



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: October 15, 2019
MOAHR Docket No.: 19-009086
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 24, 2019, with the Administrative Law Judge (ALJ) initiating a conference call from Lansing, Michigan. All other parties appeared in-person at the Genesee County Department of Health and Human Services (Department or Respondent).

Petitioner personally appeared and testified unrepresented.

Respondent was represented by April Nemec, Hearings Facilitator.

Department Exhibit A.489 was offered and admitted into the record.

ISSUES

ISSUE 1) Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) program?

ISSUE 2) Whether the Department properly denied Petitioner's application on the grounds that Petitioner failed to comply with the application process?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

ISSUE 1):

1. On [REDACTED] 2018, Petitioner applied for SDA, a cash benefit program based on disability, with the Michigan Department of Health and Human Services.

2. Petitioner is a beneficiary of the Medicaid program and receives medical benefits under the Healthy Michigan Plan (HMP).
3. On May 13, 2019, the Medical Review Team (MRT) denied Petitioner's application.
4. On May 15, 2019, the Department issued notice, and on August 13, 2019, Petitioner filed a timely hearing request.
5. Petitioner has an SSI application pending with the Social Security Administration.
6. As of the date of application, Petitioner was a [REDACTED] year-old, standing [REDACTED]" tall and weighing [REDACTED] pounds. Petitioner's Body Mass Index is normal.
7. Petitioner has been on pain medications for 20 years. Genesee Community Health Center medical evidence dated February 19, 2018, documents opioid abuse.
8. Petitioner smokes. Petitioner has a nicotine addiction.
9. Petitioner has a driver's license and can drive an automobile.
10. Petitioner has a 13-year education.
11. Petitioner has no income and lives alone.
12. Petitioner is not currently working. Petitioner last worked as a general laborer with a temp service. In 2017 Petitioner worked as a cashier at [REDACTED] part time, four hours per day, three to four days per week. Petitioner has also worked in retail, food services, banking, and house cleaning.
13. Petitioner alleges disability based on physical impairments: neck budging disk issues, DDD, pinched nerves, asthma, arthritics, and wheezing. See Exhibit A.30.
14. The MRT findings and conclusions are adopted and incorporated by reference herein.
15. Under VR 202.21 requires a finding of not disabled.

ISSUE 2):

16. On [REDACTED] 2019, Petitioner reapplied for SDA.
17. On May 31, 2019, Respondent issued a Varication Checklist and scheduled an appointment for Petitioner for an interview.
18. Petitioner failed to return the forms and failed to show for the interview.

19. On July 2, 2019, Respondent issued a Notice of Case Action denying Petitioner's SDA reapplication.
20. On August 13, 2019, Petitioner filed a hearing request.

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.

As a beneficiary of a benefit welfare services case, the party alleging eligibility has the burden of proof by a preponderance of evidence. Here, that burden falls on Petitioner regarding both issues.

ISSUE 1):

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.

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 second step is a de minimis standard. Ruling any ambiguities in Petitioner's favor, this Administrative Law Judge (ALJ) finds that Petitioner meets both. The analysis continues.

The third step of the analysis looks at whether an 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 finds that Petitioner cannot return to past relevant work based on the medical evidence and concurs with the MRT decision. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g).

After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge concurs with the MRT in finding that the medical vocational grids require a finding of not disabled pursuant to medical vocational grid rule 202.21. In reaching this conclusion, it is noted that that the law classifies Petitioner as a "younger individual." Petitioner is only [REDACTED] as of the application date. In addition, the MRT analysis finds that the birth date of Petitioner does not indicate that deeming into the next age group on the medical vocational grid is appropriate.

Petitioner's complaint of symptoms is not recognized as statutorily disabling absent corroboration requirements 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).

Petitioner's complaints and descriptions of symptoms are not consistent with the great weight of the objective medical evidence pursuant to the requirements found at 20 CFR 416.9139(b), .913(d), and .913(e).

The purview of the ALJ is to make a determination if the decision by the Department is supported by credible and substantial evidence of record. In this case this ALJ finds that based on the very thorough analysis found at Exhibit A.14 through A.37, based on the evidence found throughout in A.489 contains credible and substantial evidence that Petitioner does not meet statutory disability. As such, the MRT decision must be upheld.

ISSUE 2):

Applicable policy with regard to application processing and verification is found at BAM Items 105, 110, 115, and 130. State law covering SDA eligibility is found at MCL 400.37.

Under general verification and application processing requirements, all individuals who apply for welfare benefits are required to comply with legal and policy requirements to establish their eligibility for welfare program benefits. Failure to do so can subject the state to significant financial penalties.

Here, Petitioner reapplied for SDA on [REDACTED] 2019. On May 31, 2019, Respondent followed its procedures in issuing the required Verification Checklist for Petitioner to complete the medial forms and verification requests, due June 10, 2019. In addition, Respondent scheduled Petitioner for an interview appointment.

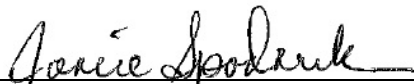
On July 2, 2019, the Department issued a Notice of Case action that Petitioner's SDA application was denied for her failure to complete the forms and timely return them, and, for failing to appear for the scheduled interview. Credible evidence establishes that the Respondent followed its procedure in notifying Petitioner. Unrefuted evidence is that the forms were not returned, and Petitioner failed to appear for the appointment. Petitioner has not met her burden of proof. Under these facts, the Department's denial is supported by the evidence of record and thus, must be upheld.

Petitioner understands that she may reapply.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED on both Issue 1 and Issue 2.**

JS/hb



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

Tamara Morris
125 E. Union St 7th Floor
Flint, MI 48502

Genesee County (Union), DHHS

BSC2 via electronic mail

L. Karadsheh via electronic mail

Petitioner

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