



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN
DIRECTOR

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Date Mailed: May 31, 2024
MOAHR Docket No.: 24-002141
Agency No.: ██████████
Petitioner: ██████ ██████

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 April 11, 2024, from Lansing, Michigan. ██████ ██████ the Petitioner, appeared on her own behalf. ██████ ██████ RN Care Manager, Northern Lakes Community Mental Health (NLCMH), appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Sherri Polk, Family Independence Manager (FIM).

During the hearing proceeding, the Department’s Hearing Summary packet was admitted as Exhibit A, pp. 1-967 and Petitioner’s additional documentation was admitted as Exhibit 1, pp. 1-25.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit 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 November ██████ 2023, Petitioner applied for SDA. (Exhibit A, p. 1; FIM Testimony)
2. On February █, 2024, the Medical Review Team/Disability Determination Services (MRT/DDS) found Petitioner not disabled. (Exhibit A, pp. 5-6)
3. On February █ 2024, a Notice of Case Action Notice was issued informing Petitioner that SDA was denied. (Exhibit A, pp. 3)
4. On February 20, 2024, the Department received Petitioner’s timely written request for hearing. (Exhibit A, p. 3)

5. Petitioner alleged disabling impairments including: severe depression, severe anxiety, attention deficit disorder, amnesic disorder, agoraphobia, post-traumatic stress disorder (PTSD), skin picking habit, balance problems, hand injury, and hearing impairment. (Exhibit A, p. 13; Petitioner Testimony)
6. At the time of hearing, Petitioner was ■ years old with a July ■ 1966 birth date; was ■ ■ ■ in height; and weighed ■ pounds. (Petitioner Testimony)
7. Petitioner completed the 12th grade, attended some college, and has a work history including bartending. (Exhibit A, p. 16; Petitioner Testimony)
8. 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 to 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: severe depression, severe anxiety, attention deficit disorder, amnesic disorder, agoraphobia, PTSD, skin picking habit, balance problems, hand injury, and hearing impairment. (Exhibit A, p. 13; 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.

August 10, 2023 to August 14, 2023 record from Bay Area urology documented diagnosis and treatment of straining on urination, cystocele with prolapse, urinary frequency, and vaginal atrophy.

(Exhibit A, pp. 612-619)

An August [REDACTED] 2023 letter from Empire Family Care stated that Petitioner has memory impairment as well as severe anxiety and depression confirmed by neuropsychological testing in May 2020. Petitioner has new symptoms of memory decline, intermittent disorientation, poor focus, word retrieval, and writing difficulties. (Exhibit A, pp. 40, 244, 420, 577, 587, and 671). A June [REDACTED] 2023 record from Empire Family Care was included documenting diagnoses and treatment for multiple conditions, including generalized anxiety disorder, agoraphobia, dental infection, urinary frequency, muscle cramps, crushing injury of hand, bilateral hand pain, and secondary traumatic arthritis. (Exhibit A, pp. 421-423).

An August [REDACTED] 2023 record from Empire Family Care documented diagnoses and treatment for multiple conditions, including severe anxiety, severe recurrent major depression, memory impairment, word finding difficulty, and foot sprain. Petitioner was referred for neuropsychology testing to evaluate for progressive condition and an MRI of the brain was ordered. (Exhibit A, pp. 432-434, 436-512, and 967).

An August [REDACTED] 2023 record from NLCMH documents diagnosis and treatment of multiple conditions, including severe recurrent major depressive disorder and generalized anxiety disorder. (Exhibit A, pp. 241-243, 571-573, 581-583, and 939-941).

An August [REDACTED] 2023 record from Empire Family Care indicated Petitioner suffered a remote crushing injury of her right hand and as referred to a hand surgery specialist. (Exhibit A, p. 65).

A September [REDACTED] 2023 MRI of the brain was advanced for Petitioner's age with chronic white matter changes characteristic of microvascular ischemia. (Exhibit A, pp. 42-43, 249, 569-570, 579-580, 645-646, 945, and 947).

A September [REDACTED] 2023 letter from Petitioner's primary care provider addressed the findings from the recent brain MRI. Specifically, that microvascular ischemia is sometimes associated with dementia, difficulty focusing, and mild cognitive impairment. (Exhibit A, p. 246, 250-251, 576, 586, 922, and 946).

