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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: April 17, 2019
MAHS Docket No.: 19-002639
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 10, 2019, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Shannon Louisignau, Lead Worker.

Respondent's Exhibit A pages 1-244 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

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

- (1) On [REDACTED], 2018, Petitioner filed an application for SDA benefits alleging disability.
- (2) Petitioner receives Medical Assistance (MA) benefits and Food Assistance Program (FAP) benefits.
- (3) On January 17, 2019, the Medical Review Team denied Petitioner's application stating that Petitioner could perform prior work.

- (4) On February 13, 2019, the Department caseworker sent Petitioner notice that the application was denied.
- (5) On March 7, 2019, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On March 26, 2019, the Michigan Administrative Hearing System received the Hearing Summary and attached documentation.
- (7) On April 10, 2019, the hearing was held.
- (8) Petitioner is a 58-year-old woman whose date of birth is [REDACTED], 1960. She is 5'1" tall and weighs 120 pounds. She has a GED.
- (9) Petitioner has worked as a waitress, day care provider, factory worker, housekeeper, and a cook.
- (10) Petitioner alleges as disabling impairments: broken right wrist, injured right leg, bipolar disorder, stress and hallucinations.

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 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 and has not worked in 8-10 years. Petitioner is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates:

Petitioner testified that she lives alone and is a widow. She has no children under 18 and no income. She receives Food Assistance Program and Medical Assistance benefits. Petitioner has a driver's license and drives every day to the store or to see her son or to go downtown. Petitioner cooks whenever she wants to eat and makes things

like pizza, vegetables, eggs and toast. Petitioner grocery shops 3 to 4 times per week with no help needed. Petitioner does laundry, washes dishes, sweeps and mops. For a hobby Petitioner reads, walks and exercises. Petitioner can stand for eight hours and has no limits on her ability to sit. Petitioner can walk 1 mile and is able to squat, bend at the waist, shower and dress herself, tie her shoes and touch her toes. Her back aches but her knees are fine. Her hands and arms, legs and feet are fine. Petitioner can carry between 10 and 20 pounds. Petitioner does smoke a pack of cigarettes per day. Petitioner's doctor has told her to quit and she's not in a smoking cessation program.

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

Medical documentation indicates a non-severe condition:

A November 3, 2018, medical examination report indicates that Petitioner walks with a normal gait. An assistive device is not used. Petitioner's dominant hand is right. Petitioner's blood pressure was 100/62. Her pulse was 70 and regular. Respiration was 16. Weight was 100 pounds. Height was 60 inches without shoes. Her skin was normal. Visual acuity in both eyes was 20/20 without corrective lenses. There was no scleral icterus or conjunctival pallor. Pupils are equal and reactive to light. The fundi appeared normal. The neck was supple with no masses or thyroid nodule. No bruits are appreciated over the carotid arteries. There is no jugular venous distention. The chest A-P diameter was grossly normal. Breath sounds were of normal intensity. There were no wheezes, rales or rhonchi. The heart does not appear to be enlarged. There is no S3 or S4. The abdomen was normal, no organomegaly or masses. There was no joint instability, enlargement or a fusion of the musculoskeletal area, the right wrist had a bony deformity noted over the distal ulna on the right forearm. She has tenderness on external rotation of the right hip. Grip strength remains intact. Motor strength and function are normal. Sensory function remains intact. There is no shoulder girdle atrophy or spasm. Reflexes are intact and symmetrical. Romberg testing is negative. (Pages 129-131)

A Disability Determination Explanation dated December 21, 2018, indicates that Petitioner is not disabled. Petitioner's condition results in some limitations in her ability to perform work activities. However, those limitations do not prevent Petitioner from performing work as she has done it in the past as a housekeeper. Disability determination services determined that Petitioner's condition was not severe enough to keep her from working. The residual functional capacity assessment indicates that Petitioner can carry 50 pounds occasionally and frequently carry 25 pounds. She can sit, stand and/or walk about six hours in an eight-hour day. Her ability to push or pull is unlimited. She does not have postural limits. On her right hand she has limited ability for gross manipulation. (Page 206) Petitioner does not have visual, communicative or environmental limitations. And mental residual functional capacity assessment indicates that Petitioner is moderately limited in their ability to carry out detailed instructions, the ability to understand and remember detailed instructions, the ability to maintain attention and concentration for extended periods, and the ability to interact appropriately with the general public. She is not significantly limited in any other areas. (Pages 208-209)

A December 19, 2013, radiology report indicates that Petitioner had a comminuted mildly impacted fracture of the distal radius on the right wrist. (Page 2)

At Step 2, Petitioner has the burden of proof of establishing that she 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 his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by Petitioner. There are 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.

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 a mental residual functional capacity assessment in the record. Petitioner was oriented x3 at all psychiatric evaluations. 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.

At Step 3, the medical evidence of Petitioner's condition does not give rise to a finding that Petitioner would meet a statutory listing in the code of federal regulations. This Administrative Law Judge finds that Petitioner's medical record does 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.

If Petitioner had not already been denied at Step 2, this Administrative Law Judge would have to deny Petitioner again at Step 4 based upon her ability to perform her past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that Petitioner is unable to perform work in which she has engaged in, in the past. Therefore, if Petitioner had not already been denied at Step 2, she would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether Petitioner has the residual functional capacity to perform some other less strenuous tasks than in prior jobs.

At Step 5, the burden of proof shifts to the Department to establish that Petitioner does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and 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).

Petitioner has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Petitioner's activities of daily living do not appear to be very limited and she should be able to perform sedentary work even with her impairments. Petitioner has failed to provide the necessary objective medical evidence to establish that she has a

severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. Petitioner's testimony as to her limitations indicates that she should be able to perform sedentary work. Thus, she retains the capacity to perform prior work and she is found not disabled at Step 4.

There is insufficient objective medical/psychiatric 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 able to answer all the questions at the hearing and was responsive to the questions. Petitioner was oriented to time, person and place during the hearing. Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to Petitioner's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that Petitioner has no residual functional capacity. Petitioner is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments.

Careful consideration has been given to Petitioner's allegations and symptoms. Petitioner has established that her physical and mental condition could cause problems with daily and work functioning. However, the totality of the evidence does not support total disability. The Petitioner's medically determinable impairments could reasonably be expected to produce alleged symptoms, but Petitioner's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible when compared to the limitations suggested by the objective medical evidence contained in the file.

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. BEM, Item 261, p. 1. Because Petitioner does not meet the definition of disabled under the MA based upon disability 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 SDA benefits.

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 not 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 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 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

Patricia Marx
448 Court Place
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Petitioner

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