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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: February 7, 2020  
MOAHR Docket No.: 19-013597  
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, telephone hearing was held on February 4, 2020, from Lansing, Michigan. The Petitioner was represented by Petitioner, [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Renee Jones, Eligibility Specialist.

Respondent's Exhibit A pages 1-390 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 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 December 6, 2019, the Medical Review Team denied Petitioner's application stating that Petitioner had a non-severe impairment.
- (4) On December 17, 2019, the Department caseworker sent Petitioner notice that the application was denied.

- (5) On December 17, 2019, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On January 13, 2020, the Michigan Office of Administrative Hearings and Rules received a hearing summary and attached documentation.
- (7) On February 4, 2020, the hearing was held.
- (8) Petitioner is a [REDACTED]-year-old woman whose date of birth is [REDACTED], 1965. She is [REDACTED] tall and weighs [REDACTED] lbs.
- (9) Petitioner has a GED. She can read and write and has basic math skills.
- (10) Petitioner last worked in March 2019 for [REDACTED] on the assembly line. Petitioner has also worked performing Home Help Care for about 20 years.
- (11) Petitioner alleges as disabling impairments: hypertension, heart arrhythmia, stress, suicidal ideation, lower back pain, broken left arm (shattered wrist bones), and depression.

### **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 and has not worked since 2019. 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 is homeless. She receives Food Assistance and Medical Assistance Program benefits. She buys sandwiches to eat. She can stand for 30 minutes and sit for one hour at a time. Petitioner can walk a half mile. She cannot squat, tie shoes or touch her toes. She can bend at the waist, shower and dress herself. She is right-handed and can carry a gallon of milk. She smokes but does not drink or do

drugs. She attends physical therapy Monday and Wednesday. Petitioner broke her left arm in March 2019. She had surgery on her wrist in April 2019 and again in November 2019.

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

Medical documentation indicates:

A November 19, 2019 Disability Determination Explanation indicates that Petitioner's condition is currently severe but expected to improve. She would not be able to perform prior work but could perform less demanding work. Petitioner can perform light work and is not disabled pursuant to Medical Vocational Rule 202.14. (Pages 24-35)

A CT demonstrated continued nonunion at the distal radius fracture site. The left wrist had circulation intact with normal pulses and no edema. No erythema. No abrasion. No lacerations. Surgical incision anterior wrist – healed, ulnar wrist – primarily sutured; borders approximated, no excessive erythema or edema, no drainage; posterior wrist – primarily sutured; borders approximated, no excessive erythema or edema, no drainage. Tenderness: Normal postoperative tenderness. Swelling: normal postoperative swelling. AROM – deferred secondary to recent surgery. Motors intact. Sensation normal. No instability. No positive provocative tests. (Page 193)

A November 1, 2019 operative report indicates that Petitioner suffered from a left distal radius ulnocarpal impaction. A left distal radius revision with bone grafting, left ulnocarpal impaction. Petitioner would continue to wear a wrist splint for comfort and continue with the bone stimulator. She is to elevate her wrist when at rest. (Page 255)

An October 11, 2019, CT of the wrist indicates a nonunion of the radial fracture, though alignment remains anatomic. The fracture through the base of the ulnar styloid has healed, the tip has not. Degenerative changes of the proximal articular surfaces of the lunate and trapezium possibly related to ulnar impaction syndrome. (Page 260)

On September 24, 2019, the fracture of the distal radius is in stable alignment. Hardware without loosening or migration. The previous fracture line still visible with bone bridging along the medial aspect. Ulnar positive variance is noted, some mild changes seen at the proximal and medial lunate. (Page 250)

An April 23, 2019 medical report indicates the fracture of the distal radius is in stable alignment. Evidence of interval healing along ulnar aspect of the metaphysis. Ulnar positive variance is noted. Radio carpal joint space is congruent. Normal post-operative swelling. Wrist flexion 35 degrees. (Page 268)

