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GOVERNOR

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

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DIRECTOR

[REDACTED]
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Date Mailed: January 21, 2021
MOAHR Docket No.: 20-006354
Agency No.: 101983572
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 2, 2020. [REDACTED], the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Andrea Edwards, Hearings Case Worker.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as marked, Exhibits A pp. 1-485. The record was left open for Petitioner to provide photographs, which have been received and admitted as Exhibit 1, pp. 1-9, and Exhibit 2, pp. 1-11.

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 [REDACTED], [REDACTED] Petitioner applied for SDA and reported that she was disabled. (Exhibit A, pp. 8-12)
2. Due to COVID-19, Petitioner's SDA case was temporarily approved while waiting for the disability determination from Disability Determination Services (DDS). (Exhibit A, p. 3)

3. On March 27, 2020, a Notice of Case Action was issued for the temporary approval of SDA. (Exhibit A, pp. 13-17)
4. On June 2, 2020, the Medical Review Team/Disability Determination Services (MRT/DDS) found Petitioner not disabled. (Exhibit A, pp. 28-34)
5. On June 9, 2020, a Notice of Case Action was issued informing Petitioner that SDA was denied because DDS determined she was not disabled. (Exhibit A, pp. 22-26)
6. On September 8, 2020, the Department received Petitioner's timely written request for hearing. (Exhibit A, pp. 5-7)
7. Petitioner alleged disabling impairments including: extreme skin rash/lesions, squamous cell cancer, digestive problems, fatigue, and depression. (Exhibit A, p. 67; Petitioner Testimony)
8. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED], [REDACTED] birth date; was [REDACTED]" in height; and weighed [REDACTED] pounds. (Petitioner Testimony)
9. Petitioner completed the 12th grade, attended some basic business and computer college classes, and has a work history including owner of a salon and spa, valet driver, and server. (Exhibit A, p. 70; Petitioner Testimony)
10. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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.

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). 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 his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's statements about pain or other symptoms are not, in and of themselves, sufficient to establish disability. 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) daily activities; (2) the location/duration/frequency/intensity of an applicant's pain or other symptoms; (3) precipitating and aggravating factors; (4) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain or other symptoms; (5) any treatment other than medication that the applicant has received to relieve pain or other symptoms; (6) any measures the applicant uses to relieve pain or other symptoms; and (7) other factors concerning the applicant's functional limitations and restrictions due to pain or other symptoms. 20 CFR 416.929(c)(3). The applicant's pain or other symptoms must be considered in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the

limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.922(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(a)(1)(iv)(vi)(vii).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity. Therefore, Petitioner is not ineligible for disability benefits under Step 1.

The severity of Petitioner's alleged impairment(s) is considered under Step 2. Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education, and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.922(b). Examples 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.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally

groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleged disabling impairments including: extreme skin rash/lesions, squamous cell cancer, digestive problems, fatigue, and depression. (Exhibit A, p. 67; Petitioner Testimony) While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

An [REDACTED], [REDACTED] record from [REDACTED] documented a rash involving the face, trunk, and extremities. It was favored that these are likely traumatic and possibly self-induced excoriations. Also considered was delusions of parasitosis based on Petitioner's reported history and bringing in samples of skin/photos of fibers and her fixed belief that this is likely an infectious etiology. Punch biopsies were taken. The biopsy results showed prurigo-like changes and dermal fibrosis with chronic inflammation. The changes were likely reactive in nature. (Exhibit A, pp. 379-385)

On [REDACTED] [REDACTED] Petitioner was seen in the emergency department for pain in right leg, abrasions of both lower legs, excoriation, and exposure to other specified factors. The skin exam findings indicated Petitioner had excoriations over lower extremities, multiple areas of picking marks. (Exhibit A, pp. 321-338)

A [REDACTED] [REDACTED] record from [REDACTED] documents active problems of cellulitis of face, dermatitis, and skin neoplasm malignant carcinoma squamous cell. Petitioner was noted to have a severe leg infection. The plan was for a referral to [REDACTED] dermatology and Petitioner was sent to the emergency department in [REDACTED]. (Exhibit A, pp. 239-241)

On [REDACTED], [REDACTED] Petitioner was seen in the emergency department for left leg swelling and chronic wounds. It was discussed with Petitioner that it appeared her wounds are from chronic excoriations, she needed to stop placing wet wraps around the legs, and it was important to follow up with dermatology at the [REDACTED]. (Exhibit A, pp. 427-443)

On [REDACTED], [REDACTED] Petitioner was seen in the emergency department for right neck swelling. A CT of the neck showed multiple right-sided parotid nodules and degenerative changes within the cervical spine. (Exhibit A, pp. 249-250, 254-255, and 295-320)

A [REDACTED], [REDACTED] record from [REDACTED] documents that Petitioner was being seen for a right neck mass and had been doing homeopathic detox. Petitioner was given a prescription for doxycycline and was to get an ultrasound with fine needle aspiration. (Exhibit A, pp. 274-276)

On [REDACTED], [REDACTED] Petitioner underwent ultrasound guided fine needle aspiration and core biopsy of a right parotid mass. The final pathologic diagnosis of the core biopsy was fragments of benign fibroadipose tissue showing fat necrosis, inflammation, fibrosis/scar, and histiocytes with focal necrotizing granuloma formation and adjacent benign lymph node tissue. It was noted that the features were non-diagnostic of a neoplasm and more suggestive of a reactive/inflammatory process. (Exhibit A, pp. 251-252, 256-269, 283-294)

