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Date Mailed: June 18, 2019
MOAHR Docket No.: 19-003447
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. After due notice, a telephone hearing was held on May 9, 2019, from Detroit, Michigan. The Petitioner was represented by herself. A witness, [redacted] of Central Wellness Network, also appeared as a witness. The Department of Health and Human Services (Department) was represented by Michael O'Brien, Payment Program Manager.

ISSUE

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

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. At the hearing, Petitioner's records from Central Wellness Network consisting of treatment records for Petitioner's mental impairments were provided and were marked as were received and marked into evidence as Exhibit 1; a Mental Residual Functional Capacity Assessment was received and marked into evidence as Exhibit 2. The record closed on May 20, 2019, and the matter is now before the undersigned for a final determination based on the evidence presented.

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 August 2, 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On March 19, 2019, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 72).

3. On March 19, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on DDS finding of no disability (Exhibit A, pp. 104-105).

4. On April 10, 2019, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 2).

5. Petitioner alleged disabling impairment due to Mental Impairments including Borderline Personality Disorder and generalized Anxiety Disorder with panic attacks.

6. On the date of the hearing, Petitioner [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.

8. At the time of application, Petitioner was not employed.

9. Petitioner has an employment history of work as assembling and packaging and boxing medical devices; as a factory assembler of hydraulic pumps and packaging and a kennel manager for a veterinarian.

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 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, s/he 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. In this case, the Petitioner is alleging Mental impairments that cause her to be unable to work.

On [redacted], 2018, the Petitioner was given an independent psychological examination. At the time of the examination, the Petitioner was seeing a Psychiatrist at [redacted] in [redacted] Michigan, and participating in group therapy and weekly individual counseling. During the exam, the Petitioner advised that she has sleep disturbance which has been helped by Trazadone. She also said she had few friends and isolates herself. She has consistently treated with a therapist and participates in group therapy. She reported that she can do her activities of daily living. Her level of depression most of the time was reported as a level 7 of 10 and was reported as frequently tearful during the exam and was observed as having some depression and

anxiety. Some of the symptoms were caused by changes in her work location, causing her anxiety and ultimately medical leave in 2015. The examiners gave a diagnosis of Generalized Anxiety Disorder and Persistent Depressive Disorder with a prognosis of fair to guarded.

The Petitioner was seen on [redacted] 2018, for follow-up and review of her depression and anxiety. At the time of the examination, the Petitioner reported feeling down, depressed and/or hopeless and having little interest or pleasure doing things. Also reported was difficulty falling or staying asleep and sleeping too much. Symptoms of feeling tired and with little energy more than half the days with either poor appetite or overeating were also reported. Petitioner expressed she felt like a failure and has let her family down. Concentration such as reading the newspaper or watching TV is difficult. Patient is participating in an intensive therapy with both group and individual therapy as well as mindfulness session on Friday. At the conclusion of the exam, the assessment was major depressive disorder and primary insomnia and was prescribed wellbutrin for depression and Trazodone for insomnia. A follow-up was scheduled for four weeks.

The Petitioner's treating psychiatrist at [redacted] completed a Mental Residual Functional Capacity Assessment a DHS-49-E on [redacted] 2019, regarding Petitioner's mental impairments and how they affected her activities. The Psychiatrist found that there was no evidence of limitations of Petitioner's ability to understand and remember one- or two-step instructions; and no limitation in Petitioner's ability to carry out simple one- or two-step instructions.

The psychiatrist concluded that Petitioner had moderate limitations regarding her ability to remember locations and work-like procedures, the ability to carry out detailed instructions, the ability to sustain an ordinary routine without supervision, the ability to interact appropriately with the general public, the ability to accept instructions and respond appropriately to criticisms from supervisors, the ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes, the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, the ability to travel in unfamiliar places or use public transportation, and the ability to set realistic goals or make plans independently of others.

The psychiatrist concluded that the Petitioner was markedly limited in her ability to understand and remember detailed instructions, the ability 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, the ability to work in coordination with or proximity to others without being distracted by them and the 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. Finally, the Petitioner was markedly limited in her ability to respond appropriately to changes in the work setting. Remarks included that all of Petitioner's symptoms worsened when she is around people and

when she is expected or scheduled to appear for a meeting. Petitioner's anxiety regarding expectations include and can result in symptoms of nausea, vomiting and diarrhea. In addition, the evaluation information was also provided with a diagnosis of Major Depressive Disorder, recurrent episode; severe; Generalized Anxiety Disorder and Borderline Personality Disorder. The clinical information notes indicated that Petitioner presents with consistent symptoms with both major depression and generalized anxiety disorder with possible agoraphobia but without panic disorder symptoms. No history of mania or psychosis.

