



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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████████████████████, MI ██████████

Date Mailed: April 9, 2020
MOAHR Docket No.: 20-000322
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 March 12, 2019, from Lansing, Michigan. The Petitioner was represented by herself. ██████████ ██████████ from Addiction Treatment Services appeared and testified for Petitioner. The Department of Health and Human Services (Department) was represented by Jennifer Sabo, AP Supervisor. Department Exhibit 1, pp. 1-775 was received and admitted.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) and/or 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 applied for SDA on ██████████ ██████████ 2019.
2. The Medical Review Team denied the application on January 13, 2020.
3. Petitioner filed a request for hearing on January 15, 2020, regarding the SDA denial.
4. A telephone hearing was held on March 5, 2020.
5. Petitioner is ██████████" tall and weighs ██████████ pounds.

6. Petitioner is ■ years of age.
7. Petitioner's impairments have been medically diagnosed as traumatic brain injury, low back pain, neck pain, knee pain, osteoarthritis, migraine headaches, asthma, PTSD, depression and anxiety.
8. Petitioner has the following symptoms: pain, fatigue, insomnia, panic attacks, memory and concentration problems, suicide attempts, paranoia, flashbacks and night terrors.
9. Petitioner completed high school and an associate degree.
10. Petitioner is able to read, write, and perform basic math skills.
11. Petitioner is not working. Petitioner last worked in 2010 as a cashier. Petitioner previously worked as an inventory control worker.
12. Petitioner lives with her mother, aunt and uncle.
13. Petitioner testified that she cannot perform some household chores.
14. Petitioner takes the following prescribed medications:
 - a. zoloff
 - b. visteril
 - c. Zofran
 - d. Topamas
 - e. Trazodone
 - f. Amitriptyline
 - g. Naproxen
 - h. singulair
15. Petitioner testified to the following physical limitations:
 - i. Sitting: 10-15 minutes
 - ii. Standing: 10-15 minutes
 - iii. Walking: 1 block
 - iv. Bend/stoop: some difficulty
 - v. Lifting: 5 lbs.
 - vi. Grip/grasp: no limitations
16. In a Neuropsychological Evaluation Report dated December 18, 2019, the Licensed Psychologist found Petitioner to have diagnose of Cognitive Disorder, Pain Disorder Associated with General Medical Condition and Traumatic Brain Injury. Under Recommendations for Vocational Option the Psychologist wrote the following: "The patient's verbal memory is a strength for her. She also has a

history of working hard and is motivate. However, fatigue is going to be a significant issue for her. At best, the patient maybe able to do part-time work, unless this fatigue issues improves. Employment that requires large amount of physical activity are unlikely to successful for this individual given her pain syndrome. Work environments will need to be in a quiet setting without a great deal of noise and confusion.” (Ex.1, pp.35-41)

17. Petitioner experienced prolonged traumatic physical abuse and has long term effects related to that abuse physically and psychologically.

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 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.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA-P 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.

Federal regulations require that the Department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is, or is not, disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Petitioner is not working. Therefore, the Petitioner is not disqualified in this step in the evaluation.

The second step to be determined in considering whether the Petitioner is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe, which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In this case, the Petitioner's medical evidence of record supports a finding that Petitioner has significant physical and mental limitations upon Petitioner's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that the Petitioner has an impairment (or combination of impairments) that has more than a minimal effect on the Petitioner's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In this case, this Administrative Law Judge finds that Petitioner may be considered presently disabled at the third step. Petitioner meets listing 12.15 or its equivalent. The testimony of Petitioner's treating therapist supports this position. This Administrative Law Judge will not continue through the remaining steps of the assessment. Petitioner's testimony and the medical documentation support the finding that Petitioner meets the requirements of the listing. Petitioner has other significant health problems

that were not fully addressed in this decision because Petitioner is found to meet a listing for a different impairment.

Therefore, Petitioner is found to be disabled.


DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is medically disabled as of November 7, 2019.

Accordingly, the Department's decision is hereby **REVERSED**, and the Department is ORDERED to:

1. Initiate a review of the application for SDA dated November 7, 2019, if not done previously, to determine Petitioner's non-medical eligibility.
2. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for April 2021.

AM/nr



Aaron McClintic
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

Joleen Peck
701 S. Elmwood Suite 19
Traverse City, MI
49684

Grand Traverse County DHHS- via
electronic mail

BSC1- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

L. Brewer-Walraven- via electronic mail

Petitioner

████████████████████ - via first class mail
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████████████████████, MI
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