STATE OF MICHIGAN
GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[redacted]

Date Mailed: August 6, 2019
MOAHR Docket No.: 19-006195
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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; and 45 CFR 205.10. After due notice, a telephone hearing was held on July 8, 2019, from Detroit, Michigan. Petitioner appeared on her own behalf Participants on behalf of the Department of Human Services (Department) included Dana Bongers, Lead Worker and Shannon Sziede, Eligibility Specialist.

ISSUE

Did the Department properly determine 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], 2019, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On April 12, 2019, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 13-19).

3. On April 29, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 433-437).

4. On June 4, 2019, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 438-439).

5. Petitioner alleged disabling impairment due to depression, back pain, and panic disorder.

6. On the date of the hearing, Petitioner was 42 years old with a [redacted], 1977 birth date; she is 5'5" in height and weighs about 348 pounds.

7. Petitioner is a high school graduate and has completed some college coursework.

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

9. Petitioner has an employment history of work as a security guard and an accounting clerk.

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 One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA**,** she is not ineligible under Step 1, and the analysis continues to Step 2.

Step Two

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 was reviewed and is summarized below.

On June 21, 2018, Petitioner was seen at [redacted] for an office visit with a complaint of back pain, fatigue, hypertension and sleep apnea. The assessment included chronic pain, hypertension, moderate episode of recurrent major depressive disorder, other fatigue, diabetes, and sleep apnea. (Exhibit A, pp. 352-356).

On August 10, 2018, Petitioner was seen at [redacted]. Petitioner was given a mental health assessment. Petitioner's GAD-7 score was 21, which correlates to severe. (Exhibit A, pp. 293-301).

On August 16, 2018, Petitioner was seen at [redacted] for evaluation of headache, nausea, dizziness, and slightly blurry vision. Petitioner indicated that at approximately 9:00 a.m., she noticed fumes coming from her work truck that started to make her feel lightheaded and nauseous and have a slight headache. When she removed herself from the situation, she felt better. Final diagnosis included acute non intractable tension-type headache and nausea. (Exhibit A, pp. 181-183).

On September 21, 2018, Petitioner was seen at [redacted] for an office visit with a complaint of anxiety. Petitioner presented with depressed mood, difficulty concentrating, difficulty falling asleep, difficulty staying asleep, diminished interest or pleasure, racing thoughts and restlessness. Petitioner further indicated that she was having nightmares and crying. The assessment included anxiety and major depressive disorder, single episode, unspecified. (Exhibit A, pp. 344-348)

On October 12, 2018, Petitioner was seen at [redacted] for an office visit with a complaint of anxiety, back pain and sleep apnea. The assessment indicated moderate episode of recurrent major depressive disorder; chronic bilateral low back pain with right-sided sciatica; and right hip pain. (Exhibit A, pp. 339-343).

On December 26, 2018, Petitioner was seen at [redacted] for an office visit with a complaint of back pain. Petitioner indicated that she picked her mother-in-law up from the floor and has experienced severe back pain ever since. Petitioner noted that the pain was more severe than normal and that she is unable to sleep. The assessment indicated acute exacerbation of chronic low back pain. (Exhibit A, pp. 320-323).

On December 31, 2018, Petitioner was seen at [redacted] for an office visit with a complaint of back pain. Petitioner indicated that the onset was one week prior. Petitioner received a Toradol injection. The assessment was acute exacerbation of chronic low back pain. (Exhibit A, pp. 268-272).

On January 4, 2019, Petitioner was seen at [redacted] for an office visit with a complaint of back pain and depression. The assessment included acute exacerbation of chronic low back pain; major depressive disorder, single episode, unspecified; hypertension; and elevated blood sugar. (Exhibit A, pp. 315-319).

On January 10, 2019, Petitioner was seen at [redacted] for an MRI of the lumbar spine without contrast. The findings indicated that the conus medullaris was normal in signal and morphology terminating at L1. Vertebral heights and alignment were maintained. Mild L4 and L5-S1 spondylosis. Posterior elements were intact, facets patent. L3 vertebral body hemangioma. (Exhibit A, pp. 174-175).

On January 11, 2019, Petitioner had an MRI of the lumbar spine without contrast. The impression indicated that there was a small chronic left central L5-S1 disc herniation abuts traversing left S1 nerve, decrease in size in the interval and mild L3-L4 and L5-S1 spondylosis. (Exhibit A, p. 187).

On January 11, 2019, Petitioner was seen at [redacted] with a complaint of back pain and diabetes. Petitioner indicated that the onset of the back pain was three weeks prior. The assessment indicated acute exacerbation of chronic low back pain and diabetes. (Exhibit A, pp. 310-315).

