



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

Date Mailed: December 21, 2017
MAHS Docket No.: 17-008911
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; and 45 CFR 205.10. On August 9, 2017, a hearing was scheduled for August 24, 2017. The hearing was adjourned and rescheduled as a disability hearing. After due notice, telephone hearing was held on November 28, 2017, from Lansing, Michigan. Petitioner represented herself. Erin Bancroft and Rebecca Cooper represented the Department of Health and Human Services (Department). The Department offered 3802 pages of evidence as exhibits that did not include page numbers. Petitioner presented 28 pages of additional evidence at her hearing.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that the Petitioner did not meet the disability standard for State Disability Assistance (SDA)?

FINDINGS OF FACT

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

1. On [REDACTED], 2012, the Department received Petitioner's application for cash assistance.
2. Petitioner was an ongoing recipient of cash assistance at times relevant to her hearing request.
3. On July 6, 2016, the Medical Review Team (MRT) or Disability Determination Service (DDS) determined that Petitioner was not capable of participation in the Partnership. Accountability. Training. Hope. (PATH) program.

4. On or around October 3, 2016, the Medical Review Team (MRT) granted a continuing deferral from work related activities based on Petitioner's impairments.
5. On or around March 31, 2017, the Medical Review Team (MRT) determined that Petitioner's condition had improved to the point that she could participate in the Partnership. Accountability. Training. Hope. (PATH) program.
6. On April 24, 2017, the Department sent Petitioner a PATH Appointment Notice and scheduling her for an appointment on May 1, 2017.
7. On April 5, 2017, the Department notified Petitioner that her cash assistance would close effective May 1, 2017, because she has received 65 months of federally funded cash assistance, which exceeds the limit to receive cash assistance without a continuing deferral from work-related activities.
8. Petitioner does not dispute that she had received cash assistance exceeding federal limitations.
9. The Department stipulated that Petitioner has a right to a hearing to determine whether her impairments prevent her from performing any work-related tasks relative to her eligibility for cash assistance.
10. The Petitioner alleges that she should be granted a continuing deferral because she is not capable of performing any work-related activities or participate in the Partnership. Accountability. Training. Hope. (PATH) program based on brain and neck surgery, chronic pain, post-traumatic stress disorder, dyslexia, and a learning disorder.
11. The Petitioner has applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
12. The Social Security Administration (SSA) denied the Petitioner's federal Supplemental Security Income (SSI) application but the Petitioner reported that a SSI appeal is pending.
13. The Petitioner is a 45-year-old woman whose birth date is [REDACTED], 1972.
14. Petitioner is 5' 5 1/2" tall and weighs 165 pounds.
15. The Petitioner has a high school equivalent education and attended some college.
16. The Petitioner was not engaged in substantial gainful activity at any time relevant to this matter.
17. The Petitioner has past relevant work experience in 2011 providing home healthcare services where she was required to lift patients weighing as much as 150 pounds.

18. Petitioner has a history of anxiety first identified in 2012.
19. Petitioner has a history of Chiari malformation and polyneuropathy.
20. Petitioner has a history of brain surgery treating the Chiari malformation.
21. Petitioner has a history of systemic lupus erythmatosis and acute numbness in her lower extremities.
22. On January 19, 2015, Petitioner was diagnosed with persistent depressive disorder, generalized anxiety disorder, and moderate alcohol use disorder that was in remission.
23. Petitioner has been diagnosed with major depressive disorder, personality disorder, seizure disorder, Post-Traumatic Stress Disorder, reading disability, and borderline intellectual functioning.
24. Petitioner was diagnosed with chronic neck pain and seizure disorder in 2016.
25. Petitioner reports that her sleep is "poor" and only gets a few hours of sleep each day but sometimes goes a few days without sleep.
26. Petitioner is being treated for depression with anxiety.
27. Petitioner is fully oriented to self, place, and date.
28. On January 20, 2017, Petitioner was evaluated using the Wechsler Adult Intelligence Scale IV and was found to have a full-scale IQ of 73, and a Verbal Comprehension Index of 85.
29. On January 18, 2017, a consultative physician determined that Petitioner is able to comprehend and carry out simple, routine tasks and directions, and perform repetitive, routine tasks, all within normal limits. Petitioner was found to be capable of menial labor, repetitive and simple within normal limits. Petitioner was found to be able to comprehend complex tasks with mild impairment. Petitioner was diagnosed with episodic anxiety stress, depression, and a learning disability.
30. On June 26, 2017, the Department received Petitioner's request for a hearing.

