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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]
[REDACTED]

Date Mailed: August 12, 2020
MOAHR Docket No.: 20-003655
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; 42 CFR 438.400 to 438.424; and 45 CFR 205.10. After due notice, a hearing was held via a three-way telephone conference on August 3, 2020. Petitioner appeared and was represented by [REDACTED] her mother and authorized hearing representative (AHR). The Department of Health and Human Services (DHHS) was represented by Audrea Jones, Hearing Facilitator.

ISSUE

Did DHHS 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 [REDACTED], 2019, Petitioner submitted an application seeking cash assistance on the basis of a disability (Exhibit A, pp. 3-9).
2. On [REDACTED] 2020, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 11-17).
3. On [REDACTED], 2020, DHHS sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 808-812).
4. On [REDACTED] 2020, DHHS received Petitioner's timely written request for hearing (Exhibit A, pp. 805-807).

5. Petitioner alleged disabling impairment due to lymphoma, anxiety, and depression.
6. From [REDACTED] 2019 to [REDACTED] 2019, Petitioner, with a history of chronic low back pain and generalized anxiety disorder, was hospitalized when she was found to have cervical lymphadenopathy and a CT of the chest showed pericardial effusion and mediastinal lymphadenopathy. She was diagnosed with pericardial effusion likely secondary to viral illness. A pericardial window with drain was placed and removed on July 18, 2019. (Exhibit A, pp. 445-710.)
7. From [REDACTED] 2019 to [REDACTED] 2019, Petitioner was again hospitalized after complaining of dizziness, nausea, and a loss of at least 20 pounds over the preceding 3 months. A physical exam revealed reduced air entry bilaterally, increased cardiac rate, and palpable bilateral cervical lymph nodes and axillary lymph nodes. A chest CT showed mediastinal lymphadenopathy process as well as subcarinal lymphadenopathy and bilateral hilar lymphadenopathy. In addition, there were some pulmonary nodules and small pericardial effusion. A PET/CT scan revealed extensive hypermetabolic lymphadenopathy involving the head and neck, thorax, and abdomen. A right cervical lymph node biopsy was consistent with Hodgkin Lymphoma. A bone marrow biopsy confirmed a diagnosis of Hodgkin lymphoma, stage IIIB bulky. (Exhibit A, pp. 204-392, 765-770, 774, 778-779, 782-785.)
8. Petitioner underwent chemotherapy. After two rounds of ABVD, a [REDACTED], 2019 PET/CT scan, comparing results to the [REDACTED], 2019 exam, showed improved lesions, with decreased size in the head/neck, chest and abdomen and no new lesions. (Exhibit A, pp. 740-760, 775-777; Exhibit 1.)
9. On [REDACTED], 2020, Petitioner was examined by a licensed psychologist for a mental status evaluation at DHHS's request. The psychologist observed that Petitioner was adequately dressed; had adequate contact with reality and diminished self-esteem but no unusual or bizarre behaviors; had appropriate insight and judgement; and denied hallucinations, delusions, or obsessions. The psychologist noted that Petitioner's mental ability to relate to others, including fellow workers and supervisors, was mildly impaired; her ability to understand, remember and carry out tasks was mildly to moderately impaired, with an ability to perform simple repetitive tasks but moderate impairment in the ability to perform multiple step tasks; her ability to maintain attention, concentration, persistence, pace and effort was mildly to moderately impaired; and her ability to withstand pressure associated with day-to-day part-time or full-time work activities was moderately prepared. The diagnosis was depressive disorder and anxiety disorder due to another medical condition, with fair prognosis with a need to be in mental health treatment. (Exhibit A, pp. 137-142.)
10. After an additional four more cycles of ABVD, a repeat PET scan in [REDACTED] 2020 showed evidence of uptake in the mediastinal region and new area of uptake close to the left internal mammary artery. (Exhibit A, pp. 740-760, 775-777; Exhibit 1.)

11. On [REDACTED] 2020, Petitioner was referred to [REDACTED] [REDACTED] (KCI) and was hospitalized from [REDACTED] 2020 until [REDACTED], 2020 and underwent a BEAM preparative regimen followed by Auto PBSCT (peripheral blood stem cell transplantation). (Exhibit 1)
12. On the date of the hearing, Petitioner was 21 years old with a [REDACTED] 1998 birth date; she is 5'3" in height and weighs about 170 pounds.
13. Petitioner is a high school graduate with some college credits.
14. At the time of application, Petitioner was not employed.
15. Petitioner has an employment history of work as sales associate at a clothing store and a restaurant server.
16. Petitioner has a pending disability claim with the Social Security Administration.

CONCLUSIONS OF LAW

Department policies are contained in DHHS Bridges Administrative Manual (BAM), DHHS Bridges Eligibility Manual (BEM), and DHHS Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHHS 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 has not engaged in SGA during the period at issue. Therefore, Petitioner cannot be assessed as not disabled at Step 1 and the evaluation 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).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. 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. 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 Servs*, 773 F2d 85, 90 n.1 (CA 6, 1985). 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. The medical records showed that Petitioner was diagnosed with Hodgkin's lymphoma, type IIIB and underwent several months of chemotherapy treatment. In [REDACTED] 2020, because the mass had not decreased, Petitioner had a bone marrow transplant. Her medical evidence also showed a diagnosis of depressive disorder and anxiety disorder due to another medical condition.

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the medical evidence presented 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, listing 13.05, lymphoma, was considered. Relevant to Petitioner's case specifically are sections B and C, which provide that a listing is met when the following conditions are satisfied:

B. Hodgkin lymphoma with failure to achieve clinically complete remission, or recurrent lymphoma within 12 months of completing initial anticancer therapy.

OR

C. With bone marrow or stem cell transplantation. Consider under a disability until at least 12 months from the date of transplantation. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

The evidence in Petitioner's case showed that she was diagnosed with Hodgkin's lymphoma, Stage IIIB bulky, in [REDACTED] 2019. She underwent chemotherapy but the [REDACTED] 2020 PET scan showed evidence of uptake in the mediastinal region and new area of uptake close to the left internal mammary artery. In [REDACTED] 2020, Petitioner underwent a stem cell transplant. Thus, the medical evidence supports Petitioner's impairment as meeting the criteria in listing 13.05(C) to be considered disabled. Accordingly, Petitioner **is disabled** and, pursuant to policy, this finding continues for a minimum 12-month period from the date of transplantation.

DECISION AND ORDER

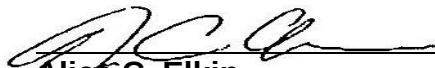
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner **disabled** for purposes of the SDA benefit program.

Accordingly, DHHS's determination is **REVERSED**.

DHHS IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Reregister and process Petitioner's [REDACTED], 2019 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;
3. Review Petitioner's continued eligibility in July 2021.

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-Wayne-18-Hearings
BSC4 Hearing Decisions
L. Karadsheh
MOAHR

Authorized Hearing Rep.

- Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

- Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]
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