The Petitioner was first assessed by her current mental health care provider on [redacted] 2017. At that time, she presented as extremely anxious and worried when facing any new situation with sleep difficulty and feelings of sadness frequently with depression. Symptoms began sometime in 2014 at her factory job due to changes in the workplace which she found difficult to adjust to. She described waking up for work feeling panicky and vomiting from anxiety and was unable ultimately to return to work. She also suffers from grief regarding her mother's death. She also participated in a partial hospitalization program prior to the current healthcare provider treatment. History also reported of attempting to attend college but terminating effort because she was so anxious. Petitioner further reported having many different jobs with trouble keeping them. The Petitioner also reported first treatment was in the mid-1990s and then again, another episode at Pine rest in [redacted] Michigan in 2015. The Petitioner's mood was saddened dysphoric, and the affect was frequently tearful. Petitioner's thought process and thought content was intact. Also noted that Petitioner avoids people due to her anxiety and has difficulty sleeping. There was no report of suicidal ideation or attempts. The diagnosis made on [redacted] 2017, was generalized anxiety disorder active unspecified depressive disorder and unspecified bipolar and related disorders, rule out.

In another assessment on [redacted] 2018, both insight and judgment were rated as fair. At this exam, notes that Petitioner has been having fleeting suicidal thoughts and is concerned about being denied assistance. The notes indicate that Petitioner was referred to her current CMH due to recommendation by her private therapist that she needs more intensive treatment that can be provided by CMH. At the time Petitioner reported increased depressed mood for the last two months, low interest, poor motivation and sleep disturbances, examiner noted that she struggles with underlying guilt/shame which impacts her interpersonal connections. The examiner noted that Petitioner presented as sad/dysphoric and depressed with guilty mood.

In an assessment dated [redacted] 2019, by her current mental health care provider, the Petitioner reported still struggling with depressed mood and anxiety which at times creates physical delete that also noted is an historical behavioral part pattern of avoidance due to distress with fleeting suicidal thoughts. As of [redacted] 2018, the diagnosis included major depressive disorder, recurrent episodes, severe; Generalized anxiety disorder and borderline personality disorder. The [redacted] records indicate consistent participation by the Petitioner in both group therapy and individualized therapy. On [redacted] 2018, the Petitioner underwent a medication

review and reported that her sleeping was really bad the prior week and disrupted. She reports that therapy is helping her, and she feels better. Her medications were all continued with a diagnosis of Major Depressive Disorder, Severe; Generalized Anxiety Disorder and Borderline Personality Disorder.

The Petitioner has attended a dialectical behavioral therapy group weekly since [redacted] 2017throughout her therapy. The 2018 records presented from her mental health care provider indicate she participates in the process and works on controlling her anxiety and stressors and is present weekly.

During the hearing, the Petitioner credibly testified that she has worked hard at trying to resolve her mental health issues of depression and anxiety as confirmed by her treatment records which confirm that she attends regular individual therapy weekly and DBT sessions weekly for two hours. Petitioner continues to have issues with sleeping when anxious and as well as with concentration isolating herself sleep problems although medications have helped. She clearly described serious symptoms causing her to stop working in 2015 due to workplace changes which brought on panic attack symptoms, diarrhea and vomiting. Petitioner's then-employer placed her on short-term and then long-term disability due to her mental issues. The long-term disability ended after two years. She was tearful during the hearing and described herself as isolating from people, not involved with any activities with others except in therapy, and other than to shop and visit with family monthly. Her therapist, [redacted], also testified at the hearing. She has worked with Petitioner for over one year and testified that when Petitioner is extremely anxious, she will have gastrointestinal upset as a pattern of her functioning and that any inconsistency in her routine or stressor upsets Petitioner and causes these symptoms.

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 demonstrates that Petitioner's

impairments meets or equals the required level of severity and the requirements of 12.04 Depressive disorder 12.04 (A) and (B).

Therefore, the medical evidence shows that Petitioner's impairment of Major Depressive Disorder, Severe 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 August 2, 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 June 2020.

LF/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 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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Patricia Marx
MDHHS-Benzie-Hearings

Authorized Hearing Rep.

[redacted]
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[redacted] MI [redacted]

Petitioner

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