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, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. 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. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

Clients must be made aware that public assistance is limited to 48 months to meet their family's needs and they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by Michigan Department of Health and Human Services (MDHHS) when the client applies for cash assistance. The Partnership. Accountability Training. Hope. (PATH) program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. Department of Health and Human Services Bridges Eligibility Manual (BEM) 229 (October 1, 2015), p 1.

The Family Independence Program (FIP) is not an entitlement. Each month an individual receives federally funded FIP, the individual receives a count of one month. A family is ineligible when a mandatory member of the FIP group reaches the 60 TANF-funded month federal time limit. The Department will provide an exception to the federal 60-month time limit for an ongoing FIP group and the grantee who is established to be incapacitated for more than 90 days. Department of Health and Human Services Bridges Eligibility Manual (BEM) 234 (July 1, 2013), pp 1-2.

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 cash assistance program. Under SSI, disability is defined as:

...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.

Petitioner was granted a deferral from the Partnership. Accountability. Training. Hope. (PATH) program based on her physical and mental impairments until the Department determined that her condition had improved to the point that she was capable of participation in work related activities. While the deferral was granted, Petitioner was eligible for state-funded cash assistance based on her incapacity to participate in PATH.

This determination that Petitioner should be classified as a work eligible individual ending her deferral and that she is now capable of participation in PATH is the decision that Petitioner is protesting. The Department stipulated that Petitioner had a right to a hearing on that issue and Petitioner did not dispute that she has exceeded the federal-time limit for cash assistance and would only remain eligible for cash assistance based on the establishment of her incapacity in accordance with BEM 234.

The Department, having previously determined that Petitioner should be deferred from PATH based on her incapacity to perform work related tasks, determined that Petitioner's condition has improved to the point where she is no longer incapacitated or disabled. The Department's findings will be evaluated by applying the steps outlined in 20 CFR 416.994.

First, Petitioner's impairments are evaluated to determine whether they fit the description of a Social Security Administration disability listing in 20 CFR Part 404, Subpart P, Appendix 1. A Petitioner that meets one of these listing that meets the duration requirements is considered to be disabled.

Petitioner's impairments failed to meet the listing for an intellectual disorder under section 12.05 because the objective medical evidence does not demonstrate that she is not capable of participating in a standardized testing of intellectual functioning. Further, Petitioner has been evaluated using the Wechsler Adult Intelligence Scale IV and was found to have a full-scale IQ of 73, and a Verbal Comprehension Index of 85.

Petitioner's impairment failed to meet the listing for her other mental impairments under section 12 Mental Disorders because the objective medical evidence does not support a finding that Petitioner's symptoms are "serious and persistent" requiring a highly structured setting, or that she has been unable to adapt to the requirements of daily life outside of a structured facility. The objective medical evidence indicates that Petitioner had adjusted her daily activities with the assistance of a home help aid. The objective medical evidence indicates that Petitioner is able to comprehend and carry out simple repetitive tasks and is capable of menial labor despite her mental impairments.