A [REDACTED], [REDACTED] record from [REDACTED] shows Petitioner was seen for the results of the biopsy. Petitioner was given prescriptions for Augmentin and Polysporin. Petitioner was advised to clean areas with hydrogen peroxide and apply Polysporin ointment. Petitioner was to not touch face or ears. Petitioner was not to use organic ointment. (Exhibit A, pp. 271-273)

A [REDACTED], [REDACTED] record from [REDACTED] documents active problems of cellulitis of face, dermatitis, skin abscess of neck, and skin neoplasm malignant carcinoma squamous cell. It was noted that a right neck abscess burst. (Exhibit A, pp. 242-244)

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that she does have some limitations on the ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted, or can be expected to last, continuously for 90 days; therefore, Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms recent diagnosis and treatment of multiple impairments including: chronic wounds, cellulitis of face, dermatitis, and squamous cell carcinoma.

Based on the objective medical evidence, considered listings included: 8.00 Skin Disorders and 13.00 Cancer. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. For example, while there is a lengthy history of the chronic skin lesions affecting several areas of Petitioner's body, the medical records did not document that the skin lesions seriously limit her use of more than one extremity, skin lesions on the palms of both hands that very seriously limit the ability to fine and gross motor movements, or skin lesions on the soles of both feet, the perineum, or both inguinal areas that very seriously limit the ability to ambulate. Listing 13.03 addresses skin cancer. However, the medical records did not show either (A) sarcoma or carcinoma with metastases to or beyond the regional lymph nodes, or (B) carcinoma invading deep extradermal structures (for example, skeletal muscle, cartilage, or bone). Accordingly, Petitioner cannot be found disabled, or not disabled at Step 3; therefore, Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered non-exertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, individual's residual functional capacity is compared with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment, along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping,

climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The evidence confirms recent diagnosis and treatment of multiple impairments including: chronic wounds, cellulitis of face, dermatitis, and squamous cell carcinoma. Petitioner's testimony indicated she can usually walk 30-60 minutes at a time, stand 30-60 minutes at a time, sitting depends if the skin condition is going across her rear end, and she could lift and carry a full gallon of milk in each hand. Petitioner described pain, fatigue, and extensive wound care practices related to her skin condition. The testimony of Petitioner regarding the severity of her limitations was partially supported by the medical records and is found partially credible. However, the medical records indicate that some Petitioner's wound care practices may be worsening her condition. As noted above, the medical records indicate the likelihood of self-induced excoriations and note multiple areas of picking marks. Petitioner was advised to stop placing wet wraps around her legs, to not touch her face or ears, and to not use organic ointment. Similarly, Petitioner described digestive problems, but explained that with any cleansing detox she cannot be far from the bathroom. Petitioner stated the digestive problems were starting to balance out a little bit. The recent medical records did not document any treatment for digestive conditions. The recent medical records also did not document any treatment for depression.

After review of the entire record it is found, at this point, that Petitioner has a combination of exertional and non-exertional limitations and maintains the residual functional capacity to perform limited light work as defined by 20 CFR 416.967(b) on a sustained basis. Limitations would include avoiding environmental contaminants such as exposure to fumes, odors, dusts, gasses, poor ventilation, etc. due to chronic skin lesions.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is considered. 20 CFR 416.960(b)(3).

Petitioner has a work history including owner of a salon and spa, valet driver, and server. (Exhibit A, p. 70; Petitioner Testimony) As described by Petitioner, except for the valet job, all of her past work was mostly part time and only fluctuated to full time some of the time. The valet work was at a hospital and did not involve much lifting and

carrying. (Petitioner Testimony) In light of the entire record and Petitioner's RFC (see above), it is found that Petitioner is not able to perform her past relevant work as a valet driver as this may expose her to environmental contaminants. Accordingly, Petitioner cannot be found disabled, or not disabled, at Step 4; therefore, Petitioner's eligibility is considered under Step 5. 20 CFR 416.905(a).

In Step 5, an assessment of Petitioner's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Petitioner was 51 years old and, thus, considered to be closely approaching advanced age for disability purposes. Petitioner completed some college and has a work history as a valet driver. (Exhibit A, p. 70; Petitioner Testimony) Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Petitioner to the Department to present proof that the Petitioner has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

The evidence confirms recent diagnosis and treatment of multiple impairments including: chronic wounds, cellulitis of face, dermatitis, and squamous cell carcinoma. As noted above, Petitioner has a combination of exertional and non-exertional limitations and maintains the residual functional capacity to perform limited light work as defined by 20 CFR 416.967(b) on a sustained basis. Limitations would include avoiding environmental contaminants such as exposure to fumes, odors, dusts, gasses, poor ventilation, etc. due to chronic skin lesions. Even considering this limitation, significant jobs would still exist in the national economy.

After review of the entire record, and in consideration of Petitioner's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.13, Petitioner is found not disabled at Step 5.

In this case, the Petitioner is found not disabled for purposes of SDA benefits, as the objective medical evidence does not establish a physical and/or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Petitioner's impairments did not preclude work at the above stated level for at least 90 days.

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.

CL/ml



Colleen Lack
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

