



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: June 7, 2024
MOAHR Docket No.: 24-003729
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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; 42 CFR 438.400 to 438.424; and 45 CFR 205.10. After due notice, a telephone hearing was held via telephone conference on May 9, 2024. Petitioner appeared and represented herself. The Michigan Department of Health and Human Services (MDHHS) was represented by Hannah Czechowski, Hearing Facilitator. During the hearing, MDHHS's 91-page hearing packet was admitted into evidence as Exhibit A.

ISSUE

Did MDHHS properly determine 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 [REDACTED] 2023, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On December 20, 2023, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. (Exhibit A, pp. 76-77)
3. On March 21, 2023, MDHHS sent Petitioner a Notice of Case Action denying the application based on DDS's finding of no disability. (Exhibit A, pp. 81-84)
4. On April 4, 2024, MDHHS received Petitioner's timely written request for hearing. (Exhibit A, pp. 85-87)
5. Petitioner alleged disabling impairment due to lupus, fibromyalgia, arthritis, gout, seizure disorder, asthma, hypertension, migraines, depression, and anxiety.

6. No medical evidence was submitted by the Department.
7. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED] birth date; she is [REDACTED] in height and weighs about [REDACTED] pounds.
8. Petitioner finished 11th grade and completed a GED.
9. At the time of application, Petitioner was not employed.
10. Petitioner last worked as a certified nurse assistant in 2016.
11. Petitioner has a pending disability claim with the Social Security Administration.
12. Petitioner's treating Nurse Practitioner Roxanne Klenk completed a Medical Needs form dated March 7, 2024, that opined that Petitioner needed assistance with eating, toileting, bathing, grooming, dressing, transferring, mobility, taking medications, meal preparation, shopping, laundry, and housework. Ms. Klenk also stated in the form that Petitioner cannot perform her usual occupation or any job. Ms. Klenk also stated "needs assistance 7 days a week for maximum hours available. She has needed this since January 1, 2024." (Ex. A, p. 40)
13. The Department representative was asked at hearing to obtain the medical records reviewed by the Medical Review Team in making their determination and provide the records. The Department Representative did not provide the medical records and gave the following explanation: "I was asked for the medical records that were provided to MRT for the SDA determination. After speaking with the supervisor, it was determined that we do not gather and send the medical records to MRT anymore. MRT gathers the documents and has their doctors review them. Then they make the determination based on the documents they gathered and reviewed. We are not provided the medical documents. We send the DHS-49F Medical Needs and the Authorization to Release Health Information." (Ex. B)
14. Petitioner testified to the following physical limitations:
 - i. Sitting: 35-45 minutes
 - ii. Standing: 10 minutes
 - iii. Walking: 100-200 feet
 - iv. Bend/stoop: some difficulty
 - v. Lifting: 5-10 lbs.
 - vi. Grip/grasp: no limitations

CONCLUSIONS OF LAW

Department policies are contained in Michigan Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. MDHHS administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.*, and Mich Admin Code, R 400.3151 to R 400.3180.

EVIDENCE

Client Access to the Case Record

All Programs

Clients and AHRs have the right to review the case record and obtain copies of needed documents and materials relevant to the hearing. Send a copy of the DHS-3050 and all documents and records to be used by the department at the hearing to the client and AHR. DHS-4772, Hearing Summary Letter, may be used for this purpose. BAM 600

Presentation of the Case

All Programs

The local office and client or AHR will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. In most cases, the client or AHR and local office staff will be together in the hearing room and will speak into a speaker telephone. The ALJ will be on the other end of the phone line. Following the opening statement(s), if any, the ALJ directs the MDHHS case presenter to explain the position of the local office. The hearing summary, or highlights of it, may be read into the record at this time. The hearing summary may be used as a guide in presenting the evidence, witnesses and exhibits that support the department's position. Always include the following in planning the case presentation:

- An explanation of the action(s) taken.
- A summary of the policy or laws used to determine that the action taken was correct.
- Any clarifications by central office staff of the policy or laws used.
- The facts which led to the conclusion that the policy is relevant to the disputed case action.
- The MDHHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, **establish all pertinent facts**, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600 (emphasis added)

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income

(SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, 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).

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 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, are insufficient to establish disability. 20 CFR 416.927(d).

BAM 600 requires that the client have an adequate opportunity to "establish all pertinent facts". Petitioner was not given adequate opportunity to establish that there are medical records that support the assessment of her treating nurse practitioner and her testimony presented at hearing regarding her physical limitations and inability to perform full time work. Apparently, the Department had new systems in place to go about obtaining the medical records reviewed by and relied upon by the medical review team but the workers who prepared the hearing packet and who presented the case at hearing did not know how to go about that. Therefore, the Department did not meet the requirements outlined in BAM 600 requiring that applicants be given adequate opportunity to establish all pertinent facts and the Department decision to deny Petitioner's application for SDA must be reversed.

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 that the Department did not

meet its obligations under BAM 600 by failing to give Petitioner adequate opportunity to establish all pertinent facts.

Accordingly, MDHHS's determination is **REVERSED**.

MDHHS 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. Reregister and process Petitioner's [REDACTED] 2023, SDA application;
2. Prepare a hearing exhibit packet that includes all medical records and any other documents reviewed by the Medical Review Team to include all documents referred to on page 43 and page 80 of the hearing packet;
3. Provide the updated hearing exhibit packet to the Petitioner and MOAHR.
4. Submit an updated Hearing Summary and request for hearing to MOAHR.

AM/cc



Aaron McClintic

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 :

Interested Parties

MDHHS-Genesee-Clio-Hearings
BSC2-HearingDecisions
L. Karadsheh
MOAHR

Via-First Class Mail :

Petitioner

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