



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR



Date Mailed: January 7, 2019
MAHS Docket No.: 18-008803
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 September 26, 2018, from Lansing, Michigan. The Petitioner was represented by herself and her mother, [REDACTED]. The Department of Health and Human Services (Department) was represented by Myrna White, Eligibility Specialist. The record was left open for additional medical records, which was received on November 26, 2018, and the record was closed.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) benefit programs and had excess income for the Healthy Michigan Program (HMP)?

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 March 28, 2018, the Petitioner was approved for HMP.
2. On July 5, 2018, the Department received income information on Petitioner's husband who went back to work resulting in excess income for HMP.
3. On July 5, 2018, the Department sent a disability packet to the Medical Review Team (MRT) to determine Petitioner's eligibility for MA.
4. On August 13, 2018, the MRT determined that Petitioner was not disabled and capable of performing other work per CFR 20 416.920(f).

5. On August 13, 2018, the Department Caseworker sent Petitioner a Notice of Case Action that her MA application was denied.
6. On August 24, 2018, the Department received a hearing request from Petitioner, contesting the Department's negative action.
7. Petitioner is a 34-year-old woman whose date of birth is [REDACTED] 1984. Petitioner is 5' tall and weighs 170 pounds. Petitioner has completed High School. Petitioner can read and write and do only addition for basic math. Petitioner was last employed as a server in December 2017 at the light level. Petitioner has also been employed as a respite worker and cashier.
8. Petitioner's alleged impairments are depression, anxiety, multiple sclerosis with migraines, nerve pain, and issues of hand and feet drop and fall.
9. On September 24, 2018, Petitioner was seen by her treating physician. She presented with depressed mood. Petitioner had occasional symptoms with moderate severity. She had a good sleep quality with occasional awakenings. Petitioner had an essentially normal physical examination. She did have a positive review for sensory change and focal weakness neurologically. There was no evidence of a severe thought disorder or risk factors. For MS, she was starting IV steroids with Dr. Garg. Petitioner was prescribed medication for her depression combined with therapy. She reported a 75% improvement with medication and therapy. Department Exhibit 2, pgs. a-e.
10. On July 12, 2018, Petitioner was seen by an independent medical examiner for a physical examination for Social Security. She had chronic depression, anxiety, chronic migraines without aura, chronic fatigue syndrome, and multiple sclerosis. Petitioner had numbness, urine incontinence, loose bowel movements, frequent headaches, nausea without vomiting, tired and fatigue, excessive sleep, loss of balance, and anxiety and depressed feeling. She had an essentially normal physical examination. Petitioner was assessed to have MS, obesity, chronic fatigue syndrome, headache, depressive disorder, and neuropathic pain of neuralgia and neuritis, unspecified. Department Exhibit 1, pgs. 183-189.
11. On June 30, 2018, Petitioner was seen by an independent medical examiner for a mental status examination for Social Security. She has an alleged disability secondary to MS, which was first diagnosed in 2014. Petitioner suffers from chronic migraines recurring as often as three to five times a week. She has severe fatigue and has to take frequent naps. Petitioner also has issues with memory and concentration, as well as foot drop and cramping in her hands and feet. She reported that she has 20 lesions on her brain and one on her back. Petitioner has been feeling anxious and depressed since her diagnosis of MS in 2014. Her affect was mildly constricted. Her mood was somewhat tearful, but still pleasant. There was no evidence of a severe thought disorder or risk factors. She had a logical, goal directed, and organized stream of mental activity. Petitioner was given a diagnosis

of mild neurocognitive disorder secondary to MS and a mild learning disability. Her prognosis was fair. She is able to manage her benefit funds. Department Exhibit 1, pgs. 191-194.

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.

"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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due

to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

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.

Step 1

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). At Step 1, the Petitioner is not engaged in substantial gainful activity and has not worked since December 2017. Therefore, the Petitioner is not disqualified from receiving disability at Step 1.

Step 2

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities means, 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the Administrative Law judge findings:

On September 24, 2018, Petitioner was seen by her treating physician. She presented with depressed mood. Petitioner had occasional symptoms with moderate severity. She had a good sleep quality with occasional awakenings. Petitioner had an essentially normal physical examination. She did have a positive review for sensory change and focal weakness neurologically. There was no evidence of a severe thought disorder or risk factors. For MS, she was starting IV steroids with Dr. Garg. Petitioner was prescribed medication for her depression combined with therapy. She reported a 75% improvement with medication and therapy. Department Exhibit 2, pgs. a-e.

