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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: April 17, 2019
MAHS Docket No.: 19-002052
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 April 4, 2019, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED]. Her friend, [REDACTED] appeared as a witness. The Department of Health and Human Services (Department or Respondent) was represented by Megan Sterk, Assistance Payments Worker.

Respondent's Exhibit A pages 1-506 and Exhibit B pages 1-332 were admitted as evidence.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

- (1) On [REDACTED], 2018, Petitioner filed a review application for State Disability Assistance (SDA) benefits alleging disability.
- (2) Petitioner receives Medical Assistance and Food Assistance Program benefits and SDA.
- (3) On February 13, 2019, the Medical Review Team denied Petitioner's application stating that Petitioner failed to cooperate, and that Petitioner could perform other work.
- (4) On February 21, 2019, the department caseworker sent Petitioner notice that her application was denied.

- (5) On March 4, 2019, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On April 4, 2019, the hearing was held.
- (7) Petitioner is a ■-year-old woman (date of birth June 13, 1969). She is 5'7" inches tall and weighs 260 lbs. She has a bachelor's degree. She last worked in March 2017, driving a transit bus. She has also worked as a substitute teacher and is in the process of completing a master's degree in Education and English.
- (8) Petitioner alleges as disabling impairments: hypertension, arthritis, fibromyalgia, headaches, muscle spasms, trigeminal neuralgia, pain everywhere in the body, depression, post-traumatic stress disorder and memory problems.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

Department policies are contained in the following Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and 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. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of Medical Assistance (MA) benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history;
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

The person claiming a physical, or mental, disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913.

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Petitioner is not engaged in substantial gainful activity. Petitioner is not disqualified from receiving disability at Step 1.

Petitioner testified on the record that she lives with her cousin in the house and her cousin supports her. Petitioner is single and her child does not live with her. Petitioner has no income. Petitioner receives Medical Assistance and Food Assistance Program benefits. Petitioner does have a driver's license and drives one time per month but does not have a car. Petitioner cooks things in the oven like chicken and vegetables. She grocery shops two times per month. Petitioner vacuums, dusts and washes dishes.

Petitioner writes for a hobby and watches television two hours per day. She tends her potted plants. Petitioner testified she can stand for 10 minutes at a time and can sit for one hour. She can walk one block. She is able to squat, shower, dress herself, tie her shoes, and bend at the waist but that triggers her attacks. Petitioner testified that her level of pain on a scale from 1 to 10 without medication is a 10 and medication only takes the edge off. She is right-handed and she has arthritis and pain in her hands and arms and pain in her legs. The heaviest weight Petitioner can carry is 10 pounds. Petitioner smokes marijuana daily to keep her pain at bay. She does have medical marijuana card.

This Administrative Law Judge did consider the entire record in making this decision.

Specific sampling of the Medical documentation indicates:

A disability determination explanation dated August 15, 2017, indicates that Petitioner is not disabled pursuant to medical vocational rule 202.20 as she is limited to light work. (Page A54) A mental residual functional capacity assessment indicates that Petitioner is moderately limited in the ability to understand and remember detailed instructions; moderately limited in the ability to carry out detailed instructions; the ability to maintain attention and concentration for extended periods of time and the ability to interact appropriately with the general public; the ability to accept instructions and respond appropriately to criticism from supervisors; the ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes; the ability to respond appropriately to changes in the work setting but is not significantly limited in any other areas. (Page A52)

A Hearing Decision dated December 7, 2017, indicates that Petitioner was disabled for purposes of State Disability Assistance eligibility and that a review of the benefits was scheduled from one year from the date of the decision. (Pages B1-B10)

Unfortunately, all the medical documents contained in the approximately 800 pages of material provided to this Administrative Law Judge was from 2017 and early 2018. There is no updated medical documentation to establish Petitioner's current medical condition and whether her current medical condition meets the definition of disabled.

The February 13, 2019, psychiatric review indicates that there was insufficient evidence provided.

