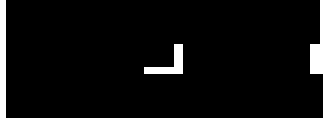




GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: October 8, 2019  
MOAHR Docket No.: 19-008333  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Janice Spodarek

### **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, an administrative hearing was held on September 10, 2019, with the Administrative Law Judge (ALJ) initiating a conference call from Lansing, Michigan. All other parties appeared in-person at the Newaygo County Department of Health and Human Services (Department or Respondent). Petitioner appeared and testified unrepresented. Respondent was represented by Rose Ward, APS.

Respondent's Exhibit A.876 was offered and admitted into the record.

### **ISSUE**

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) 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. In March 2018, Petitioner had an SDA case opened on the basis of disability pursuant to an MRT approval scheduling Petitioner's case for a review in February 2019. In June 2018, SSA and the DDE determined that Petitioner was not disabled on the basis of an SSA subsequent Quality Review finding by [REDACTED] and [REDACTED]. The DHHS failed to inform DDE of the not disabled ruling. In June 2018, Petitioner's SDA case closed on the basis that Petitioner was gainfully employed. In October 2018, Petitioner separated from employment. Her SDA was reopened, leading to the MRT review previously set for February 2019. Exhibit A.14.

2. Petitioner is a beneficiary of the Medicaid program and receives medical benefits under the Healthy Michigan Plan (HMP).
3. On July 23, 2019, the Medical Review Team (MRT) denied Petitioner's application at review on the basis of 20 CFR 416.994a(e)(2).
4. On July 29, 2019, the Department issued notice, and on August 2, 2019, Petitioner filed a timely hearing request. The Department reinstated the action pending the outcome of the hearing.
5. As of the date of review, Petitioner was a 29-year-old, standing 5'3" tall and weighing 210 pounds. Petitioner's Body Mass Index (BMI) is 37.2, classifying Petitioner as obese under the BMI index.
6. Petitioner has no alcohol abuse problem or history. Petitioner has a drug abuse history.
7. Petitioner smokes. Petitioner has a nicotine addiction.
8. Petitioner has a driver's license. Medical documentation by a 3<sup>rd</sup> party ADL notes that Petitioner does drive when she is able. Exhibit A.15.
9. Petitioner has a "9<sup>th</sup> grade or 10<sup>th</sup> grade" education and is "working on my GED."
10. Petitioner has child support income.
11. Petitioner is not currently working. Petitioner was jailed for missing court by her testimony.
12. Petitioner's current file lists alleged impairments as seizures, back pain, multiple ER visits.
13. Petitioner is on seizure medication.
14. Two medications Petitioner takes may exacerbate generalized epileptiform abnormalities which would result in testing showing a risk of developing generalized seizures. Exhibit A.14.
15. Petitioner's MRI of the brain was normal.
16. A February 17, 2019 ER visit for possible seizure result in a headache.
17. Petitioner had multiple 2019 ER visits for headaches, dental pain, tooth decay, UTI, dehydration, stiff neck.
18. Petitioner has a reported history of seizures but has not had any recent witnessed seizures. Primary care visit within normal limits. MRT denied. Petitioner has not seen a neurologist since 2016.

19. Petitioner is not currently working but worked as carrot and potato sorter. MRT concluded that Petitioner is capable of returning to the conveyor belt sorting position. Exhibit A.15.
20. Petitioner reported taking care of personal care needs, prepare meals, shop, visits with family, fishes, hunts, colors and writes. She does these things weekly. Exhibit A.15.

### **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 Health and Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

For the SDA program, the Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1.

As to the disability assessment, the State of Michigan follows the general guidelines with regards to the MA program to show SDA statutory disability with one major exception: duration for the SDA program is due to a disability which has lasted or can be expected to last for a continuous period of not less than 90 days. Unless otherwise noted below, the MA regulations, policy and law are followed.

Relevant federal guidelines provide in pertinent part:

Disability is:

...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.

Federal regulations require that several considerations be analyzed in sequential order:

We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required.

These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). Monthly income limit for 2017 presumptive SGA for non-blind individuals is \$1,170.00. If the applicant is not engaged SGA or presumptive SGA, the analysis continues to Step 2.
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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f).
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? This step considers the residual functional capacity, age,

education, and past work experience to see if the client can do other work. If yes, the analysis ends, and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application, Petitioner has the burden of proof:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required to establish statutory disability. Statements alone made by the applicant and/or the applicant's physician are not sufficient. Rather, regulations require laboratory or clinical medical reports that corroborate an any applicant's or physicians' statements regarding disability. These regulations state in part:

...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 sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms) ... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques.
- (c) **Psychiatric signs** are medically demonstrable phenomena which indicate specific psychological abnormalities e.g.,

abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated;

- (d) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927.

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug and alcohol addiction. This removal reflects the view of a strong behavioral component. In addition, these behavioral driven impairments are not considered to fall within the category of diseases under consideration of statutory disability under the social security disability program.

At review, 2 additional steps are added to the 5-step sequential analysis. 20 CFR 416.994a. The first requires an analysis as to whether the individual at review has improved, and second, whether that improvement is related to the ability to engaged in SGA. If both steps are answered yes, then the 5-step analysis is applied.

Within the review federal regulations are certain exceptions. The first set of exceptions are not applicable here. However, the 2<sup>nd</sup> group of exceptions indicates that the review

standard is not applicable if or when the medical evidence of record supports a finding that the initial finding of disability was in error. 20 CFR 416.994a(e)(2).

