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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: August 8, 2019
MOAHR Docket No.: 19-006687
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 July 31, 2019, from Lansing, Michigan. Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department and Respondent) was represented by Mariah Schaefer, Family Independence Manager.

Respondent's Exhibit A pages 1-596 and B pages 1-446 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], 2019, Petitioner filed an application for SDA benefits alleging disability.
- (2) Petitioner receives Medical Assistance (MA) benefits and Food Assistance Program (FAP) benefits.
- (3) On June 6, 2019, the Medical Review Team denied Petitioner's application stating that Petitioner could perform other work.
- (4) On June 13, 2019, the Department caseworker sent Petitioner notice that the application was denied.

- (5) On July 2, 2019, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On July 8, 2019, the Michigan Office of Administrative Hearings and Rules received a hearing summary and attached documentation.
- (7) On July 31, 2019, the hearing was held.
- (8) Petitioner is a 55-year-old woman whose date of birth is [REDACTED], 1964. She is 5'7 $\frac{3}{4}$ " tall and weighs 160 lbs. Petitioner has an associate degree.
- (9) Petitioner can read and write. She has basic math skills.
- (10) Petitioner last worked May 2019 as a cook in a grocery store. Petitioner has worked as a cook, waitress, assisted living attendant and at cleaning jobs.
- (11) Petitioner alleges as disabling impairments: back, hip pain; protruding discs; right shoulder pain, tendonitis in the right wrist.

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. Petitioner is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates:

Petitioner testified on the record that she lives with her adult daughter. She does have a driver's license. She does cook, grocery shop, and clean the home, but not like she used to. She can stand for 30 minutes, sit with no limit and walk 20 yards. She can shower and dress herself. She uses a cane. Her level of pain on a scale from 1 to 10

without medication is an eight; with medication pain level is a six. She is right-handed. Her arms, hands, legs and feet are fine. She smokes 10 cigarettes per day. She drinks a six pack of beer per day. She uses a nicotine patch. She watches television eight hours per day and crochets for a hobby. Petitioner has no mental impairments.

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

Medical documentation indicates a non-severe condition.

A physical residual functional capacity assessment dated June 6, 2019, indicates that Petitioner can occasionally carry 20 pounds and frequently carry 10 pounds. She can stand, walk or sit about six hours in an 8-hour workday. (Respondent's Exhibit A, Page 16) She can frequently climb stairs, ramps, balance, kneel and crawl. She can occasionally stoop or crouch but should avoid ladders, ropes and scaffolds due to the history of hip surgery. (Respondent's Exhibit A, Page 17) Petitioner has no established manipulative, visual communicative or environmental limitations except she should avoid concentrate exposure to hazards, machinery, heights due to musculoskeletal issues and residual pain. (Respondent's Exhibit A, Pages 18-19) the current objective medical evidence in the file provides physical findings to compose a light residual functional capacity. (Respondent's Exhibit A, Page 20)

A February 14, 2019, clinical note indicates that the electro diagnostic study shows no evidence of an active lumbar radiculopathy, peripheral entrapment neuropathy or lumbosacral plexopathy. The doctor told her to purchase over the counter capsaicin cream and try applying this to the painful area up to three times per day as needed. (Respondent's Exhibit A, Page 46)

A January 9, 2019, clinic note indicates that Petitioner is diagnosed with chronic low back pain, liberal tear of left hip joint, left hip pain, meralgia paresthetica of the left side; lumbar degenerative disc disease and lumbar spondylosis. (Respondent's Exhibit A, Page 48) Petitioner has alcohol abuse and alcoholic hepatitis/cirrhosis. She is still smoking with a history of chronic tobacco abuse. (Respondent's Exhibit A, Page 49) She was alert and oriented and in no acute distress. In the cardiovascular areas she had normal peripheral perfusion and no edema. She had good lumbar flexion without pain. Restricted lumbar extension with minimal discomfort. Minimal lumbar tenderness to palpation. SI joint provocative maneuvers are negative on both sides. Petitioner had a body mass index of 27.5. In the lower extremity examination, she had bilateral strength 5/5 with Normal Range of motion. Positive left and negative hip impingement tests. A lumbar MRI of the spine from 2014 show degenerative disc disease and spondylosis between L3 – 4 and L5 – S1. The left hip MRI from November 19, 2014, and June 30, 2018, showed a small left hip interior labral tear with mild SI joint arthritis and degenerative lower lumbar changes. (Respondent's Exhibit A, pages 2)

A January 26, 2019, MRI of the left hip indicated no significant arthropathy, no evidence of fracture or destructive osseous process, no evidence of labral tear, change and configuration of the anterior femoral head and neck junction suggest interval

cheilectomy. No obvious bony stigmata of femoroacetabular impingement. (Respondent's Exhibit A, Page 59)

A January 26, 2019, MRI of the spine lumbar finds lumbosacral anatomy with partial lumbarization of S1. (Respondent's Exhibit A, Page 61) A combination of degenerative changes L5 – S1 results in right greater than left subarticular recess stenosis potentially impinging the proximal descending right greater than left us one nerve roots. (Respondent's Exhibit A, Page 62)

A November 8, 2018, final report indicates that Petitioner came in for a follow-up with her left hip. She went to physical therapy. She's taking Naprosyn. She did not notice any improve with therapy or after the therapy. She gets around without ambulatory aides with the pain scale of 4/10. (Respondent's Exhibit A, Page 422)

A September 20, 2018, final report from physical therapy indicates that the patient was ambulating into the clinic with no assistive devices. She ambulates with a limp on the left leg due to a slight Trendelenburg on the left hip. (Respondent's Exhibit A, Page 63)

An August 1, 2018, final report indicates that Petitioner was status post left hip arthroscopy with a repeat care of the anterior labrum. There were no complications there is nothing then looked like it would impinge. The doctor flexed the hip up to 90° and there was absolutely no impingement. (Respondent's Exhibit A, Pages 368-69)

A November 16, 2017, final report indicates that x-rays were obtained, ordered and interpreted. Overall, position and everything looks good. No evidence of any complication. No heterotopic bone. No stress fractures noted. Right hip looks good as well. Petitioner was six weeks post left hip arthroscopy. (Respondent's Exhibit A, Page 516)

An October 4, 2017, final report indicates that Petitioner had a detached to degenerated labrum, left hip with very minor cam deformity and left femoral neck. (Respondent's Exhibit A, Page 370)

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. Petitioner has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by Petitioner. There are insufficient laboratory or x-ray findings listed in the file which support Petitioner's contention of disability. 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. 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 her 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 been engaged 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 or not Petitioner has the residual functional capacity to perform some other less strenuous tasks than in her 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 light or 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 light or sedentary work.

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. Under the Medical-Vocational guidelines, an individual (age 55), with an associate degree education and an unskilled work history who is limited to light work, is not considered disabled.

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

It should be noted for the record that claimant continues to smoke and drink alcohol despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause, there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

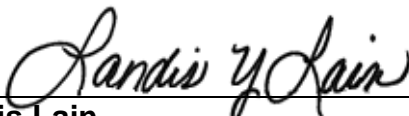
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was not eligible to receive State Disability Assistance.

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 based upon disability. Petitioner should be able to perform a wide range of light or sedentary work even with her impairments. The Department has established its case by a preponderance of the evidence.

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

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 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

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

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Petitioner

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