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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]

Date Mailed: December 11, 2019
MOAHR Docket No.: 19-011609
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 November 26, 2019, from Lansing, Michigan. The Petitioner was represented by Petitioner, [REDACTED], and witness [REDACTED]. The Department of Health and Human Services (Department) was represented by Brenda Kann, Family Independence Manager.

Respondent's Exhibit A pages 1-399 were admitted as evidence. Petitioner's Exhibit 1-12 were admitted as evidence.

ISSUE

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

FINDINGS OF FACT

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

- (1) On [REDACTED], 2018, Petitioner filed an application for State Disability Assistance.
- (2) On August 28, 2019, the Medical Review Team denied Petitioner's application, stating that Petitioner could perform prior relevant work.
- (3) On October 23, 2019, the Department caseworker sent Petitioner notice that her application was denied.

- (4) On November 5, 2019, Petitioner filed a request for a hearing to contest the Department's negative action.
- (5) Petitioner is a 55-year-old woman whose birth date is April 27, 1964. Petitioner is 5'1" tall and weighs 160 pounds. Petitioner has a GED. Petitioner is able to read and write and has basic math skills.
- (6) Petitioner last worked as a machine operator, a sales associate, a furniture builder, and a hardware salesperson.
- (7) Petitioner alleges as disabling impairments: chronic obstructive pulmonary disease, back pain, hypertension, depression, anxiety, emphysema, post-traumatic stress disorder, thyroid problems, and knee pain.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and nonfinancial eligibility criteria are found in PEM Item 261.

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).

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 and has not worked since 2015. 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 in Section 8 housing. She is divorced with no children under 18. Petitioner receives food assistance program benefits and medical assistance benefits. Petitioner does have a driver's license but does not drive because she has no car. She either takes the bus or get a ride. Petitioner cooks things like sandwiches and soup, and she grocery shops one time per month with a support person. Petitioner does dishes and laundry. Petitioner watches television all day long or uses the Internet from the library. Petitioner testified that she can stand 15 minutes and sit for 30 minutes at a time. She can walk 20 to 30 feet. She cannot squat. Petitioner is able to shower, dress herself, tie her shoes, touch her toes and bend at the waist. Petitioner testified that her back hurts and her knees hurt. She is right-handed and her level of pain on a scale from 1 to 10 without medication is a 5. Her hands, arms, legs and feet are fine. On the heaviest weight she can carry is 10 to 15 pounds. Petitioner does smoke four cigarettes per day. Her doctors told her to quit and she is using the patches. Petitioner does drink four beers per day even though her doctors told her to quit.

A November 12, 2019 medical examination report indicates that Petitioner's blood pressure was 142/90 and her respiratory rate was 18. Her pulse rate was 88 bpm and her temperature were normal. Her BMI was 28.1. Her A1C indicated that Petitioner has prediabetes. (Petitioner's Exhibit 1 through 12)

A disability determination explanation dated August 26, 2019 indicates that Petitioner was 63 inches tall and weighs 155lbs. Her BMI was 27.5. She alleged major depression, posttraumatic stress disorder, shortness of breath, chronic obstructive pulmonary disease, emphysema and arthritis. (Pages 352-353) A physical residual functional capacity assessment indicates that Petitioner can occasionally carry 50 pounds, frequently carry 25 pounds and stand, sit or walk about six hours in an eight-hour workday. She can occasionally climb stairs, ladders and can balance, stoop, kneel, crouch and crawl frequently. She has no manipulative, visual, communicative or environmental limitations. She should avoid concentrated exposure to extreme cold, fumes or extreme wetness. Petitioner had a recent history of patellar fracture of the knee. Imaging found the patellar structure to be through the inferior aspect with normal alignment. Follow-up visit on the fracture had healed without incident no limitation. She was totally weight bearing on the joint without limitations or restrictions. The totality of the medical evidence in the file supports Petitioner's ability to engage in work activity. A mental residual functional capacity assessment indicates that Petitioner is not significantly limited in most areas and is only moderately limited in the ability to understand or remember detailed instructions; the ability to carry out detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to interact appropriately with the general public; the ability to accept instructions and respond appropriately to criticism from supervisors; and the ability to respond appropriately to changes in the work setting. Petitioner is able to perform simple routine tasks of sustained basis. She is limited to simple work-related decisions. She should be limited to occasional contact with members of the public. (Pages 361 to 365) Petitioner has the ability and is limited to medium work pursuant to medical vocational rule 203.15 and is not disabled. (Page 368)