In the instant case, while not specifically citing 20 CFR 416.994a(e)(2), does in fact apply the federal regulation to Petitioner's prior disability finding when it stated that the first decision was subsequently reversed by a subsequent review by Drs. Kuiper and Hunt. This subsequent review was evidentially conducted due to a final determination by SSA finding against Petitioner. However, as noted by the MRT the DHHS failed to notify DDE of this ruling, thus reopening Petitioner's SDA when she separated from employment and scheduling this matter as a review case.

This ALJ finds that whether the error exception is applied as MRT did, or whether the first 2 steps of the sequential analysis is applied, under both, Petitioner does not meet statutory disability. Further, the Department has met its burden of proof at review at the first 2 new steps of the 7-step analysis.

What follows will be a standard application of the 5-step review process.

Applying the sequential analysis herein, Petitioner is not ineligible at the first step as Petitioner is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This ALJ finds that Petitioner does not meet statutory disability at this step. Petitioner does not have a severe impairment(s). The record does not show documented seizure activity. Petitioner's multiple ER visits are for tooth decay, and symptoms not associated with any independent disease diagnoses that would raise the evidence to stator disability. However, as the second step is a de minimis standard, this ALJ still finds continuing in the sequential analysis a finding of not disabled would be required for the reasons set forth below.

At the third step of the analysis, a review is made as to whether the applicant individual meet or equals one of the Listings of Impairments. 20 CFR 416.920(d). Petitioner does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Petitioner in the past. 20 CFR 416.920(f).

In this case, this ALJ agrees with the MRT finding that Petitioner can return to past relevant work based on the medical evidence. Thus, statutory disability is not shown.

It is noted that Petitioner's obesity, and smoking as discussed below, are the "individual responsibility" types of behaviors reflected in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6<sup>th</sup> Cir 1988) decision. In *Sias*, the Petitioner was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised Petitioner to reduce his body weight. The court said in part:

...The Petitioner's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening

situation. The Petitioner admitted to the ALJ he was at least 40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the Petitioner in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *Sias*, supra, p. 481.

In *Sias*, the Petitioner was found not truly disabled because the secretary disregarded the consequences resulting from the Petitioner's unhealthy habits and lifestyles—including the failure to stop smoking. *Awad v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6<sup>th</sup> Cir 1984).

Statutory disability does not recognize many behaviors as statutorily disabling where behavioral driven treatment will remove or reduce the severity or complaint. Among others, this includes complaints such as drug and alcohol addiction, obesity, and *smoking*. *Issues related to these problems often result from lifestyle choices*. In addition, many heart problems, type 2 diabetes, neuropathy, and high cholesterol have been significantly correlated with many lifestyle behaviors. In such instances, the symptoms and problem are treatable--obesity is treatable with weight loss, diet and exercise; alcoholism and drug addiction with abstinence; lung/breathing related medical issues are treatable with cessation from smoking. As with the congressional mandate denying statutory disability for alcohol and drug addiction, individual behaviors that drive medically related complaints and symptoms are not considered under the federal social security law as "truly disabling". See *Sias, supra*. In most instances, standard medical protocol is to instruct the individual to stop consuming alcohol, stop the drug addiction, stop smoking, and to lose weight. In fact, 20 CFR 416.930 requires a finding of not disabled where an individual does not follow the recommended or prescribed treatment program.

Here, Petitioner is morbidly obese with a BMI over 30. Using the same analysis required under the drug and alcohol legislation enacted by congress, as well as the Congressional removal of the obesity criteria from the Listings of Impairments, Petitioner did not meet the burden to show that if the nicotine addiction and obesity behaviors were removed that the medical would still show with substantial and credible evidence statutory disability as defined under federal and state law. Petitioner's obesity is correlated with symptom such as back pain, as Petitioner complains of. However, symptoms alone with an independent medical diagnosis does not meet statutory disability.

Petitioner here mostly argues that she is disabled due to seizures. Petitioner stated that her last seizure was April 2019 and prior to that six weeks on March 3, 2019. Per ER visit on March 3, 2019, Petitioner did not have a seizure. In addition, Petitioner argues that she cannot drive due to seizures. However, a 3<sup>rd</sup> party ADL form indicates that Petitioner does drive when she can. In addition, Petitioner could not identify any



exhibits in the medical packet as medical evidence to support a claim of disability due to the inability to work.

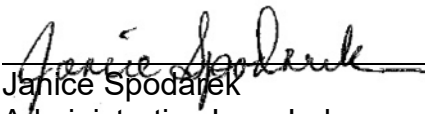
Petitioner can work, as Petitioner clearly demonstrated while working as a carrot sorter assembly line worker. Petitioner fails to meet the statutory requirements of pursuant to 20 CFR 416.929. Claimant further failed to meet the burden of proof required by 20 CFR 416.912(c) and further as required by the sufficiency requirements found at 20 CFR 416.913(b), and .913(d), and .913(e).

Based on the record established in this matter and the applicable law, and for the reasons set forth herein, statutory disability is not shown, and thus, the Department's denial must be upheld.

**DECISION AND ORDER**

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

JS/nr

  
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Janice Spodarek  
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**

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Newaygo County DHHS- via electronic  
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BSC3- via electronic mail

L. Karadsheh- via electronic mail

**Petitioner**