An April 9, 2019 medical report indicates chief complaint: Petitioner was evaluated for left wrist fracture. ■-year-old female presents for evaluation of her left wrist. The patient has a fall on outstretched hand sustained March 30, 2019 while roller skating. She

noted deformity of wrist however did not seek treatment until recently. She denies numbness or tingling. (Page 278)

A March 30, 2019 Radiology report indicates interval placement of fiberglass cast overlying the palmar aspect of the wrist and forearm. Improved alignment of the distal radius comminuted fracture and associated ulnar styloid fracture. (Page 359)

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. (Ninety days for SDA approval) Petitioner fractured her wrist in March 2019. It has not properly healed. She has had surgery in April 2019 and in November 2019. She is still required to wear a brace on her wrist. There is sufficient objective clinical medical evidence in the record that Petitioner suffers a severely restrictive physical or mental impairment. This Administrative Law Judge finds that the medical record is sufficient to establish that Petitioner has a severely restrictive physical impairment.

Petitioner alleges depression and suicidal ideation.

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.

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.

The fourth step of the analysis to be considered is whether Petitioner has the ability to perform work previously performed by Petitioner within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent Petitioner from doing

past relevant work. In the present case, Petitioner's past employment was as a roofer and a dish washer. Both jobs require extensive standing.

Petitioner's impairments would prevent him from doing past relevant work. This Administrative Law Judge will continue through step 5.

In the final step of the analysis, the trier of fact must determine if Petitioner's impairment(s) prevent Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon Petitioner's:

1. residual functional capacity defined simply as "what can you still do despite your limitations? 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite her limitations. 20 CFR 416.966.

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).

**Medium work:** Medium work involves lifting no more than 50 pounds at a time with frequent lifting, or carrying, of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).



**Heavy work:** Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Petitioner makes it to the final step of the analysis, the Petitioner has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6<sup>th</sup> Cir, 1984).

The Department determined that Petitioner has a currently severe impairment. She cannot perform her prior work at step four because she does not maintain bilateral manual hand dexterity. *Sedentary exertion combined with a no exertional impairment*. Example 1 of section 201.00(h) in Appendix 2 illustrates a limitation to unskilled sedentary work with an additional loss of bilateral manual dexterity that is significant and, thus, warrants a conclusion of “Disabled.” (The bulk of unskilled sedentary jobs requires bilateral manual dexterity.)

Moving forward, the burden of proof rests with the State to prove by substantial evidence that Petitioner has the residual function capacity for substantial gainful activity. After careful review of Petitioner’s extensive medical record, and the Administrative Law Judge’s personal interaction with Petitioner at the hearing, this Administrative Law Judge finds that Petitioner’s exertional and non-exertional impairments render Petitioner unable to engage in a full range of, even sedentary, work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The Department has failed to provide sufficient vocational evidence which establishes that Petitioner has the residual functional capacity for substantial gainful activity and, that given Petitioner’s age, education, and work experience, there are significant numbers of jobs in the national economy which Petitioner could perform despite Petitioner’s limitations.

Accordingly, this Administrative Law Judge concludes that Petitioner is disabled for purposes of the SDA program as of June 24, 2019. Petitioner’s testimony regarding her limitations and ability to sit, stand, walk, lift, and carry is credible and supported by substantial medical evidence. She cannot perform unskilled sedentary work because she does not have bilateral manual hand dexterity.

Therefore, Petitioner is found to be disabled.

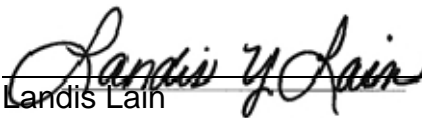
**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is medically disabled as of the June 24, 2019 application for State Disability Assistance.

Accordingly, the Department's decision is hereby **REVERSED**, and the Department is ORDERED to:

1. Initiate a review of the [REDACTED], 2019 application for SDA, if not done previously, to determine Petitioner's non-medical eligibility.
2. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for June 24, 2020.
3. If Petitioner is otherwise eligible, pay to Petitioner SDA benefits to which she is entitled under Department policy from June 24, 2019 forward.

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  
Lansing, Michigan 48909-8139

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