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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: April 9, 2019
MAHS Docket No.: 18-013662
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. A hearing was scheduled for January 28, 2019; and a snow weather emergency was declared, and the matter was adjourned. After due notice, a telephone hearing was held on February 21, 2019, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Tamika Harris, Assistance Payments Supervisor, and Tiffany Brooks, Assistance Payments Worker, Eligibility Specialist, and Sandrine Revol, Assistance Payments Worker. At the rescheduled Hearing, Corliss Tripp-Watson, Assistance Payments Supervisor, also appeared with Tiffany Brooks and Sandrine Revol.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. A DHS-49D and DHS-49E from [REDACTED] were received and marked into evidence as Exhibit B. The record closed on March 25, 2019; 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 September 29, 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On November 24, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, p. 24).
3. On November 20, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on DDSs finding of no disability (Exhibit A, p.13).
4. On December 26, 2018, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 2).
5. Petitioner alleged disabling impairment due to tubal ligation syndrome causing severe pain when menstruating, acute right shoulder pain and strain. The Petitioner also alleges carpal tunnel syndrome in both hands and left wrist with surgery on right hand. The Petitioner also alleges mental impairments due to depression and severe anxiety.
6. On the date of the hearing, Petitioner was [REDACTED] years old with an [REDACTED], birth date; she is [REDACTED]" in height and weighs about [REDACTED] pounds.
7. Petitioner is a high school graduate. Petitioner also has a learning disorder due to ADD; she cannot do multiplication or division.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as a Certified Nursing Assistant (CNA) caring for patients, dementia care, and in a factory that manufactured filters for humidifiers.
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 Supplemental Security Income (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.

On [REDACTED] 2017, the Petitioner was seen by [REDACTED]; and her right shoulder was examined due to complaints of shoulder pain. An x-ray of the right shoulder was taken and notes indicate consideration of physical therapy and referral to orthopedics. The initial diagnosis was acute right shoulder strain. Petitioner was prescribed Valium

and Vicodin for pain. The Petitioner has not received medical treatment for her shoulder since this time.

The Petitioner has a history of mental impairments and was seen in 1999 for a three-year period and treated for depression.

The Petitioner was seen at the emergency department on [REDACTED] 2018, and was admitted due to chest pain. At the time, Petitioner was having a severe anxiety attack and believed she was having a heart attack. At the time, she was diagnosed with major depressive affective disorder, recurrent episode chronic, Agoraphobia with panic disorder, chronic and chronic generalized anxiety disorder, with attention deficit hyperactivity disorder predominantly inattentive type. Notes indicate patient was very anxious.

The Petitioner at the time of the hearing was in continuing treatment for her mental problems with [REDACTED], who she has seen since 2014. [REDACTED] completed a Mental Residual Functional Capacity Assessment on [REDACTED] 2019. The psychiatrist concluded that with respect to Understanding and Memory, Petitioner had moderate limitations regarding her ability to remember locations and work like procedures and to understand and remember one- or two-step instructions. Petitioner's ability to understand and remember detailed instructions were evaluated as markedly limited.

With respect to Sustained Concentration and Persistence, the Petitioner was evaluated as moderately limited in her ability to carry out simple one- or two-step instructions, and in her ability to sustain an ordinary routine without supervision and the ability to make simple work-related decisions. The Petitioner was markedly limited inability to carry out detailed instructions, to maintain attention and concentration for extended periods, the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances and the ability to work in coordination with or proximity to others without being distracted by them. In addition, the petitioner was evaluated as markedly limited in her ability to complete a normal workday and worksheet without interruptions from psychologically-based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.

With respect to Social Interaction, the Petitioner was moderately limited in her ability to accept instructions and respond appropriately to criticism from supervisors, and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness. The Petitioner was markedly limited in her ability to interact appropriately with the general public, the ability to ask simple questions or request assistance and the ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes.

With respect to Adaptation, the Petitioner was moderately limited in her ability to respond appropriately to change in the work setting and moderately limited in her ability to be aware of normal hazards and take appropriate precautions. The Petitioner was evaluated as

markedly limited in her ability to travel in unfamiliar places or use public transportation and the ability to set realistic goals or make plans independently of others.

The Petitioner's treating psychiatrist, [REDACTED], also completed a Psychiatric/Psychological Examination Report on [REDACTED] 2019. The doctor indicated he has seen Petitioner since [REDACTED] 2014; and currently she visits with him for a session once monthly. With respect to Petitioner's history, the doctor noted depression and anxiety with panic disorder and ADHD. The current treatment was medical management with treatment every month. Her mental status at the time of the examination noted she was alert anxious and restless. The Petitioner's daily activities include making the bed, and she rarely sees people as they frighten her. The diagnosis was major depressive order, anxiety disorder severe, and Agoraphobia. The GAF score was 55.

