



GRETCHEN WHITMER
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: May 19, 2021
MOAHR Docket No.: 21-001317
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 April 20, 2021, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Tracy Bailey, Lead Worker/Eligibility Specialist.

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], 2020, Petitioner applied for SDA.
2. On February 9, 2021, the Medical Review Team (MRT) denied Petitioner's application for SDA per BEM 261 because the nature and severity of Petitioner's impairments would not preclude work activity at the above stated level for 90 days and is capable of performing her past relevant work under per 20 CFR 416.920(e).
3. On February 11, 2021, the Department Caseworker sent Petitioner a notice that her application was denied.
4. On February 19, 2021, the Department received a hearing request from Petitioner, contesting the Department's negative action.

5. Petitioner is a [REDACTED] year-old woman whose date of birth is [REDACTED], 1960. She is [REDACTED] tall and weighs [REDACTED] pounds. Petitioner completed High School. She can read and write and do basic math. Petitioner was last employed as a housekeeper on July 9, 2017, which is her pertinent work history for the last 20 years.
6. Petitioner's alleged impairments are degenerative disc disease, pinched nerve, radiculopathy, low thyroid issues, and depression.
7. Petitioner was seen by an independent medical examiner for an occupational medical examination at [REDACTED] on [REDACTED], 2021. She has had difficulty with nerve damage in both legs and a pinched nerve on the left side of her back since at least 2017. At the physical examination, Petitioner had decreased range of motion on the lumbar and cervical spine. She had substantial pain at 90 degrees straight leg rising bilaterally in both the seated and supine positions. Petitioner ambulates with a somewhat ataxic gait. There was no evidence of a mental disorder. The independent medical examiner assessment was chronic axial spine pain with possible radiculopathy down the left lower extremity and irritable bowel syndrome. She is functioning at a modified sedentary level of activity. This is described as lifting a maximum of 5 to 10 pounds on an occasional basis, which is less than 1/3 of an 8-hour workday. Petitioner should avoid excessive bending and twisting. Department Exhibit 1, pgs. 181-186.
8. On [REDACTED], 2021, Petitioner was seen by her treating physician from [REDACTED]. She was seen for a disability check up. Petitioner was diagnosed with hypertension, chronic pain, alcohol abuse, and hair loss. Petitioner had a past medical history of lumbago with sciatica, left side, other chronic pain, balance disorder, chronic GERD, essential hypertension, and esophageal dysphagia. Her medications were reviewed and adjusted as medically required. Her thyroid level was low, and she was sent to an endocrinologist for further evaluation. She had an essentially normal physical examination. Department Exhibit 1, pgs. 192-196.
9. On September 30, 2020, Petitioner was seen by a neurologist for an office visit. She had a ground level fall in June 2020, which C5-C6 left sided facet fracture and minimal subluxation. Petitioner was treated for external orthosis where follow-up x-rays showed good alignment of the cervical spine with only slight subluxation at C5-C6, which remains stable. Her neurologist was very comfortable removing her collar. An MRI from August 2020 was unremarkable for any acute structural lesions. He recommended that she increase activities as tolerated. Nothing else merits attention at this time. Department Exhibit 2, pgs. 7-8.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of 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.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. 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 are 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

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, Appendix 1, 12.00(C).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Petitioner does not have

a severe medically determinable impairment or combination of impairments, the Petitioner is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Petitioner's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the trier must consider all of the Petitioner's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner has the residual functional capacity to do past relevant work, then the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Petitioner has satisfied requirements as set forth in steps one and two of the sequential evaluation. However, Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for step 3. Therefore, vocational factors will be considered to determine Petitioner's residual functional capacity to do relevant work and past relevant work.

