



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: February 5, 2019
MAHS Docket No.: 18-007454
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 August 23, 2018, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Martha Sherman, Eligibility Specialist, and Kimberly Polasek, Lead Eligibility Specialist.

The record closed on August 23, 2018; and the matter is now before the undersigned for a final determination based on the evidence presented.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the 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. On December 18, 2017, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On May 8, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 91-96).
3. On May 11, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability.

4. On July 16, 2018, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 2-3).
5. Petitioner alleged disabling impairment due to left rotator cuff tear, left knee pain, chronic pain in the lumbar spine down through buttock.
6. On the date of the hearing, Petitioner was ■ years old with an ■, birth date; she is ■ in height and weighs about ■ pounds.
7. Petitioner has a GED and did not complete high school through the 8th grade. Petitioner earned credits for a paralegal but never worked as a paralegal. Petitioner has difficulty dividing large numbers.
8. At the time of application, Petitioner was not employed.
9. Petitioner has no employment history in the last 15 years.
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 (July 2015), 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 1

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 was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, she is not ineligible under Step 1; and the analysis continues to Step 2.

Step 2

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, *and in response to the interim order*, was reviewed and is summarized below.

The Petitioner had an appointment with her personal primary care provider (PCP) on [REDACTED] 2018. The Petitioner is scheduled for shoulder surgery in [REDACTED] 2018 to repair her shoulder; however, she was directed to complete six weeks of prescribed physical therapy before the shoulder surgery. When physical therapy is done, her PCP noted that she will have her shoulder surgery at that time.

The Petitioner was seen on [REDACTED] 2018, in the emergency room for cough, dizziness and tachycardia. The Petitioner had a CT angiography of the thorax. The findings were: no pulmonary embolism was evident. No thoracic aortic aneurysm or dissection was present. There was no pericardial effusion of the heart. A single mildly enlarged right hilar lymph node was noted. There was no pleural effusion. A gallstone of 2 cm was noted and is 6 mm calculus of the left kidney was also observed. The impression was negative CT of the thorax; no evidence of pulmonary embolus. Healing fracture of right rib 5. Cholelithiasis and left nephrolithiasis. The Petitioner was discharged on the day of the emergency room visit.

Due to chronic left shoulder pain and a left acromioclavicular separation, with suspicion for rotator cuff tear, an MRI of the left shoulder was performed on [REDACTED] 2018. The impression was full – thickness tear of the distal supraspinatus tendon. Minimal short fissure-like delamination at the myotendinous junction of the infraspinatus. Moderate acromioclavicular osteoarthritis without evidence of acromioclavicular Sealer injury or coracoclavicular ligament injury.

On [REDACTED] 2018, the Petitioner was seen by a physical therapist who made the following notes which indicated decreased hip and knee flexion on the right with decreased stance time. At the time of the visit, the Petitioner was being seen for low back pain with sciatica and right neck pain. The notes indicate the rotator cuff tear is likely the cause of neck pain and noted limited range of motion to the right in all directions. Focus of treatment was for low back. Functional limitations noted were difficulty bending, sitting, lifting, standing, walking, sleeping and playing with her grandchildren. Rehabilitation potential was noted as good. The notes also indicate that the pain was better with new pain medication. The focus of the treatment overall was for spinal mobility. A physical therapy session on [REDACTED] 2018, noted problems with hip flexor flexibility and hip mobility and no reported increase in pain at lower back related to any stress levels. The Petitioner's therapy session on [REDACTED] 2018, noted that she was antalgic on the right side and sore and did not want to remain sitting. On [REDACTED] 2018, the Petitioner reported that she had a fall due to her leg giving out. She reported falling on her left knee.

The Petitioner was prescribed physical therapy on [REDACTED] 2018, for her left shoulder due to a fall five years ago and chronic non-radiating pain. She was to attend 2 to 3 times a week for six weeks. A calendar of physical therapy indicates that she began attending physical therapy on [REDACTED] 2018, and will continue through [REDACTED] 2018. During physical therapy, the Petitioner reported a fall going up the steps due to her right leg giving out causing sharp pain. A second fall also was reported at the time of her 6th visit to PT causing her to fall on her left knee.

The Petitioner was seen on [REDACTED] 2018, by her PCP due to musculoskeletal pain with follow-up for neck pain. The notes indicate that x-ray showed degenerative changes. Further diagnostic evaluation was ordered for the cervical spine x-ray. X-ray showed degenerative changes, mild to moderate, with physical therapy referral. At the time of the visit, a lumbar spine x-ray was also ordered. The notes indicate that the patient was also counseled for tobacco cessation.

