



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
██
██████████, MI ██████████

Date Mailed: September 17, 2020
MOAHR Docket No.: 20-004702
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 August 20, 2020, from Lansing, Michigan. The Petitioner was represented by herself. Petitioner's boyfriend Mr. ██████████ appeared and testified for the Petitioner. The Department of Health and Human Services (Department) was represented by April Nemeck Hearing Facilitator. Department Exhibit 1, pp. 1-152 was received and admitted. Petitioner Exhibit A, pp. 1-50.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit 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. Petitioner applied for SDA on ██████████ ██████████ 2020.
2. On April 17, 2020, Petitioner's application for SDA was approved due to the pandemic.
3. On July 6, 2020, the Medical Review Team found Petitioner not disabled.
4. On July 7, 2020, Notice of Case Action was sent to Petitioner informing her that her SDA case would close effective July 31, 2020.
5. Petitioner filed a request for hearing on July 16, 2020, regarding the SDA denial.
6. A telephone hearing was held on August 20, 2020.

7. Petitioner is ■■■" tall and weighs ■■■ pounds.
8. Petitioner is ■■ years old.
9. Petitioner's impairments have been medically diagnosed as asthma, scoliosis, spinal stenosis, bulging discs, migraines, shoulder injury, diabetes, edema, heart palpitations, carpal tunnel syndrome, sleep apnea, PTSD and bipolar disorder.
10. Petitioner has the following symptoms: pain, fatigue, shortness of breath, panic attacks, insomnia, social isolation.
11. Petitioner completed high school and had training as a nurse assistant.
12. Petitioner is able to read, write, and perform basic math skills.
13. Petitioner is not working. Petitioner previously worked certified nurse assistant.
14. Petitioner testified that she cannot perform some household chores.
15. Petitioner testified to the following physical limitations:
 - i. Sitting: 10-15 minutes
 - ii. Standing: 5-10 minutes
 - iii. Walking: 50 yards
 - iv. Bend/stoop: some difficulty
 - v. Lifting: 5-10 lbs.
 - vi. Grip/grasp: some difficulty
16. Petitioner takes the following prescribed medications:
 - a. albuterol
 - b. Metformin
 - c. cyclobenzaprine
 - d. fluticasone
 - e. glimiperide
 - f. metoprolol
 - g. novolin

- h. oxybutynin
 - i. pantoprazole
 - j. qvar
 - k. steglatro
 - l. sumatriptin
17. Petitioner testified that she experiences pain a high level of 6 on an everyday basis with some pain always present at a low level of 4.
18. An MRI report of Petitioner's lumbar spine on February 25, 2019, showed the following under IMPRESSION: "1. No displaced fractures or dislocations. The vertebral body heights are maintained. 2. Mild to broad-based left neural foraminal through far lateral protrusion and L5/S1 with mild to moderate left neural foraminal narrowing. Please see above for detail. 3. Left adrenal adenoma. Similar from a 2017 exam." (Ex. 1, pp 146-147)
19. Petitioner was treated at the emergency room in June 2019 for a foot injury she sustained while fishing. (Ex. 1, pp. 118-143)
20. An MRI of Petitioner's cervical spine from September 9, 2019, showed disc bulges at C5-6 and C6-C7 and confirmed the diagnosis of scoliosis.

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 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.

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 uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA-P 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.

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Petitioner is not working, therefore, the Petitioner is not disqualified at this step in the evaluation.

The second step to be determined in considering whether the Petitioner is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical, or mental, ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In the third step of the analysis, the trier of fact must determine if the Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Petitioner's medical record does not support a finding that the 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. Listings 1.04, 12.06 and 12.04 were considered.

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. A conclusory statement by a physician, or mental health professional, that an individual is disabled, or blind, is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.927.

The fourth step of the analysis to be considered is whether the Petitioner has the ability to perform work previously performed by the Petitioner within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Petitioner from doing past relevant work. In the present case, the Petitioner previously worked as a certified nurse's aide this work would be on the medium exertional level. The Petitioner's impairments would prevent her 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 the Petitioner's impairment(s) prevent the Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the 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 (6th Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial evidence that the Petitioner has the residual function capacity for substantial gainful activity.

After careful review of the medical evidence presented and Petitioner's statements and considering the Petitioner in the most restrictive circumstances this Administrative Law Judge finds that Petitioner would be able to perform work on the sedentary exertional level.

This Administrative Law Judge finds that Petitioner is capable of the requisite sitting, standing and walking for a sedentary job. The Petitioner is a younger individual. 20 CFR 416.963. Petitioner's previous work has been unskilled. Federal Rule 20 CFR 404,

Subpart P, Appendix 2 contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table 1, Rule 201.18 the Petitioner is not disabled for the purposes of SDA. Petitioner's testimony regarding her limitations and ability to sit, stand, walk, lift and carry is not supported by substantial evidence. Petitioner's MRI reports do not reflect back injuries that would cause the limitations testified to by Petitioner. It should also be noted that Petitioner sustained an injury while fishing in June 2019, an activity that would require more physical activity than Petitioner testified she was capable of. Petitioner testimony regarding her limitations is found to not be credible. Petitioner failed to present sufficient evidence that she has a psychological impairment that is substantially limiting, her psychological symptoms were described as mild in her medical records.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



AM/nr

Aaron McClintic
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

