



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: September 10, 2020
MOAHR Docket No.: 20-004806
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 13, 2020, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Garilee Janofski. Department Exhibit 1, pp. 1-992 was received and admitted.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) and/or 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 ██████████ ████████ 2020, Petitioner applied for MA and SDA due to disability.
2. On March 27, 2020, temporary SDA was granted due to COVID pandemic.
3. The Medical Review Team denied the application on May 8, 2020.
4. Petitioner filed a request for hearing on May 20, 2020, regarding the SDA and MA denials.
5. A telephone hearing was held on August 13, 2020.
6. Petitioner is ████████” tall and weighs ████████ pounds.
7. Petitioner is ████████ years old.

8. Petitioner's impairments have been medically diagnosed as spinal stenosis, seizures, migraines, asthma, diabetes, hypertension, TIA, fibromyalgia, borderline personality disorder, bipolar disorder, panic disorder.
9. Petitioner has the following symptoms: pain, fatigue, shortness of breath, insomnia, syncope, flashbacks, night terrors, social isolation, memory and concentration problems and suicide attempts.
10. Petitioner completed 11th grade and a GED.
11. Petitioner is able to read, write, and perform basic math skills.
12. Petitioner is not working. Petitioner previously worked as retail clerk and an oil and gas worker.
13. Petitioner lives with her three children.
14. Petitioner testified that she cannot perform household chores.
15. Petitioner testified to the following physical limitations:
 - i. Sitting: 5 minutes
 - ii. Standing: 4 minutes
 - iii. Walking: 50 feet
 - iv. Bend/stoop: some difficulty
 - v. Lifting: 5-7 lbs.
 - vi. Grip/grasp: some difficulty
16. Petitioner takes the following prescribed medications:
 - a. Lyrica
 - b. Metformin
 - c. Abilify
 - d. Trudexa
 - e. Valium
 - f. Trintellix
 - g. Trazodone

- h. Dopamax
 - i. Zantac
 - j. Levothyroxine
 - k. Gabapentin
 - l. Vyvanse
 - m. zofran
17. Petitioner testified that she experiences pain at a high level of 10 on an every-day basis with some pain always present at a low level of 5-6.
18. In a psychological evaluation dated September 25, 2019, Petitioner was found to have 12 different diagnoses related to mental health and to be experiencing extreme levels of anxiety and depression. (Ex. 1, p. 340)
19. On November 17, 2019, Petitioner had a psychiatric admission with an admission GAF score of 30 and discharge GAF score of 50. (Ex. 1, p. 384)

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.

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 in 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 this case, the Petitioner's medical evidence of record supports a finding that Petitioner has significant physical and mental limitations upon Petitioner's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that the Petitioner has an impairment (or combination of impairments) that has more than a minimal effect on the Petitioner's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In this case, this Administrative Law Judge finds that Petitioner may be considered presently disabled at the third step. Petitioner meets listing 12.04 or its equivalent. This Administrative Law Judge will not continue through the remaining steps of the assessment. Petitioner's testimony and the medical documentation support the finding that Petitioner meets the requirements of the listing. Petitioner has other significant health problems that were not fully addressed in this decision because Petitioner is found to meet a listing for a different impairment.

Therefore, Petitioner is found to be disabled as of February 24, 2020.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Initiate a review of the application for SDA and MA dated [REDACTED] 2020, 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 September 2021.

AM/nr



Aaron McClintic
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

Garilee Janofski
201 Commerce Dr
Ithaca, MI
48847

Gratiot County DHHS- via electronic mail

BSC2- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

L. Brewer-Walraven- via electronic mail

Petitioner

██████████ - via first class mail

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██████████, MI

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