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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

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██████████, MI ██████████

Date Mailed: March 17, 2023
MOAHR Docket No.: 23-000230
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; and 45 CFR 205.10. After due notice, telephone hearing was held on February 22, 2023, from Lansing, Michigan. Petitioner was represented by herself. Karl Hiipakka represented the Department of Health and Human Services (Department).

ISSUE

Did the Department of Health and Human Services (Department) properly determine that Petitioner did not meet the disability standard for State Disability Assistance (SDA)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On ████████ ████████ 2022, the Department received Petitioner's application for State Disability Assistance (SDA) benefits alleging disability.
2. On November 16, 2022, the Medical Review Team (MRT) determined that Petitioner did not meet the disability standard for State Disability Assistance (SDA) because it determined that she is capable of performing other work despite her impairments. Exhibit A, pp 11-12.
3. On November 23, 2022, the Department sent Petitioner notice that it had denied the application for assistance. Exhibit A, p 6.
4. On January 11, 2023, the Department received Petitioner's hearing request, protesting the denial of disability benefits. Exhibit A, p 3.
5. Petitioner testified that she had applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).

6. Petitioner testified that the Social Security Administration (SSA) denied Petitioner's federal Supplemental Security Income (SSI) application and Petitioner reported that an SSI appeal is pending.
7. Petitioner's disability claim is based on injuries to her back and shoulder, bi-polar disorder, and schizophrenia.
8. Petitioner is a [REDACTED] year-old woman whose birth date is [REDACTED] [REDACTED] 1968.
9. Petitioner is [REDACTED]" tall and weighs [REDACTED] pounds.
10. Petitioner is a high school graduate.
11. Petitioner has been attending college classes.
12. Petitioner is able to read and write and does have basic math skills.
13. Petitioner was not engaged in substantial gainful activity at any time relevant to this matter.
14. Petitioner has past relevant work experience as a telemarketer.
15. Petitioner is capable of attending college classes.
16. Petitioner has been diagnosed with schizophrenia, bi-polar disorder, and substance abuse disorders. Exhibit A, p 165.
17. Petitioner is capable of caring for her personal needs and is independently mobile. Exhibit A, p 2318.
18. Petitioner is capable of participation in regular community activities and community activities with verbal direction. Exhibit A, p 2319.
19. Petitioner is capable of communicating with others. Exhibit A, pp 2319-2320.
20. Petitioner was treated in an emergency room on May 13, 2022, for chest pain. Exhibit A, p 374.
21. Petitioner has been diagnosed with lumbosacral radiculopathy, and she has received epidural injections as a treatment. Exhibit A, pp 487-488.
22. Petitioner has been diagnosed with tendinosis of the supraspinatus tendon and osteoarthritis at the acromioclavicular joint. Exhibit A, p 364.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (January 1, 2020), pp 1-44.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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 Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

An individual is disabled for the purposes of establishing eligibility for SDA benefits when the individual meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. 2022 PA 166, Sec. 604.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether Petitioner is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the

ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

Petitioner testified that she has not been employed since 2011 and is not currently engaged in substantial gainful activity, which was not disputed by the Department during the hearing. Therefore, this Administrative Law Judge finds that Petitioner is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 2

Does the client have a severe impairment that has lasted or is expected to last 90 days or more or result in death? If no, the client is not disabled.

At step two, a determination is made whether Petitioner has a medically determinable impairment that is "severe" or a combination of impairments that is "severe." An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921). If Petitioner does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Petitioner has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 90 days, or result in death.

Petitioner is a [REDACTED] year-old woman that is [REDACTED]" tall and weighs [REDACTED] pounds. Petitioner alleges disability due to back injuries, shoulder injuries, bi-polar disorder, and schizophrenia.

The objective medical evidence indicates the following:

Petitioner has been diagnosed with schizophrenia, bi-polar disorder, and substance abuse disorders.

Petitioner has been diagnosed with tendinosis of the supraspinatus tendon and osteoarthritis at the acromioclavicular joint. Petitioner has been diagnosed with lumbosacral radiculopathy and has received epidural injections as a treatment.

The evidence on the record indicates that Petitioner's was been diagnosed with schizophrenia, bi-polar disorder, and suffers from chronic back and shoulder pain, which has resulted in significant impairments to her ability to sustain work related tasks.

This Administrative Law Judge finds a physical impairment that has more than a de minimus effect on Petitioner's ability to perform work activities. Petitioner's impairments have lasted continuously or are expected to last for 90 days. Petitioner is not disqualified from receiving disability benefits at step 2 and the analysis will continue.

