



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Date Mailed: January 31, 2018
MAHS Docket No.: 17-015654
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 January 2, 2018, from Lansing, Michigan. Petitioner personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Hearing Facilitator, Adam Slate. Mr. Slate testified on behalf of the Department. The Department submitted 478 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Whether the Department properly determined 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], 2017, Petitioner applied for SDA. [Dept. Exh. pp 3-22].
2. On November 15, 2017, the Medical Review Team (MRT) denied Petitioner's SDA application. [Dept. Exh. pp 33-39].
3. On November 17, 2017, the Department mailed Petitioner a Notice of Case Action informing her that her application for SDA was denied. [Dept. Exh. pp 477-478].

4. On November 28, 2017, Petitioner requested a hearing to contest the denial of SDA benefits. [Dept. Exh. p 1].
5. Petitioner is diagnosed with posttraumatic stress disorder (PTSD), severe depression, mood disorder, alcohol use disorder, arthritis, high blood pressure, heart problems, gastroesophageal reflux disease (GERD), hyperlipidemia, anemia due to chronic blood loss, osteopenia, osteoarthritis, and degenerative disc disease.
6. On May 19, 2016, Petitioner's left hip x-rays revealed progressive moderate degenerative changes, when compared to the x-rays in 2005. Lumbar spine x-rays showed mild degenerative disc disease. [Dept. Exh. pp 176-177].
7. On September 23, 2016, Petitioner's therapist submitted a letter regarding her treatment of Petitioner. The therapist met with Petitioner and her son beginning in May of 2012, through May of 2013. Her diagnosis of Petitioner at that time was Adjustment Disorder with Anxiety and Depressed Mood. Petitioner returned to counseling in January of 2016, after the death of her son. Petitioner continued under the same diagnosis with an increase in her anxiety symptoms causing clinically significant distress and impairment in social, occupational, or other important areas of functioning. [Dept. Exh. p 396].
8. On October 7, 2016, Petitioner underwent an independent psychological evaluation on behalf of the Department. Petitioner stated that her son died in July of 2015, and that it was ruled a suicide. After his death, she reported that she tried to kill herself twice, first by taking a massive overdose, and second, by hanging, but the rope broke. She explained that as a result of the rope burn, she had to hide her neck for some time. Petitioner described significant turmoil and stress, which the psychologist opined was chronic versus acute. Petitioner was diagnosed with Major Depressive Disorder, persistent, and PTSD. The psychologist opined that Petitioner's prognosis was guarded. The psychologist opined that Petitioner appeared to be struggling with strong emotions and may have difficulty tolerating ordinary stress. [Dept. Exh. pp 389-394].
9. On January 11, 2017, Petitioner underwent a series of x-rays. The x-ray of the cervical spine showed minor sequela of degenerative disc disease and multilevel facet degenerative changes. The x-rays of Petitioner's right hand revealed minor osteoarthritis, while x-rays of Petitioner's right wrist showed minor osteoarthritis of the first metacarpal carpal articulation. The thoracic spine x-rays revealed upper thoracic scoliosis and minor sequela of degenerative disc disease. [Dept. Exh. pp 233-235].
10. On February 20, 2017, Petitioner underwent a neuropsychological evaluation on behalf of the Department. The results indicated superior executive function ability, superior attention ability, above average language and spatial abilities, and average memory ability. The psychologist noted that Petitioner experienced a traumatic event in July of 2015, which led to the accidental hanging death of her

12-year-old son. Since this event, Petitioner reported a decrease in her ability to concentrate and multi-task productively. She reported increased tearfulness, irritability, fatigue, social isolation, and suicidal ideation and attempts, since her son's death. Her change in daily cognitive functioning abilities appeared to be related to grieving her son's death, as opposed to a neurocognitive deficit. Petitioner was diagnosed with PTSD; Major Depressive Disorder, Severe, Without Psychotic Features; Generalized Anxiety Disorder, and Alcohol Use Disorder (Moderate). [Dept. Exh. pp 218-226].