Petitioner's impairment failed to meet the listing for Chiari malformation under section 12.11 Neurodevelopmental disorders because the objective medical evidence does not support a finding that Petitioner suffers marked limitations of her ability to understand, remember, or apply information, or concentrate, persist, or maintain pace, or adapt or manage oneself. On January 18, 2017, a consultative physician determined that Petitioner is able to comprehend and carry out simple, routine tasks and directions, and perform repetitive, routine tasks, all within normal limits. Petitioner was found to be capable of menial labor, repetitive and simple within normal limits. Petitioner was found to be able to comprehend complex tasks with mild impairment

The medical evidence of the Petitioner's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

Next, the objective medical evidence presented on the record supports a finding that the Department credibly determined that Petitioner has experienced improvement of her condition and that she is capable of participation in the PATH program, with reasonable accommodations if necessary. Petitioner has been found to be able to comprehend complex tasks with mild impairment and she is not capable of carrying out simple repetitive work-related tasks. Petitioner was previously exempted from participation in work related activities due to her incapacity for self-sufficiency following surgery, but the record evidence supports a finding that her condition has improved. Petitioner's impairments are primarily non-exertional and do not prevent her from performing any work-related tasks with reasonable accommodations.

The Department credibly determined that the improvements Petitioner has experienced are related to her ability to perform work-related activities.

Next, Petitioner's impairments are evaluated to determine whether her current impairments result in a severely restrictive physical or mental impairment. Petitioner is a 45-year-old woman with a high school equivalent education. Petitioner suffers from chronic pain that significantly limits her ability to sleep. The pain Petitioner experiences can be reasonably expected to arise from the physical impairments she had been diagnosed with.

The objective medical evidence indicates the following:

Petitioner has been diagnosed with persistent depressive disorder, generalized anxiety disorder, chronic pain, seizure disorder, Chiari malformation and polyneuropathy, post-traumatic stress disorder, a reading disability, and borderline functioning.

Petitioner was evaluated using the Wechsler Adult Intelligence Scale IV and was found to have a full-scale IQ of 73, and a Verbal Comprehension Index of 85.

Petitioner reported that her sleep is "poor." Petitioner reported only sleeping a few hours each night and occasionally goes a few days without sleep.

This Administrative Law Judge finds physical and mental impairments that has more than a de minimus effect on the Petitioner's ability to perform work activities. Petitioner's physical and mental impairments are considered a severely restrictive impairment of her ability to perform work-related tasks and the analysis will continue.

Next, Petitioner's impairments are evaluated to determine whether she is capable of performing work that she has performed in the past. Petitioner has relevant work history as a home health aide where she was required to lift patients weighing up to 150 pounds. The objective medical evidence does not support a finding that Petitioner is capable of currently performing the work she had performed in the past. Petitioner's testimony and the hearing record supports a finding that Petitioner is not currently capable of working as a home health aide. The analysis will continue.

Next, the Department has the burden to establish that Petitioner has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

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.

Light work. 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).

The objective medical evidence indicates that medical evidence indicates that Petitioner has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically able to do light or sedentary work if demanded of her. The Department credibly determined that Petitioner's impairments are primarily non-exertional and that she should be able to perform light or sedentary work.

The Petitioner was able to answer all the questions at the hearing and was responsive to the questions. The Petitioner was oriented to time, person and place during the hearing.

The Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Petitioner's ability to perform work.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Petitioner is 45-years-old, a younger person, under age 50, with a high school equivalent education and above, and a history of unskilled work. Based on the objective medical evidence of record Petitioner has the residual functional capacity to perform light work. Therefore, the Department credibly determined that Petitioner is not incapacitated, and she is capable of participating in the PATH program is using Vocational Rule 202.20 as a guideline.

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 that the Department acted in accordance with Department policy when it determined a continuing deferral from the

Partnership. Accountability. Training. Hope. (PATH) program is not supported by the objective medical evidence. Petitioner is not incapacitated, and she is capable of participating in the PATH program despite her severe physical and mental impairments. Since Petitioner no longer meets the exceptions to the federal time limit for eligibility for cash assistance, the Department closed Petitioner's cash assistance in accordance with policy.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.

KS/nr



Kevin Scully
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Laura Bensinger
1050 Independence Blvd
Charlotte, MI
48813

Eaton County DHHS- via electronic mail

BSC2- via electronic mail

L. Karadsheh- via electronic mail

Petitioner

