



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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

Date Mailed: May 30, 2019
MOAHR Docket No.: 19-003272
Agency No.: [REDACTED]
Petitioner: M [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 April 30, 2019, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Mary Stolcenberg, Eligibility Specialist, Rowena Davis, Assistance Payments Supervisor, and Cynthia Salazar, Eligibility Specialist.

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 applied for SDA.
2. On February 11, 2019, the Medical Review Team (MRT) denied Petitioner's application for SDA per BEM 261 because insufficient evidence per 20 CFR 404.1520b.
3. On February 15, 2019, the Department Caseworker sent Petitioner a notice that her application was denied.
4. On March 28, 2019, the Department received a hearing request from the Petitioner, contesting the Department's negative action.

5. Petitioner is a 59-year-old woman whose date of birth is [REDACTED], 1960. Petitioner is 5' tall and weighs 137 pounds. Petitioner completed High School and has a bachelor's degree. Petitioner can read and write in Spanish and do basic math. Petitioner was last employed as a project manager in June 2012, which is her pertinent work history.
6. Petitioner's alleged impairments are anxiety, depression, fall in September 2018 where she injured her right shoulder resulting in rotator cuff surgery in July 2019, Cushing's Syndrome, surgery of the pituitary gland in October 2017, surgery of the pancreas to remove a tumor in December 2017, and surgery to remove her adrenal gland on December 30, 2017.
7. Petitioner was seen by her treating physician at [REDACTED] at the [REDACTED] on [REDACTED], 2019. She was seen for right shoulder pain, unspecified chronicity, avascular necrosis of right humeral head, acquired hypothyroidism, ACTH hypersecretion, current chronic use of systemic steroids, history of diabetes insipidus, history of total adrenalectomy, and pancreatic lesion. She had a problem list of muscle weakness, history of deep venous thrombosis, acquired hypothyroidism, pancreatic lesion, history of total adrenalectomy, chronic current use of systemic steroids, urinary tract infection due to urinary indwelling catheter, ACTH hypersecretion, essential hypertension benign, H/O compression fracture of spine, history of diabetes insipidus, and osteoporosis. She was scheduled for a CT of the upper extremity on May 10, 2019, a preoperative history and physical and a return visit fitting on July 25, 2019, and return visit for a post-operative on August 6, 2019. During her visits, her treating physician addressed her acquired hypothyroidism, ACTH hypersecretion, current chronic use of systemic steroids, history of diabetes insipidus, history of total adrenalectomy, and pancreatic lesion. Department Exhibit 1, pgs. 271-275.
8. On [REDACTED], 2019, Petitioner saw an independent medical examiner for [REDACTED] for a medical examination. Her chief complaint was Cushing's syndrome. Petitioner provided a good effort during the examination. Her immediate, recent, and remote memory was intact with normal concentration. Petitioner did not have the typical manifestations of a current Cushing's syndrome. She is on hormone supplementation at this point due to pan hypopituitarism surgical extraction. She has diminished vision by Snelling chart. She did not have findings of congestive heart failure, soft tissue swelling, or underlying renal disease. Her weight has remained stable over the past year. She has continued hormone supplementation and activity as tolerated would be indicated. Petitioner ambulates with a walker, but it is not required at this point. Petitioner has diminished range of motion to the right shoulder. She was diagnosed with avascular necrosis presumably due to possible underlying degeneration and osteoporotic disease due to her current hormonal situation. Petitioner has well-preserved grip strength and the remainder of her joints appear

relatively stable. She had mild thoracic kyphosis. Petitioner is on Fosamax and calcium supplementation. Department Exhibit 1, pgs. 187-193.

9. On [REDACTED] 2018, Petitioner was seen by her treating specialist at [REDACTED]. She was seen for Cushing's syndrome. Petitioner was seen for a follow-up for muscle weakness. She had an essentially normal physical examination. Her treating specialist did note that she was positive for headaches, depression, anxiety, memory loss, and dizziness. She cannot rise from her chair without using her hands. Her treating specialist noted a small mass on her pancreas. She had osteoporosis of the spine with a reduced bone density in her femur. She was diagnosed with adrenal insufficiency, primary. Part of her weakness is likely related to volume depletion from not taking her fludrocortisone. The specialists reviewed her medications with her and determined that she should resume the fludrocortisone, which should help to resolve her hyperkalemia. Her adrenal replacement therapy was modified as medically required. For her apparent panhypopituitarism, she was found to be clinically and biochemically euthyroid at this point. Finally, for her muscle weakness, she has made some progress, but should be able to improve more. We did we discussed going for additional physical therapy or working with a professional trainer. Petitioner prefers to work with a trainer at the gym. She has had limited success with exercising at home due to the limited facilities. Department Exhibit 1, pgs. 282-288.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of 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. 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.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from

the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. 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 are 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

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, Appendix 1, 12.00(C).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Petitioner does not have a severe medically determinable impairment or combination of impairments, the Petitioner is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Petitioner's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the trier must consider all of the Petitioner's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner has the residual functional capacity to do past relevant work, then the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Petitioner has satisfied requirements as set forth in steps one and two of the sequential evaluation. However, Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for step 3. Therefore, vocational factors will be considered to determine Petitioner's residual functional capacity to do relevant work and past relevant work.

