



GRETCHEN WHITMER
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: October 15, 2019
MOAHR Docket No.: 19-009579
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 October 10, 2019, with the Administrative Law Judge (ALJ) initiating a conference call from Lansing, Michigan. All other parties appeared in-person at the Kalamazoo County Department of Health and Human Services (Department or Respondent).

Petitioner personally appeared and testified unrepresented.

Respondent was represented by Lindsey Hashmi, ES, Carrier Taylor APS, and Amanda Fields, HF.

Department Exhibit A.281 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. On [REDACTED] 2019, 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 July 29, 2019, the Medical Review Team (MRT) denied Petitioner's application.
4. On July 31, 2019, the Department issued notice, and on August 27, 2019, Petitioner filed a timely hearing request.
5. Petitioner has an SSI application pending with the Social Security Administration, with a [REDACTED], 2019, application date, and an alleged onset date of disability of June 15, 2018.
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 (BMI) is [REDACTED], classifying Petitioner as obese under the BMI.
7. Petitioner has no alcohol/drug abuse problem or history.
8. Petitioner does not smoke.
9. Petitioner has a driver's license and can drive an automobile.
10. Petitioner has a bachelor's degree in education.
11. Petitioner has no income and lives alone. Petitioner has been 'borrowing money' to live.
12. Petitioner last worked on August 16, 2018, as a Par-pro at \$[REDACTED] per hour. Petitioner worked for 20 years as a home care aid with the elderly. Petitioner returned to work approximately 3 weeks prior to the administrative hearing high school students with autism and behavioral issues with flexible sit stand options. Petitioner began the first week at about four hours per day increasing weekly to currently 25 hours per week.
13. Petitioner's return to work employment shortly after September 4, 2019 is presumptive SGA.
14. Petitioner alleges disability based on physical impairments: chronic low back pain, muscle spasm, herniated disk. Petitioner had a spinal cord stimulator implant relieving about 50 percent of her pain allowing her to go back to work.
15. Petitioner has secondary anxiety and depression due to her medical condition(s).
16. MRT denied on the grounds of 20 CFR 416.920(f).
17. Petitioner was unable at the time of the application but is now able to fix food, do light housework, and laundry. Petitioner does not need any assistance with her bathroom and grooming needs.
18. Petitioner does not actively exercise but walks about 50 percent of the time on her current position.

19. Petitioner requests cash disability for a closed ended period of time.

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.

Applying the sequential analysis herein, Petitioner is not eligible at the first step as Petitioner is currently working. 20 CFR 416.920(b). Under presumptive SGA, the federal guidelines find Petitioner's current wages as over the threshold and thus statutory disability is now shown since Petitioner returned to work. However, Petitioner requests cash for a closed ended period of time. The earliest allowed by policy is her application date here—[REDACTED]/19. Evidence must show a minimum period of 90 days for eligibility. Petitioner did not return to presumptive SGA work until after 9/4/19. Thus, the remaining analysis will look at Petitioner's statutory disability for the closed ended period of time from 6/4/19 to 9/4/19, 3 months, just over 90 days. The analysis

continues and will examine Petitioner's medical condition(s) and functional limitations during the closed ended period of time.

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. MRT concurs. 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 disagrees with the MRT conclusion that during this closed ended period of time Petitioner could do other work. Medical evidence indicates an MRI of lumbar, thoracic and cervical spine showing disc encroachment at the R-S1 nerve root, disc protrusion at T8-T9, mid disc osteophyte complex at T9-T10, DDD lumbar spine with disc budge at L5-S1. The severe chronic pain symptoms and functional limitations Petitioner experienced are correlated with the medical evidence of record and support finding that Petitioner was unable to engage in SGA during the closed ended period of time at issue.

Petitioner does have medically determinable impairments that would reasonably cause some of the alleged symptoms. Petitioner's conditions result in some limitations on her ability to perform work related activities and were severe enough to keep her from working. However, after the spinal cord implant, Petitioner's functional limitations and symptoms improved allowing her to return to work. Clearly the spinal cord implant allowed Petitioner to adjust to other work.

Petitioner's complaint of symptoms is recognized as statutorily disabling for the closed ended period of time pursuant to 20 CFR 416.929. Claimant met 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) for the closed ended period of time.

Petitioner's complaints and descriptions of symptoms are 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) for the period of time at issue.

Based on the record established in this matter and the applicable law, and for the reasons set forth herein, statutory disability is shown, and thus, the Department's denial is reversed for the closed ended period of time.

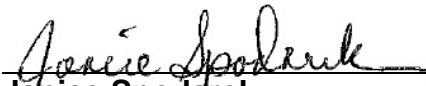
DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED **TO BEGIN DOING THE FOLLOWING**, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, **WITHIN 10 DAYS** OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Petitioner's [REDACTED] 2019, SDA disability application, and
2. Review Petitioner's case and process any further eligibility requirements including financial eligibility which to date has not been done, and
3. Issue any supplement benefits to Petitioner for the **closed ended period of time from June 4, 2019 to September 4, 2019**, only if otherwise eligible, and
4. Issue written notice to Petitioner informing her of the outcome of reprocessing the case.

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

Renee Olian
322 Stockbridge
Kalamazoo, MI 49001

Kalamazoo County, DHHS

BSC3 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]
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