On July 12, 2018, Petitioner was seen by an independent medical examiner for a physical examination for Social Security. She had chronic depression, anxiety, chronic migraines without aura, chronic fatigue syndrome, and multiple sclerosis. Petitioner had numbness,

urine incontinence, loose bowel movements, frequent headaches, nausea without vomiting, tired and fatigue, excessive sleep, loss of balance, and anxiety and depressed feeling. She had an essentially normal physical examination. Petitioner was assessed to have MS, obesity, chronic fatigue syndrome, headache, depressive disorder, and neuropathic pain of neuralgia and neuritis, unspecified. Department Exhibit 1, pgs. 183-189.

On June 30, 2018, Petitioner was seen by an independent medical examiner for a mental status examination for Social Security. She has an alleged disability secondary to MS, which was first diagnosed in 2014. Petitioner suffers from chronic migraines recurring as often as three to five times a week. She has severe fatigue and has to take frequent naps. Petitioner also has issues with memory and concentration, as well as foot drop and cramping in her hands and feet. She reported that she has 20 lesions on her brain and one on her back. Petitioner has been feeling anxious and depressed since her diagnosis of MS in 2014. Her affect was mildly constricted. Her mood was somewhat tearful, but still pleasant. There was no evidence of a severe thought disorder or risk factors. She had a logical, goal directed, and organized stream of mental activity. Petitioner was given a diagnosis of mild neurocognitive disorder secondary to MS and a mild learning disability. Her prognosis was fair. She is able to manage her benefit funds. Department Exhibit 1, pgs. 191-194.

At Step 2, the objective medical evidence in the record indicates that Petitioner has established that she has a severe impairment. Petitioner was diagnosed with MS in December 2017 with some of the limiting symptoms. She had an essentially normal physical examination. However, she does have chronic fatigue syndrome and neurological issues in her hands and feet due to the MS. Petitioner is capable of performing at least light work. Therefore, Petitioner is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

Step 3

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the 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. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that Petitioner's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, Petitioner is disqualified from receiving disability at Step 3.

Step 4

Can the Petitioner do the former work that she performed within the last 15 years? If yes, Petitioner is not disabled.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if Petitioner's impairment(s) prevents Petitioner from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that Petitioner testified that she does perform some of her daily living activities. However, the objective medical evidence on the record does not support that level of impairment. Petitioner stated that she does have any mental impairments where she is in therapy and taking medications. She does not or had ever smoked cigarettes or used illegal or illicit drugs rarely. Petitioner does not drink alcohol after trying it two times at age of 22. Petitioner did not think that there was any work she could do.

At Step 4, this Administrative Law Judge finds that Petitioner has established that she cannot perform any of her prior work. Her past employment was as a server in December 2017 at the light level. Petitioner has also been employed as a respite worker and cashier. Petitioner is capable of performing at least light work. She does have some limitations with her back and neck. Therefore, Petitioner is not disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the Petitioner has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

Step 5

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment(s) prevents Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner's:

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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. 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. 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).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

Medium work. 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).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The objective medical evidence on the record is insufficient that Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. Petitioner's testimony as to her limitation indicates her limitations are exertional and non-exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, Petitioner testified that she has anxiety and depression. Petitioner is taking medication and in therapy for her mental impairments. See MA analysis Step 2. There was no evidence of a serious thought disorder or risk factors. She has a high school diploma, so will be limited to simple and unskilled work.

At Step 5, Petitioner can meet the physical requirements of light work, based upon the Petitioner's physical abilities. Under the Medical-Vocational guidelines, a younger aged individual with a high school education, and an unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.20. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression and anxiety. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to Petitioner's physical and mental impairments, the Administrative Law Judge finds that Petitioner could perform light work and that Petitioner does not meet the definition of disabled under the MA 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 not disabled for purposes of the MA benefit program where she is capable of performing light work.

DECISION AND ORDER

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

CF/hb



Carmen G. Fahie
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

Pam Farnsworth
903 Telegraph
Monroe, MI 48161

Monroe County, DHHS

BSC4 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

Petitioner

A large black rectangular redaction box covering the signature area of the petitioner.