On [REDACTED] 2018, was seen by her PCP with complaints of musculoskeletal pain and cough. A shoulder x-ray was obtained; a forearm x-ray was obtained; and an MRI of the upper extremity without die was ordered; the assessment noted chronic left shoulder pain with suspected rotator cuff tear or injury. The Petitioner's treating doctor prescribed physical therapy for her lumbar and cervical spine due to chronic back and neck pain. The Petitioner consistently attended physical therapy and had noted decreased grip strength, and decreased range of motion in her knee and hip on the right

with functional limitations which include difficulty bending, lifting sitting, standing, walking, sleeping. The notes also indicated weakness of lower extremity with falling.

The Petitioner has been seen and treated consistently with her community mental health provider since [REDACTED] 2017. She has been assessed and diagnosed with depression, anxiety and PTSD. The Petitioner has a reported history of childhood sexual abuse and four hospitalizations for suicide as a youth. Her current treatment includes medications to treat her PTSD and depression. Her symptoms support a PTSD diagnosis, which appears throughout her treatment records with sleep problems and difficulty concentrating. The Petitioner has been treated twice monthly with her therapist, has an assigned caseworker and has reviews every three months with her psychiatrist. The Petitioner is medication compliant. At the hearing, as a result of the Department assisting Petitioner with transportation to her mental health provider, she will begin attending therapy weekly.

The Petitioner was seen for a mental status exam arranged by the Department that found her capable of working despite her PTSD unless her other physical impairments prevent her from working.

The Petitioner was incarcerated for nine years and paroled in 2017. During her incarceration, the Petitioner was treated for mental health issues, prescribed medications and diagnosed with bipolar disorder, mood disorder, borderline personality disorder and antisocial personality disorder. Her records consistently report sleep problems and anxiety and concentration problems.

The Petitioner also reported two falls in 2017 and was treated for left arm and elbow pain with noted forearm swelling.

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 3

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 12.04, Depressive bipolar and related disorders, 12.15 Trauma and stressor related disorders, (PTSD), 12.06 anxiety and obsessive-compulsive disorders and 1.04 Disorder of the Spine 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, non-exertional, 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 non-exertional 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). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five-point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four-point scale (none, one or two, three, four or more) is used to rate the degree of limitation *in the fourth functional area*. *Id.* *The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. Id.*

In this case, Petitioner alleges both exertional and non-exertional limitations due to her medical condition. Petitioner testified that she could make a simple meal, and needs reminding to take her meds. The Petitioner has difficulty climbing stairs, due to her lower extremity weakness. The Petitioner cannot carry laundry but can fold it. The Petitioner can stand 15 or 20 minutes and then must sit or lie down. She can sit in one position about 30 minutes to an hour. The Petitioner can walk about a half block to a block, cannot squat and can bend forward and to the right. The Petitioner also takes prescribed pain medications with the best level of pain a 6. The Petitioner needs assistance washing her hair and fastening her bra. Petitioner cannot touch her toes. The Petitioner cannot hold her hand above her left shoulder and cannot carry with that arm. The most weight the Petitioner can carry with her right arm is seven pounds or less.

As regards her mental health, the Petitioner experiences anxiety attacks 3 to 5 times weekly, cries every other day and experiences sweating and isolates herself from others when anxious. She still experiences PTSD flashbacks due to seeing her stepfather burn to death and past sexual abuse. The medications make her memory foggy and has difficulty concentrating and completing tasks and cannot complete reading a book due to lack of focus. The Petitioner reports having no friends and only leaves the home

to go to the doctors. The Petitioner is affected by her depression, forgetting to bathe at times and not getting out of bed. The Petitioner takes three naps daily.

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.

With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a).

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has moderate to occasional severe limitations due to anxiety and concentration and mild limitations with respect to daily living as regards her mental ability to perform basic work activities.

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

Step 4

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).

The Petitioner has no past relevant work history in the last 15 years prior to the application.

Step 5

If an individual is incapable of performing past relevant work, Step 5 requires an assessment of the individual's RFC and age, education, and work experience to determine whether an adjustment to other work can be made. 20 CFR 416.920(a)(4)(v); 20 CFR 416.920(c). If the individual can adjust to other work, then there is no disability; if the individual cannot adjust to other work, then there is a disability. 20 CFR 416.920(a)(4)(v).

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 February 2020.

LMF/jaf



Lynn M. Ferris

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) 763-0155; 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

Rose Ward
MDHHS-Newaygo-Hearings

Petitioner

[REDACTED]
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