On January 18, 2019, Petitioner was seen at [redacted] for an office visit with a complaint of back pain and anxiety. The assessment included acute exacerbation of chronic back pain and anxiety. (Exhibit A, pp. 306-309).

On February 1, 2019, Petitioner was seen at [redacted]. Petitioner was given a mental health assessment. Petitioner's PHQ-9 score was 19, which correlates to a depression severity of moderately severe. (Exhibit A, pp. 231-237). Petitioner was also seen on this day at Grace Health for an office visit with a complaint of back pain and

knee pain. The assessment included chronic bilateral low back pain with right sided sciatica and chronic right knee pain. (Exhibit A, pp. 301-305).

On February 4, 2019, Petitioner was seen at [redacted] to discuss sleep apnea. The record indicates that Petitioner has no problem with sleep induction but does have significant problems with sleep maintenance as she wakes up 3-5 times throughout the night and could be up for 15-45 minutes. The diagnosis included sleep apnea, snoring, non-restorative sleep; and sleep arousal disorder. (Exhibit A, pp. 177-180).

On February 4, 2019, Petitioner had an x-ray of her right knee in which there were no acute osseous abnormality of the right knee. (Exhibit A, p. 186).

On March 12, 2019, Petitioner was seen at [redacted] with a chief complaint of low back pain. The records indicated that Petitioner underwent an MRI of her lumbar spine in 2016 and physical therapy. On December 24, 2018, Petitioner was helping to lift a family member when she had an increase in her low back pain. Petitioner has been on FMLA from her work as a security guard since December 24, 2018. Petitioner's diagnosis included chronic midline low back pain with left-sided sciatica; morbid obesity with BMI of 50.0-59.9; and herniated lumbar intervertebral disc, central L5-S1. (Exhibit A, pp. 161-167).

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 Three

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 1.02 (major dysfunction of a joint); 12.04 (depressive, bipolar and related disorders); and 12.06 (anxiety and obsessive-compulsive disorders) were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. *20 CFR 416.929(c)(3).* The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 20 CFR 416.967(a). 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 the light 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 involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of

non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. *20 CFR 416.920a(c)(1).* Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3). For the first three functional areas, a five-point scale is applied (none, mild, moderate, marked, and extreme). 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner alleges both exertional and nonexertional limitations due to her medical condition. Petitioner testified that she could dress/undress herself; bathe/shower herself; use the bathroom unassisted; eat unassisted, prepare meals, drive a car and reach in either direction. However, Petitioner testified that she has difficulty lifting a gallon of milk; squatting, bending at the waist; standing or walking for an extended period of time; and kneeling. Additionally, Petitioner testified that she has memory issues due to a cognitive impairment; cannot concentrate because she becomes easily distracted; forgets things when attempting to follow instructions and does not work well with others.

Petitioner's MRI results relating to her back yielded normal results with mild L4 and L5-S1 spondylosis. Although Petitioner testified that she had difficulty standing, walking, squatting, kneeling and climbing stairs, the Medical Needs – PATH form completed by her doctor (Exhibit 1) indicated that she had no physical limitations.

Further, the medical evidence indicated that Petitioner has been attending counseling with [redacted] for a sustained period of time. While it is true that Petitioner's GAD-7 and PHQ-9 scores correlated to severe anxiety and depression, the scores are based on self-reporting and were recorded by Petitioner's licensed social worker. There were no medical records provided from a psychiatrist or psychologist currently treating Petitioner for her anxiety and/or depression. Further, at the hearing, Petitioner testified that she has not been admitted to a hospital in the past 12 months for an overnight stay. In the records from Grace Health, Petitioner does not report any suicidal or homicidal ideations.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(b). Based on the medical record presented, as well as Petitioner's testimony, Petitioner has mild to moderate limitations on her mental ability to perform basic work activities. Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id*.; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a security guard and an accounting clerk. Petitioner's work as an accounting clerk, Petitioner was required to sit approximately 75% of an eight hour day and walk 25% of an eight hour day. Petitioner was also required to lift between five and fifteen pounds. This work required light physical exertion.

Based on the RFC analysis above, Petitioner is able to perform past relevant work. Accordingly, Petitioner is not disabled at Step 4 and the assessment ends.

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.

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

JAM/tlf

Jacquelyn A. McClinton
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

Via Email:

MDHHS-Kalamazoo-Hearings
BSC3 Hearing Decisions
Policy-FIP-SDA-RAP
MOAHR

Petitioner – Via First-Class Mail:

[redacted]