In the present case, Petitioner was seen by an independent medical examiner for an occupational medical examination at [REDACTED] on [REDACTED], 2021. She has had difficulty with nerve damage in both legs and a pinched nerve on the left side of her back since at least 2017. At the physical examination, Petitioner had decreased range of motion on the lumbar and cervical spine. She had substantial pain at 90 degrees straight leg rising bilaterally in both the seated and supine positions. Petitioner ambulates with a somewhat ataxic gait. There was no evidence of a mental disorder. The independent medical examiner assessment was chronic axial spine pain with possible radiculopathy down the left lower extremity and irritable bowel syndrome.

She is functioning at a modified sedentary level of activity. This is described as lifting a maximum of 5 to 10 pounds on an occasional basis, which is less than 1/3 of an 8-hour workday. Petitioner should avoid excessive bending and twisting. Department Exhibit 1, pgs. 181-186.

On [REDACTED], 2021, Petitioner was seen by her treating physician from [REDACTED]. She was seen for a disability check up. Petitioner was diagnosed with hypertension, chronic pain, alcohol abuse, and hair loss. Petitioner had a past medical history of lumbago with sciatica, left side, other chronic pain, balance disorder, chronic GERD, essential hypertension, and esophageal dysphagia. Her medications were reviewed and adjusted as medically required. Her thyroid level was low, and she was sent to an endocrinologist for further evaluation. She had an essentially normal physical examination. Department Exhibit 1, pgs. 192-196.

On September 30, 2020, Petitioner was seen by neurologist for an office visit. She had a ground level fall in June 2020, which C5-C6 left sided facet fracture and minimal subluxation. Petitioner was treated for external orthosis where follow-up x-rays showed good alignment of the cervical spine with only slight subluxation at C5-C6, which remains stable. Her neurologist was very comfortable removing her collar. An MRI from August 2020 was unremarkable for any acute structural lesions. He recommended that she increase activities as tolerated. Nothing else merits attention at this time. Department Exhibit 2, pgs. 7-8.

The Administrative Law Judge finds that Petitioner is capable of performing her past relevant work of at least the light level. She was previously employed as a housekeeper, which is her pertinent work history. Petitioner does have physical limitations with her back, but her MRI was unremarkable. She had a fall in June 2020 where she did have cervical fracture, which has healed in a stable condition. Her physical condition does not match her medical complaints.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that Petitioner testified that she does not perform most of her daily living activities, which is not supported by the objective medical evidence on the record. Petitioner does feel that her condition has worsened because of increase back pain 24/7 where her nerves in her legs jump. The Petitioner stated that she does have mental impairments where she is taking medication, but not in therapy. Petitioner does not or has ever smoked or used illegal and illicit drugs. She drinks three tall boys of 24 ounces of beer a day. Petitioner did not feel there was any work she could do.

At Step 4, this Administrative Law Judge finds that Petitioner has not established that she cannot perform any of her prior work. She was previously employed as a housekeep on July 9, 2017, which is her pertinent work history. Petitioner is taking medication for her mental impairments, but not in therapy. Therefore, Petitioner is disqualified from receiving disability at Step 4. Petitioner is capable of performing her

past work at least the light level. However, the Administrative Law Judge will still 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.

The objective medical evidence on the record is insufficient that Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. Petitioner's testimony as to her limitation indicates her limitations are non-exertional and exertional.

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).

In the instant case, Petitioner testified that she has depression. Petitioner is taking medication for her mental impairments, but not in therapy. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. She has completed high school and received a diploma. Petitioner is capable of performing simple, unskilled, repetitive work.

After giving full consideration to Petitioner's mental and physical impairments, the Administrative Law Judge finds that Petitioner could perform her past relevant work and that Petitioner does not meet the definition of disabled under the SDA program.

DECISION AND ORDER

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. The Petitioner could perform her past relevant work and Petitioner does not meet the definition of disabled under the SDA program.

Accordingly, the Department's determination is **AFFIRMED**.

CF/hb



Carmen G. Fahie
Administrative Law Judge
for Elizabeth Hertel, 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

Mackinac County via electronic mail

BSC1 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]
MI [REDACTED]