner went to the hospital emergency department, was diagnosed with, and treated for, a fever and released (Exhibit A, pp. 88-108).

In a January 27, 2014 exam, Petitioner reported very decent energy and no complaints about potential symptoms of adrenal insufficiency (Exhibit A, pp. 114-115). In a March

19, 2014 exam, Petitioner reported having nausea and was advised to avoid caffeine, carbonated beverages, fried foods, and fatty foods. (Exhibit A, pp. 254-255.)

Petitioner participated in an October 14, 2014 mental status examination in Florida. The licensed psychologist who evaluated her found that she was cooperative, had a fair flow of ideas; had a somewhat depressed mood and anxiety; and exhibited fair common sense with a relevant and logical train of thought. She was alert and fairly oriented to person, place and time. Her immediate memory was poor, recent memory was fair, and remote memory was fair. She had a fair fund of information. She had few deficits in her ability to think abstractly, and her judgement was fair. She could care for herself and reported friendships. She showed fair concentration and persistence. The psychologist's diagnostic impression was depressive disorder, not otherwise specified, and dependent personality features. Her prognosis was fair with the thought that she could benefit from a vocational rehabilitation program. (Exhibit A, pp. 250-252).

Petitioner was first seen by an endocrinologist on February 22, 2018. Her diagnosis was listed as major depressive disorder, single episode, unspecified; depressive disorder; unspecified adrenocortical insufficiency; and adrenal cortical hypofunction. The notes showed that Petitioner was well-nourished; oriented to person, time and place, and had a normal thyroid and respiratory rate and pattern. A February 22, 2018 basic metabolic panel completed as a follow-up showed results within defined limits. Petitioner had follow-up visits on April 23, 2018; May 31, 2019; July 31, 2019; and September 2, 2019. Notes from Petitioner's September 2, 2019 follow-up visit with the endocrinologist showed Petitioner denied fatigue, weight loss or gain; intolerance of heat or cold; excessive thirst or polyuria; dry skin; sleepiness or insomnia; or excessive sweating. The doctor prescribed hydrocortisone and fludrocortisone and advised Petitioner to continue Cortef and Florinef. (Exhibit A, pp. 62-74, 204-205, 236-243.)

Petitioner was seen by a nurse practitioner at [REDACTED] from November 10, 2018 to August 22, 2019. At the November 10, 2018 and May 23, 2019 visits, Petitioner reported that she had only one functioning kidney, osteopenia, and depression but she identified no depressive symptoms, changes in sleep habit or thought content, or suicidal ideation. She identified no weight change, change in strength or exercise tolerance, and no pain. The objective exam did not show any abnormality. At her August 22, 2019 visit, Petitioner reported that she had not been feeling her best since she turned 60 and that she had fatigue and malaise, mild anxiety, and some depression but no suicidal ideation. She also reported palpitations, night sweats, and trouble sleeping and requested a referral to Hurley Neuropsychology because of her depression. She indicated that she could not handle physical stress because of her lack of adrenal glands. (Exhibit A, pp. 215-226.)

On September 25, 2019, Petitioner went to [REDACTED] complaining of a depressed mood. She reported that she lived by herself, had loved ones, and relied on her spirituality. She was observed to be appropriately dressed; to have clean grooming; to be pleasant and cooperative; to have appropriate affect, unremarkable motor activity, relevant and coherent speech, intact memory, appropriate

thought content, logical and relevant thought process, appropriate judgment, and unrealistically low to moderate self-concept and capacity to gain insight. She denied homicidal ideation but indicated low moods, isolating, sleep issues, self-motivation concerns, fatigue, and just not being happy. She was diagnosed with dysthymic disorder. At an October 15, 2019 follow-up, she was reported as dysphoric mild with a depressed affect and struggling emotionally and financially. (Exhibit A, pp. 188-201.)

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 9.00 (endocrine disorders) and 12.04 (depressive, bipolar and related disorders) were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed

to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 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 the light 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. 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. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3). A five-point scale is used to rate the

degree of limitation in each area: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner alleges both exertional and nonexertional limitations due to her medical conditions. Petitioner testified that she lived on her own and could bath, dress herself and care for her personal hygiene. She could cook, clean, do laundry and shop. She could drive but did not have a car. She was able to walk but tired out easily. She could lift 10 pounds, possibly 20 pounds on a good day. She had no problems sitting or using her hands to grip or grasp. Her biggest concern was her lack of energy and stamina and not knowing how long and how far she could push herself, noting that she had issues maintaining consistent attendance.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

Petitioner's primary contention is that she lacks the stamina to consistently work a full day and that she could not concentrate. The medical record showed that Petitioner was diagnosed with Addison's disease and was on long-term steroid use to address her adrenal insufficiency and that she was diagnosed with dysphoric disorder. Notes from Petitioner's visits with a nurse practitioner showed no problems or abnormalities until the August 22, 2019 visit in which Petitioner reported that she had not been feeling her best since she turned 60 and that she had fatigue and malaise, mild anxiety, some depression but no suicidal ideation, palpitations, night sweats, and trouble sleeping. However, notes from Petitioner's September 2, 2019 follow-up visit with the endocrinologist showed Petitioner denied fatigue, weight loss or gain; intolerance of heat or cold; excessive thirst or polyuria; dry skin; sleepiness or insomnia; or excessive sweating. At her September 25, 2019 intake evaluation at [REDACTED] she was observed to be appropriately dressed; to have clean grooming; to be pleasant and cooperative; to have appropriate affect, unremarkable motor activity, relevant and coherent speech, intact memory, appropriate thought content, logical and relevant thought process, and appropriate judgment. She was found to have unrealistically low to moderate self-concept and capacity to gain insight.

Based on Petitioner's testimony that she was able to perform her daily activities and the lack of objective medical evidence or evidence from other medical or nonmedical sources supporting her testimony as to the intensity, persistence and limiting effects of her symptoms from her Addison's disease, it is found, based on a review of the entire record, that Petitioner maintains the physical capacity to perform moderate work as defined by 20 CFR 416.967(c).

Petitioner also alleged nonexertional limitations due to her mental condition. Based on the medical record presented, as well as Petitioner's testimony, Petitioner has limitations on her mental ability to perform basic work activities as follows: mild limitations in her ability to understand, remember or apply information; mild limitations in her ability to interact with others; mild limitations in ability to concentrate, persist, or maintain pace; and mild limitations in ability to adapt or manage herself.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a medical assistant, which required standing four hours of an eight-hour day but no regular lifting. Based on the exertional RFC analysis above, Petitioner is capable of performing her past relevant work. Her nonexertional RFC due to her mental impairments would not render her incapable of performing past relevant work. Because Petitioner is able to perform past relevant work, she is not disabled at Step 4 and the assessment ends.

DECISION AND ORDER

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 SDA benefit program.

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

ACE/tlf



Alice C. Elkin
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

Via Email:

MDHHS-Genesee-Union-Hearings
BSC2 Hearing Decisions
[REDACTED]
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]