



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: December 11, 2018
MAHS Docket No.: 18-009238
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an In-person hearing was held on November 15, 2018, from Benzonia, Michigan. The Petitioner was represented by [REDACTED] from ADVOMAS. Petitioner appeared and testified. The Department of Health and Human Services (Department) was represented by Patti Marx FIM. Department Exhibit 1, pp. 1-160 was received and admitted. Petitioner Exhibit A, pp. 1-25 was received and admitted.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) 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. Petitioner applied for MA-P on [REDACTED], 2017.
2. The Medical Review Team denied the application on March 29, 2018. The denial was not sent to Petitioner's Authorized Representative.
3. Petitioner filed a request for hearing on September 6, 2018, regarding the SDA denial.
4. An In-person hearing was held on November 15, 2018.
5. Petitioner is [REDACTED]" tall and weighs [REDACTED] pounds.

6. Petitioner is ■ years of age having turned 55 on ■, 2018.
7. Petitioner's impairments have been medically diagnosed as bradycardia, back pain, acid reflux, migraines, left shoulder pain, generalized anxiety disorder, depression.
8. Petitioner has the following symptoms: pain, fatigue, panic attacks, shortness of breath, crying spells, social isolation, suicide attempt, auditory hallucinations, and memory and concentration problems.
9. Petitioner completed high school and a 2-year college degree.
10. Petitioner is able to read, write, and perform basic math skills.
11. Petitioner is not working. Petitioner last worked full time in October 2016 as a judicial clerk.
12. Petitioner testified that she can perform most household chores.
13. Petitioner takes the following prescribed medications:
 - a. sertraline
 - b. hydrocodone
 - c. hydroxine
 - d. omeprazole
 - e. topiramate
 - f. trazodone
 - g. klonopin
 - h. fluconazole
14. Petitioner testified to the following physical limitations:
 - i. Sitting: 10-15 minutes
 - ii. Standing: 5-10 minutes
 - iii. Walking: ¼ mile
 - iv. Bend/stoop: some difficulty
 - v. Lifting: 10 lbs.
 - vi. Grip/grasp: no limitations
15. Petitioner testified to experiencing pain at a high level of 7 on an everyday basis with some pain always present at a low level of 5.

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.

Petitioner applied for medical assistance alleging a disability. A disabled person is eligible for MA. To be considered disabled for MA-P purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR

416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working at the time of hearing. Because Petitioner was not engaged in SGA, she is not ineligible at Step 1, and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). 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 was thoroughly reviewed and is briefly summarized below:

Clinical Notes from [REDACTED], PA-C for the time period from March 10, 2015, through October 11, 2018, were reviewed which showed treatment for anxiety disorder, major depression with psychosis, left shoulder pain. (Ex. A, pp. 1-22)

Office Notes from [REDACTED] from May 7, 2018 were reviewed which showed diagnoses of generalized anxiety disorder, panic disorder and recurrent major depression with psychosis. (Ex. A, pp. 23-25)

Office Notes from [REDACTED] from October 13, 2017, through February 28, 2018 were reviewed which showed treatment for major depression and generalized anxiety disorder. (Ex.1, pp. 77-91)

A Hospital Summary and admission records from [REDACTED] from September 2, 2017, were reviewed which showed treatment following suicide attempt. (Ex.1, pp. 98-124)

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 Three

In this case, this Administrative Law Judge finds that Petitioner may be considered presently disabled at the third step. Petitioner meets listing 12.06 or its equivalent. Petitioner was experiencing a panic attack and crying spells throughout the hearing. Petitioner credibly testified that she had difficulty leaving the house. Petitioner credibly testified that she has panic attacks several times a day. Petitioner credibly testified that she hears voices and sees movement out of the corner of her eye. This Administrative Law Judge will not continue through the remaining steps of the assessment. Petitioner's testimony and the medical documentation support the finding that Petitioner meets the requirements of the listing. Petitioner has other significant health problems that were not fully addressed in this decision because Petitioner is found to meet a listing for a different impairment.

Therefore, Claimant is found to be disabled.

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 MA benefit program as of the date of application [REDACTED], 2017.

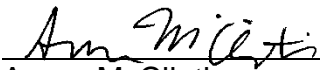
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is medically disabled as of October 2017.

Accordingly, the Department's decision is hereby **REVERSED**, and the Department is ORDERED to:

1. Initiate a review of the application for MA-P dated October 18, 2017, if not done previously, to determine Petitioner's non-medical eligibility.
2. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for December 2019.

AM/nr



Aaron McClintic
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
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