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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]
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Date Mailed: September 1, 2021
MOAHR Docket No.: 21-002800
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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, an administrative hearing was held on July 29, 2021.

Petitioner personally appeared and testified unrepresented.

Respondent was represented by Melissa Stanley, hearings Facilitator.

The following Exhibits were collected by the Department and offered and admitted into the record on behalf of Petitioner: Exhibit A.128; B.140; and C.332.

Neither party called any witnesses.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) 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. On [REDACTED], 2020 Petitioner reapplied for SDA, a cash benefit program based on disability, with the Michigan Department of Health and Human Services. Petitioner had previously applied in 2018 and received an adverse decision from ALJ McClinton on December 6, 2018. Petitioner has also had multiple prior adverse SSA applications, and has received two prior adverse federal ALJ decisions. Petitioner was last denied social security disability with the SSA in "September or October 2020" and has reapplied.

2. On May 27, 2021, the Medical Review Team (MRT) denied Petitioner's application.
3. On May 27, 2021, the Department issued notice, and on June 7, 2021 Petitioner filed a timely hearing request.
4. As of the date of application, Petitioner was a ■-year-old, standing ■ and weighing ■ pounds. Petitioner's Body Mass Index (BMI) is ■ classifying Petitioner as ■ under the BMI.
5. Petitioner has no alcohol/drug abuse problem or history.
6. Petitioner has a nicotine addiction, having smoked for ■ years.
7. Petitioner has a driver's license and can drive an automobile. Petitioner owns an automobile.
8. Petitioner has some college.
9. Petitioner lives with her adult ■ who is disabled.
10. Petitioner is not currently working. Petitioner last worked in February 2016. Petitioner's work history is as a home health aide, call center representative, cashier and waitress.
11. Petitioner alleged disabling impairment due to neuropathy, COPD, bi-polar disorder, anxiety, ankylosis/spondylosis
12. MRT denied on the basis of 20 CFR 416.920(f), Medical Vocational Grid Rule 201.21.
13. Petitioner is able to fix food, do light housework, and laundry. Petitioner does not need any assistance with her bathroom and grooming needs.
14. Petitioner does not exercise.

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.

For the SDA program, the Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1.

As to the disability assessment, the State of Michigan follows the general guidelines with regards to the MA program to show SDA statutory disability with one major exception: duration for the SDA program is due to a disability which has lasted or can be expected to last for a continuous period of not less than 90 days. Unless otherwise noted below, the MA regulations, policy and law are followed.

Prior to any substantive review jurisdiction must be established. Under federal and state law, there is no jurisdiction to proceed with a substantive review where an individual has received an adverse decision from SSA in the twelve months prior to a state application, with certain exceptions. BEM, BAM. Here, Petitioner did receive a prior adverse SSA application in the twelve month period prior to refiling a SDA application with the MDHHS. While Petitioner argues that there was more medical evidence than contained in her medical file, Petitioner failed to submit any new medical to support her claim. As the evidence stands, Petitioner is barred from a substantive review until the twelve month period passes. As such, Petitioner's SDA application of [REDACTED], 2020 lacks jurisdiction. However, as Petitioner's appeal is only pertaining to a state funded disability program, and, as the state has failed to carve out the applicability of a federal SSA ruling as to the jurisdiction on a program funded exclusively with state funds, the sequential analysis will be applied as an alternative argument.

Relevant federal guidelines provide in pertinent part:

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.

Federal regulations require that several considerations be analyzed in sequential order:

We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required.

These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). Monthly income limit for 2017 presumptive SGA for non-blind individuals is \$1,170.00. If the applicant is not engaged SGA or presumptive SGA, the analysis continues to Step 2.
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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f).
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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends, and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application, Petitioner has the burden of proof:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required to establish statutory disability. Statements alone made by the applicant and/or the applicant's physician are not sufficient. Rather, regulations require laboratory or clinical medical reports that corroborate an any applicant's or physicians' statements regarding disability. These regulations state in part:

...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 sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms) ... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques.
- (c) **Psychiatric signs** are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by

observable facts that can be medically described and evaluated;

- (d) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927.

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug and alcohol addiction. This removal reflects the view of a strong behavioral component. In addition, these behavioral driven impairments are not considered to fall within the category of diseases under consideration of statutory disability under the social security disability program.

Applying the sequential analysis herein, Petitioner is not ineligible at the first step as Petitioner is not currently working. 20 CFR 416.920(b). The analysis continues.