In the present case, Petitioner was seen by her treating physician at [REDACTED] at the [REDACTED] on [REDACTED] 2019. She was seen for right shoulder pain, unspecified chronicity, avascular necrosis of right humoral head, acquired hypothyroidism, ACTH hypersecretion, current chronic use of systemic steroids, history of diabetes insipidus, history of total adrenalectomy, and pancreatic lesion. She had a problem list of muscle weakness, history of deep venous thrombosis, acquired hypothyroidism, pancreatic lesion, history of total adrenalectomy, chronic current use of systemic steroids, urinary tract infection due to urinary indwelling catheter, ACTH hypersecretion, essential hypertension benign, H/O compression fracture of spine, history of diabetes insipidus, and osteoporosis. She was scheduled for a CT of the upper extremity on May 10, 2019, a preoperative history and physical and a return visit fitting on July 25, 2019, and return visit for a post-operative on August 6, 2019. During her visits, her treating physician addressed her acquired hypothyroidism, ACTH hypersecretion, current chronic use of systemic steroids, history of diabetes insipidus, history of total adrenalectomy, and pancreatic lesion. Department Exhibit 1, pgs. 271-275.

On [REDACTED] 2019, Petitioner saw an independent medical examiner for [REDACTED] [REDACTED] for a medical examination. Her chief complaint was Cushing's syndrome. Petitioner provided a good effort during the examination. Her immediate, recent, and remote memory was intact with normal concentration. Petitioner did not have the typical manifestations of a current Cushing's syndrome. She is on hormone supplementation at this point due to pan hypopituitarism surgical extraction. She has diminished vision by Snelling chart. She did not have findings of congestive heart failure, soft tissue swelling, or underlying renal disease. Her weight has remained stable over the past year. She has continued hormone supplementation and activity as

tolerated would be indicated. Petitioner ambulates with a walker, but it is not required at this point. Petitioner has diminished range of motion to the right shoulder. She was diagnosed with avascular necrosis presumably due to possible underlying degeneration and osteoporotic disease due to her current hormonal situation. The Petitioner has well-preserved grip strength and the remainder of her joints appear relatively stable. She had mild thoracic kyphosis. The Petitioner is on Fosamax and calcium supplementation. Department Exhibit 1, pgs. 187-193.

On [REDACTED], 2018, Petitioner was seen by her treating specialist at [REDACTED]. She was seen for Cushing's syndrome. Petitioner was seen for a follow-up for muscle weakness. She had an essentially normal physical examination. Her treating specialist did note that she was positive for headaches, depression, anxiety, memory loss, and dizziness. She cannot rise from her chair without using her hands. Her treating specialist noted a small mass on her pancreas. She had osteoporosis of the spine with a reduced bone density in her femur. She was diagnosed with adrenal insufficiency, primary. Part of her weakness is likely related to volume depletion from not taking her fludrocortisone. The specialists reviewed her medications with her and determined that she should resume the fludrocortisone, which should help to resolve her hyperkalemia. Her adrenal replacement therapy was modified as medically required. For her apparent panhypopituitarism, she was found to be clinically and biochemically euthyroid at this point. Finally, for her muscle weakness, she has made some progress, but should be able to improve more. We did we discussed going for additional physical therapy or working with a professional trainer. Petitioner prefers to work with a trainer at the gym. She has had limited success with exercising at home due to the limited facilities. Department Exhibit 1, pgs. 282-288.

This Administrative Law Judge finds that Petitioner is physically limited but should be able to perform at least light work. She would also benefit from physical therapy. Petitioner has not followed her required medical regiment, which may have affected her physical abilities.

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. Petitioner does feel that her condition has stayed the same in the past year. Petitioner stated that she does have mental impairments where she is taking medication, but not in therapy. Petitioner does or has ever smoked cigarettes. She stopped drinking in 2010, where before she drank socially. She does not or has ever used illegal and illicit drugs. Petitioner did not feel there was any work she could do.

At Step 4, this Administrative Law Judge finds that Petitioner has not established that she cannot perform any of her prior work. She was previously employed as a project manager in June 2012, which is her pertinent work history. Petitioner has had several surgeries in 2017 but has recovered where she is capable of performing at least light work. Therefore, Petitioner is disqualified from receiving disability at Step 4. Petitioner is capable of performing her past work at the light level. However, the Administrative Law

Judge will still proceed through the sequential evaluation process to determine whether or not Petitioner has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

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 non-exertional and 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 depression and anxiety. Petitioner is taking medication for her mental impairments, but not in therapy. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. Based on the independent psychiatric evaluation, she should be able to perform work.

In the final step of the analysis, the trier of fact must determine if the Petitioner's impairment(s) prevent the 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 your 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 her limitations. 20 CFR 416.966.

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).

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).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, Petitioner can meet the physical requirements of light work, based upon Petitioner's physical abilities. Under the Medical-Vocational guidelines, an advanced aged individual with a high school education and more, and a semi-skilled and skilled work history, who is limited to light work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.05. 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 mental and physical impairments, the Administrative Law Judge finds that Petitioner could perform light work and that Petitioner does not meet the definition of disabled under the SDA program.

DECISION AND ORDER

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 SDA benefit program. The Petitioner could perform light work and that the Petitioner does not meet the definition of disabled under the SDA program.

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

CF/hb



Carmen G. Fahie
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR 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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, DHHS

BSC3 via electronic mail

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Petitioner

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