On [REDACTED] 2018, during the Petitioner's completion of her medical social questionnaire, the case intake worker noted that the client was a complete physical wreck. She stopped several times to howl with pain and grabbed her stomach and mentally could not stay focused. Communication was very distorted as well.

The Petitioner's chiropractor noted in a letter to the Department DDS that he had seen Petitioner for neck pain, right upper back pain, right clavicle pain and right arm pain that had improved greatly with care. Notes indicate pain levels decreased from 8/10 to 3/10. At the time of her last visit, Petitioner had recovered well, with no limitation on her activities of daily living and/or ability to work. The Petitioner began treatment on [REDACTED] 2017. The general history noted insomnia, low blood pressure, nervousness, muscle spasms, shoulder pain, headaches and neck pain. The major complaint at that time was upper thoracic back pain and medial thoracic front of the right arm and right clavicle pain. At the time of treatment, Petitioner had no treatment for the shoulder pain reported. Petitioner noted that showering, sitting, dressing, making the bed and doing laundry were interfered with due to her symptoms. In addition, physical activities such as lifting, pushing things and pulling things were also affected. Based on x-rays, there was decrease disk space at C3-C4 and C5-C6. The Petitioner was seen for treatments on [REDACTED] 2017; [REDACTED] 2017; [REDACTED] 2017; [REDACTED] 2017; [REDACTED] 2017; and [REDACTED] 2017, for treatment of pain and spasm. At the time of the last visit on [REDACTED] 2017, the prognosis was good; and notes indicate that her pain level was much lower.

The Petitioner has treated consistently one time monthly with her psychiatrist receiving psychotherapy treatment and medical management. A review of the treatment notes indicates that as late as [REDACTED] 2018, the Petitioner was symptomatic with no change in diagnosis; and Petitioner was prescribed Ambien due to sleep problems and difficulty sleeping. Objective findings were consistent noting that while thought content and affect are appropriate, mood is sad and anxious. Patient was not suicidal or homicidal with attention, concentration memory and language intact her insight and judgment were listed as good. During the examinations, Petitioner reported anxiety with muscle tension, irritability, insomnia, restlessness, with mind going blank. Patient reports being

easily fatigued and excessively worried. There is depression with low energy, lack of interest, impaired concentration with insomnia, feelings of guilt and worthlessness with less ability to experience pleasure with depression many days. During her treatment, Petitioner has been prescribed Xanax, Adderall and Ambien. On [REDACTED] 2017, Patient was seen and had been more depressed because she ran out of her Adderall; reported inability to stop crying. During all of the sessions, psychiatric support was given to help deal with anxiety, depression and impaired concentration.

The Petitioner's husband completed an evaluation about Petitioner's abilities to perform daily activities. The notes indicate that Petitioner goes outside once a week, does not visit with friends or family, can no longer keep a budget or plan for money, and does not communicate with the children or grandchildren like she used to. He notes that the various conditions that are affected are completing tasks, concentration, understanding and using her hands and that she isolates herself. Most of her activities are dependent on how she feels that day. The Petitioner completed a function report on [REDACTED] 2018. In that report, she noted that she has difficulties with hearing, understanding, memory, carpal tunnel and severe social anxiety. She needs her husband near her for all her appointments to help her understand. She notes severe depression with post tubal ligation syndrome causing pain for the first four days of her menstrual periods. Petitioner also expressed her anxiety, indicating she was scared of people she did not know and anxious about completing the paperwork. Petitioner also expressed that she was hopelessly waiting for God to take her home and also stating that she was not suicidal. The Petitioner also indicated that the following affects her ability, memory, completing tasks, concentration, understanding, following instructions and using her hands. She further indicated that as an example she may be required to reread five times how long to microwave something. She remembers things only if written down.

During the Petitioner's hearing conducted on [REDACTED] 2019, the CPS worker advised that based upon her observations of Petitioner, it was necessary for Petitioner to take a break indicating that she was exhibiting symptoms of anxiety and struggling. A five-minute break was taken, and Petitioner was able to resume the hearing having calmed herself.

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 and 12.06 Anxiety and Obsessive-compulsive disorders were considered. The medical evidence presented shows that Petitioner's mental impairment meet or equal the required level of severity of Listing 12.06 A. 1, Anxiety Disorder to be disabling without further consideration.

Therefore, the medical evidence shows that Petitioner's impairment of Severe Anxiety diagnosis meets or is equal in severity to the criteria in Appendix 1 of the Guidelines to be considered as disabled. Accordingly, Petitioner **is disabled**, and no further analysis is required.

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.

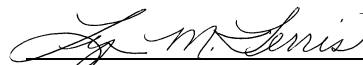
DECISION AND ORDER

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. Reregister and process Petitioner's September 20, 2018, SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
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 April 2020.

LMF/jaf



Lynn M. Ferris

Administrative Law Judge
for Robert Gordon, 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

Renee Swiercz
MDHHS-Oakland-IV-Hearings

Petitioner

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