On April 27, 2019 medical examination indicates that Petitioner's blood pressure was 139/93, respirations 18, pulse 98. Height 5'2" without shoes, weight 160 pounds without shoes. Visual acuity was tested with corrective lenses. Right eye 20/100; left eye 20/50. Petitioner was alert and oriented times three and in no acute distress. She demonstrated good effort throughout the examination. Pulmonary, cardiac, abdomen and skin were normal. Cranial nerves two through 12 are intact. Manual muscle testing reveals strength of 5/5 throughout. Reflexes are symmetric at 2/4. Sensation is intact. No atrophy of the musculature was seen and there were no fasciculations or fibrillations. Petitioner had adequate oxygenation. She did a pulmonary function test and had some positive findings of diminished lung sounds pulse bronchodilator as well as scattered wheezing and clubbing. Follow-up would be warranted with pulmonology. (Pages 187-190)

An April 23, 2019 psychiatric evaluation indicates a diagnosis consistent with posttraumatic stress disorder and major depressive disorder, severe recurrent. The

symptoms of these conditions are clearly quite severe in nature and contribute to significant ongoing impairments and her adaptive and functional abilities. Petitioner's prognosis is guarded. She does not require assistance with managing her funds. She was fully oriented. Her speech patterns were within normal limits. Her spoken words were clear and understandable. Her responses were congruent to interview questions. She did not appear overtly confused or disoriented. Her general judgment skills appeared intact. There is no history of psychotic processes. (Pages 205-209)

January 7, 2019 emergency documents and to [REDACTED] that Petitioner was diagnosed with an equivocal nondisplaced fracture of the patella near inferior pole. (Page 221)

A February 26, 2018, MRA head without contrast radiology report indicates an unremarkable MRI of the head. (Page 327)

A February 5, 2018 report indicates that Petitioner has hypertension and chronic obstructive pulmonary disease, tremors, vertigo and that she was assaulted in 2015. (Respondent's Exhibit A page 46)

A physical examination dated February 5, 2018 indicates that Petitioner was normal in all areas she was assessed with hypothyroidism, chronic obstructive pulmonary disease, essential hypertension, syncope and major depressive disorder. (Respondent's Exhibit A pages 49 and 50)

February 5, 2018 report indicates that Petitioner has hypertension and chronic obstructive pulmonary disease, tremors, vertigo and that she was assaulted in 2015. (Respondent's Exhibit A page 46)

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 the 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. There is a mental residual functional capacity assessment in the record which indicates that Petitioner is moderately limited in some areas. However, there is insufficient 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 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.

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 engaged in, in the past. Therefore, if Petitioner had not already been denied at Step 2, he 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. The 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 a high school education and an unskilled work history who is limited to light work is not considered disabled.**

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use are material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Petitioner's testimony and the information indicate that Petitioner has a history of **tobacco, drug, or alcohol abuse**. Applicable herein is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Petitioner does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

It should be noted that Petitioner continues to smoke and drink alcohol despite the fact that her doctor has told her to quit. Petitioner 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).

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. The Petitioner's medically determinable impairments could reasonably be expected to produce alleged symptoms, but the Petitioner's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible when compared to the limitations suggested by the objective medical evidence contained in the file.

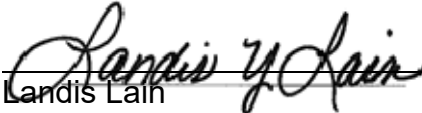
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Petitioner was not eligible to receive State Disability Assistance.

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. The 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 Departments decision is AFFIRMED.

LL/nr



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
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