At Step 2, Petitioner has the burden of proof of establishing that she currently has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Petitioner suffers a severely restrictive physical or mental impairment.

This Administrative Law Judge finds that Petitioner has reports of pain in multiple areas of her body; however, there are insufficient corresponding clinical findings that support

the reports of symptoms and limitations made by Petitioner. There are insufficient laboratory or x-ray findings listed in the file. The clinical impression is that Petitioner is stable. There is no medical finding that Petitioner has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, Petitioner has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Petitioner has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that Petitioner has a severely restrictive physical impairment.

Petitioner alleges the following disabling mental impairments: depression, anxiety and agoraphobia with panic attacks.

An April 5, 2016, Psychological Evaluation assessed Petitioner with an Axis V GAF of 70. (Page 262)

A June 12, 2014, psychological examination diagnosed Petitioner with Major Depressive Disorder, recurrent and generalized anxiety disorder. Her prognosis was fair to guarded. She could handle her own benefit funds. (Pages 383-384)

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).

There is insufficient objective medical/psychiatric evidence in the record indicating Petitioner suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was oriented to time, person and place during the hearing. Petitioner was able to answer all the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that Petitioner suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Petitioner has failed to meet her burden of proof at Step 2. Petitioner must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If Petitioner had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Petitioner's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

In general, Petitioner has the responsibility to prove that she is disabled. Petitioner's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory

diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only Petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the Petitioner has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, Petitioner is not engaged in substantial gainful activity and has not worked since 2001.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii).

At Step 2, Petitioner's impairments do not equal or meet the severity of an impairment listed in Appendix 1.

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the Petitioner was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Petitioner's impairment(s).

If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the Petitioner's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

In the instant case, this Administrative Law Judge finds that Petitioner does have medical improvement and the medical improvement is related to Petitioner's ability to

perform substantial gainful activity. Petitioner has not established that she lacks residual functional capacity at Step 5.

If there is a finding of medical improvement related to Petitioner's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the Petitioner's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a Petitioner's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds Petitioner can perform at least sedentary or light work even with her impairments.

In the seventh step of the sequential evaluation, the trier of fact is to assess a Petitioner's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the Petitioner's current residual functional capacity based on all current impairments and consider whether the Petitioner can still do work he/she has done in the past. In this case, this Administrative Law Judge finds that Petitioner could probably perform past work at [REDACTED] or [REDACTED].

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether Petitioner can do any other work, given Petitioner's residual function capacity and Petitioner's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii).

In this case, based upon Petitioner's vocational profile of **a person of closely approaching advanced age (age 49), with a high school education and an unskilled work history who is limited to light work is not considered disabled.** SDA is denied using Vocational Rule 202.13 as a guide. Petitioner can perform other work in the forms of light work per 20 CFR 416.967(b). This Administrative Law Judge finds that Petitioner does have medical improvement in this case and the Department has established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel the State Disability Assistance benefits based upon medical improvement.

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because Petitioner does not meet the definition of disabled under the Medical Assistance program and because the evidence of record does not establish that Petitioner is unable to work for a period exceeding 90 days, Petitioner does not meet the disability criteria for State Disability Assistance benefits either.

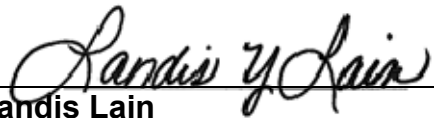
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was no longer eligible to receive State Disability Assistance based upon disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner has medical improvement and that the Department has appropriately established on the record that it was acting in compliance with department policy when it denied Petitioner's application for State Disability Assistance benefits. Petitioner should be able to perform a wide range of light or sedentary work even with her impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is **AFFIRMED** based upon the substantive information contained in the file.

LL/hb



Landis Lain
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

Mariah Schaefer
3255 122nd Ave Ste 300
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Allegan County, DHHS

BSC3 via electronic mail

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Petitioner

[REDACTED]