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under 20 CFR 416.920(c), Step 2, and the analysis will proceed to Step 3.

Based on the medical evidence presented in this case, listings 3.02 (chronic respiratory disorders), 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders) were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

In this case, Petitioner alleges both exertional and non-exertional limitations due to her medical conditions. Petitioner did not testify that she could not dress/undress herself, bathe and shower herself, use the bathroom; eat by herself, complete chores, prepare meals, go grocery shopping, drive a car, stand, reach, sit and use her hands. Petitioner indicated that she could not squat or bend at her waist without potentially falling down. Petitioner indicated that she could not kneel due to numbness in her feet and that she could not climb very many stairs. Petitioner attributed her inability to remember due to the stroke she suffered.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

The current medical records provided revealed that Petitioner has complained about numbness on several occasions since her stroke in April 2018. However, the objective testing did not reveal any continued issues. Further, Petitioner passed her six-minute walk test. By Petitioner's own testimony, she is able to sit, stand, reach, and complete chores. Petitioner has been diagnosed with COPD and therefore, likely would be unable to perform any employment which required prolonged walking or strenuous amounts of lifting. Thus, based on a thorough review of Petitioner's medical records with respect to Petitioner's exertional limitations, it is found that, Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a). Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was substantial gainful activity (SGA) and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 10 years prior to the application consists of work as a home health aide, cashier/stock clerk, and call center representative. Petitioner's work as a call center representative did not require any prolonged standing or heavy lifting and thus required sedentary physical exertion. Petitioner's work as a cashier/stock clerk required her to stand for a prolonged period and also required her to lift 20 pounds or less, thus requiring light physical exertion. Petitioner's work as a home health aide required persistent walking for most of her shift but did not require any heavy lifting, thus requiring light physical exertion.

Based on the RFC analysis above, Petitioner's exertional RFC limits her to no more than light work activities. As such, Petitioner is capable of performing past relevant work. Petitioner also has mild to moderate limitations in her mental capacity to perform basic work activities. In light of the entire record, it is found that Petitioner is able to perform past relevant work. Accordingly, Petitioner is not disabled at Step 4 and the assessment ends.

It is noted that Petitioner's obesity, and by analogy smoking as discussed below, are the "individual responsibility" types of behaviors reflected in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th Cir 1988) decision. In *Sias*, the Petitioner was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised Petitioner to reduce his body weight. The court said in part:

...The Petitioner's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening situation. The Petitioner admitted to the ALJ he was at least 40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the Petitioner in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *Sias*, supra, p. 481.

In *Sias*, the Petitioner was found not truly disabled because the secretary disregarded the consequences resulting from the Petitioner's unhealthy habits and lifestyles—including the failure to stop smoking. *Awad v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6th Cir 1984).

Statutory disability does not recognize many behaviors as statutorily disabling where behavioral driven treatment will remove or reduce the severity or complaint. Among others, this includes complaints such as drug and alcohol addiction, obesity, and *smoking*. *Issues related to these problems often result from life style choices*. In addition, many heart problems, type 2 diabetes, neuropathy, and high cholesterol have

been significantly correlated with many life style behaviors. In such instances, the symptoms and problem are treatable--obesity is treatable with weight loss, diet and exercise; alcoholism and drug addiction with abstinence; lung/breathing related medical issues are treatable with cessation from smoking. As with the congressional mandate denying statutory disability for alcohol and drug addiction, individual behaviors that drive medically related complaints and symptoms are not considered under the federal social security law as "truly disabling". See *Sias, supra*. In most instances, standard medical protocol is to instruct the individual to stop consuming alcohol, stop the drug addiction, stop smoking, and to lose weight. In fact, 20 CFR 416.930 requires a finding of not disabled where an individual fails to follow the recommended or prescribed treatment program.

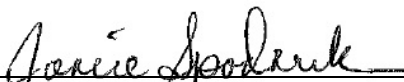
It is also noted in reaching this conclusion that Petitioner complained that her medical records as submitted on her behalf were incorrect and incomplete. Petitioner has the burden. Petitioner failed to supplement her record with any medical records to support her position. Petitioner failed to meet her burden of proof.

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.

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

JS/ml



Janice Spodarek
Administrative Law Judge

NOICE 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

MDHHS-Saginaw-Hearings
BSC2
L. Karadsheh
MOAHR

Petitioner

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