STEP 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? If no, the analysis continues to Step 4.

At step three, a determination is made whether Petitioner's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If Petitioner's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), Petitioner is disabled. If it does not, the analysis proceeds to the next step.

Petitioner's impairment failed to meet the listing for schizophrenia spectrum under section 12.03 Schizophrenia spectrum and other psychotic disorders because the objective medical evidence does not demonstrate marked limitations of her ability to understand, remember, or apply information; to interact with others; to concentrate, persist, or maintain pace; or to adapt or manage herself. The objective medical evidence indicates that medical evidence also does not establish that Petitioner's treatments require a highly structure setting or that she has minimal capacity to adapt to changes in her environment. The objective medical evidence supports a finding that Petitioner is capable of caring for her personal needs, participating in regular community activities with verbal direction, and establishing effective communication with others.

Petitioner's impairment failed to meet the listing for bi-polar disorder under section 12.04 Depressive, bipolar, and related disorders because the objective medical evidence does not demonstrate marked limitations of her ability to understand, remember, or apply information; to interact with others; to concentrate, persist, or maintain pace; or to adapt or manage herself. The objective medical evidence indicates that medical evidence also does not establish that Petitioner's treatments require a highly structure setting or that she has minimal capacity to adapt to changes in her environment. The objective medical evidence supports a finding that Petitioner is capable of caring for her personal needs, participating in regular community activities with verbal direction, and establishing effective communication with others.

Petitioner's impairment failed to meet the listing for her back injuries or shoulder injuries under section 1.00 Musculoskeletal Disorders because the objective medical evidence does not demonstrate that Petitioner requires a walker, bilateral canes, bilateral crutches, or a wheeled and seated mobility device. The objective medical evidence does not support a finding that Petitioner has an inability to use one of her arms or use either arm to perform work-related activities involving fine and gross movements.

The medical evidence of Petitioner's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

Can the client do the former work that she performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of Petitioner's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). 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 undersigned must consider all of Petitioner's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether Petitioner has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as Petitioner actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for Petitioner to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If Petitioner has the residual functional capacity to do her past relevant work, Petitioner is not disabled. If Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

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).

To determine the skills required in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. These terms have the same meaning as defined in. 20 CFR 416.968.

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs. 20 CFR 416.968(a).

Semi-skilled work. Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing, or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage, or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks. 20 CFR 416.968(b).

After careful consideration of the entire record, this Administrative Law Judge finds that Petitioner has the residual functional capacity to perform sedentary as defined in 20 CFR 404.1567 and 416.967. Petitioner is capable of taking college classes and her impairments do not prevent her from participation in community activities. Petitioner's education provided for direct entry into more skilled work. The hearing record supports a finding that Petitioner's mental impairments do not prevent her from doing skilled or semiskilled work.

Petitioner has past relevant work experience as a telemarketer.

There is no evidence upon which this Administrative Law Judge could base a finding that Petitioner is unable to perform work substantially similar to work performed in the past.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that Petitioner has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

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? If yes, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether Petitioner is able to do any other work considering her residual functional capacity, age, education, and work experience. If Petitioner is able to do other work, she is not disabled. If Petitioner is not able to do other work and meets the duration requirement, she is disabled.

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).

The objective medical evidence indicates that Petitioner has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically able to do less strenuous tasks if demanded of her. Petitioner's testimony as to her limitations indicates that she should be able to perform sedentary work.

Petitioner was able to answer all the questions at the hearing and was responsive to the questions. Petitioner was oriented to time, person, and place during the hearing.

Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to Petitioner's ability to perform work.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

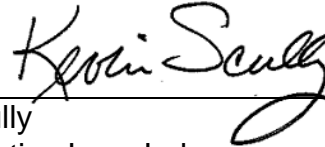
Petitioner was ■ years-old, a person closely approaching advanced age, 50-54, with a high school education and above, and no significant work history. Based on the objective medical evidence of record Petitioner has the residual functional capacity to perform sedentary work. State Disability Assistance (SDA) is denied using Vocational Rule 201.13 as a guideline.

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. Department of Human Services Bridges Eligibility Manual (BEM) 261 (April 1, 2017), pp 1-8. Because Petitioner does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Petitioner is unable to work for a period exceeding 90 days, Petitioner does not meet the disability criteria for State Disability Assistance benefits either.

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 State Disability Assistance (SDA) benefits.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



KS/nr

Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

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