11. On October 25, 2017, Petitioner underwent an independent psychological evaluation on behalf of the Department. The psychologist diagnosed Petitioner with PTSD, major depressive disorder, chronic, and alcohol use disorder. The psychologist opined that Petitioner's prognosis appeared to be guarded. She was not involved in counseling, but was taking medication to help with her depression and emotional problems. The psychologist indicated that he suspected that Petitioner continued to struggle with motivation and coping with her son's death, despite having a good support group. The psychologist opined that Petitioner may have difficulties working in close proximity to others without behavioral extremes. He noted that Petitioner had difficulty maintaining her mood and he suspected that Petitioner would have difficulties with dependability. [Dept. Exh. pp 205-209].
12. Petitioner is a [REDACTED]-year-old woman, born on [REDACTED], 1965. She is 5'2" and weighs 150 pounds. She has a college education and last worked in 2016.
13. Based on Petitioner's age, education and employment history, Petitioner meets statutory disability on the basis of Medical/Vocation Grid Rule footnote 201.12 as a guide.
14. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
15. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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 Health and Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department

of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility. (Emphasis added).

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and

416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that Petitioner is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether Petitioner is engaging in substantial gainful activity. (20 CFR 404.1520(b) and 416.920(b)). Substantial Gainful Activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA. (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether Petitioner has a medically determinable impairment that is "severe" or a combination of impairments that is "severe." (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If Petitioner does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

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).

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). 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).

At step three, the Administrative Law Judge must determine whether Petitioner's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1. (20 CFR 404.1520(d),

404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If Petitioner's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, (20 CFR 404.1509 and 416.909), Petitioner is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine Petitioner's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of Petitioner's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether Petitioner has the residual functional capacity to perform the requirements of his/her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as Plaintiff actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for Petitioner to learn to do the job and have been SGA. (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If Petitioner has the residual functional capacity to do his/her past relevant work, Petitioner is not disabled. If Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g)) and 416.920(g)), the Administrative Law Judge must determine whether Petitioner is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If Petitioner is able to do other work, he/she is not disabled. If Petitioner is not able to do other work and meets the duration requirements, he/she is disabled.

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).

At Step 1, Petitioner is not engaged in substantial gainful activity and testified that she has not worked since May of 2016. Therefore, Petitioner is not disqualified from receiving disability at Step 1.

At Step 2, in considering Petitioner's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Petitioner's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the

Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Petitioner's symptoms to determine the extent to which they limit Petitioner's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

At Step 2, the objective medical evidence of record shows Petitioner was diagnosed with posttraumatic stress disorder (PTSD), severe depression, mood disorder, alcohol use disorder, arthritis, high blood pressure, heart problems, gastroesophageal reflux disease (GERD), hyperlipidemia, anemia due to chronic blood loss, osteopenia, osteoarthritis, degenerative disc disease, and in need of a left hip replacement. The finding of a severe impairment at Step 2 is a *de minimus* standard. This Administrative Law Judge finds that Petitioner established that at all times relevant to this matter Petitioner had PTSD, depression and degenerative disc disease which would affect her ability to do substantial gainful activity. Therefore, the analysis will continue to Step 3.

At Step 3 the trier of fact must determine if Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Petitioner's medical record will not support a finding that Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, Petitioner's past relevant employment has been as a departmental analyst. The objective medical evidence of record is sufficient to establish that Petitioner has severe impairments that have lasted or are expected to last 90 days or more and prevent her from performing the duties required from her past relevant employment for 90 days or more. Accordingly, this Administrative Law Judge finds that Petitioner cannot return to past relevant work on the basis of the medical evidence. The analysis continues.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Petitioner has the residual functional capacity to perform other jobs.

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. 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. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 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 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). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 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. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the burden of proof shifts to the Department to establish that Petitioner does have residual function capacity. 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. See discussion at Step 2 above.

At Step 5, the objective medical evidence of record is sufficient to establish that Petitioner's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds Petitioner meets statutory disability on the basis of Medical/Vocational Grid Rule 201.12 as a guide.

As a result, Petitioner has presented the required competent, material, and substantial evidence which would support a finding that Petitioner has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Petitioner has cited medical problems and the clinical documentation submitted by Petitioner is sufficient to establish a finding that Petitioner is disabled. Accordingly, Petitioner is disabled for the purposes of the Medical Assistance disability (MA-P) program.

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.

DECISION AND ORDER

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

THE DEPARTMENT 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. The Department shall process Petitioner's August 24, 2017, application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in February of 2019, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.

VLA/bb



Vicki Armstrong
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

Renee Olian
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Kalamazoo County, DHHS

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Petitioner

[REDACTED]