An October [REDACTED] 2023 letter from Up North Psychology indicated Petitioner started treatment for depression and anxiety. An October [REDACTED] 2023 Brief Mental Status Exam was included and noted Petitioner's: attitude was cooperative but intense; speech was loud; mood was anxious and elevated, and Petitioner expressed intense anxiety over medical issues; thought process was disorganized; and memory/concentration was distractible/inattentive with Petitioner repeating herself multiple times. (Exhibit A, pp. 41 and 566-567).

On October ■ 2023, Petitioner completed a patient health questionnaire regarding her mental health. (Exhibit A, pp. 557-558).

A December ■ 2023, record from Empire Family Care documented that Petitioner was seen for foot and ankle pain. Ongoing problems included attention deficit disorder, crushing injury of hand, depression with anxiety, endometriosis, memory impairment, severe anxiety, severe recurrent major depression, straining to void, vaginal atrophy, and word finding difficulty. (Exhibit A, pp. 247-248, 924, and 943-944).

On January ■ 2024, Petitioner attended a consultative psychological evaluation. Diagnoses were severe recurrent major depressive disorder and generalized anxiety disorder. It was noted that Petitioner's ability to maintain concentration seemed somewhat impaired. As a result of her emotional state, Petitioner may often be distracted and her effectiveness and performance will likely be limited and slowed. (Exhibit A, pp. 253-258)

A March ■ 2024 record from Empire Family Care documented diagnoses of crushing injury of hand, bilateral hearing loss, severe anxiety, agoraphobia, severe recurrent major depression, skin picking habit, amnesic disorder, and PTSD. (Exhibit 1, pp. 3-6). A Mental Impairment Questionnaire was completed by the FPNC. Diagnoses were severe anxiety, agoraphobia, severe recurrent major depression, skin picking habit, amnesic disorder, and PTSD. Petitioner's signs and symptoms were noted. Petitioner was rated as having moderate limitations with understanding information and applying information. Petitioner was rated as having marked limitations with remembering information, interacting with others, concentrating, persisting, maintaining pace, adapting in the workplace, and managing oneself in the workplace. Petitioner's condition is serious and persistent, she relies on ongoing medical treatment, and has only marginal adjustment. It was anticipated that Petitioner's impairments would cause her to be absent from work more than 4 days per month. (Exhibit 1, pp. 7-10). A Medical Source Statement of Ability to do Work-Related Activities was completed by the FPNC. Diagnoses were crushing injury of right hand, bilateral hearing impairment, and severe anxiety. Petitioner would be able to lift/carry 21-50 pounds occasionally, sit/stand/walk 8 hours in an 8 hour work day, and would never be able to do handling/fingering with her right hand. Petitioner could never be exposed to unprotected heights, moving mechanical parts, operating a motor vehicle, extreme cold, or vibrations. Petitioner could occasionally be exposed to humidity/wetness, dust/odors/fumes/pulmonary irritants, and extreme heat. Petitioner's pain or other symptoms would be severe enough to interfere with attention and concentration frequently and she would be likely to be off task 25% or more. Petitioner would be likely to be absent more than 4 days per month. (Exhibit 1, pp. 20-25).

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: remote crushing injury of hand, secondary traumatic arthritis, bilateral hearing loss, straining on urination, cystocele with prolapse, urinary frequency, vaginal atrophy, severe anxiety, severe recurrent major depression, agoraphobia, skin picking habit, amnesic disorder, memory impairment, word finding difficulty, and PTSD. Based on the objective medical evidence, considered listings included: 12.04 depressive, bipolar, and related disorders and 12.06 anxiety and obsessive-compulsive disorders. Based on the Mental Impairment Questionnaire, Petitioner meets the A, B, and C criteria for these listings. (Exhibit 1, pp. 20-25). The treating provider's opinion was consistent with the other evidence. Overall, the medical evidence was sufficient to meet or equal the intent and severity requirements of these listings. Accordingly, Petitioner can be found disabled, at Step 3.

In this case, the Petitioner is found disabled for purposes of SDA benefits, as the objective medical evidence does 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 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 disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

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

1. Initiate a review of the application dated November █ 2023, for SDA, if not done previously, to determine Petitioner's non-medical eligibility. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for November 2024.

CL/dm



Colleen Lack
Administrative Law Judge

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

Via-Electronic Mail :

DHHS
Jamie Dent
Grand Traverse/Leelanau County
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**MDHHS-GrandTraverse-
Hearings@michigan.gov**

KaradshehL

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Via-First Class Mail :

Petitioner

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