

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-017432
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: December 07, 2015
County: Macomb-District 12
(Mt Clemens)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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, an in-person hearing was held on December 7, 2015, from Mt. Clemens, Michigan. Petitioner appeared and represented herself. The Department was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department 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], Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On [REDACTED], the Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 2-9).
3. On [REDACTED], the Department sent Petitioner a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 75-78).
4. On [REDACTED], the Department received Petitioner's timely written request for hearing.

5. In connection with her application, Petitioner alleged disabling impairment due to right ankle osteoarthritis and dislocation rotation.
6. On the date of the hearing, Petitioner was 41 years old with a [REDACTED], birth date; she is 5'5" in height and weighs about 270 pounds.
7. Petitioner graduated from high school and has some college credits.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as a caregiver and cashier.
10. Petitioner has a pending disability claim with the Social Security Administration.

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 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 disabled person is eligible for SDA. BEM 261 (July 2015), 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).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner has not engaged in SGA activity during the period for which assistance might be available. Therefore, Petitioner is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, including (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence

shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments.

In the present case, Petitioner alleges disabling impairment due to right ankle osteoarthritis and dislocation rotation resulting from a 2012 incident where she was hit by a car while bicycling. The medical evidence presented at the hearing was reviewed and is summarized below.

On [REDACTED], Petitioner was examined by a doctor at the Department's request. Petitioner informed the doctor that she had been diagnosed with high blood pressure a year earlier but denied any chest pain, heart attack, stroke, shortness of breath, orthopnea, or paroxysmal nocturnal dyspnea. She also reported she had been advised two months earlier that her sugar was very high and was started on metformin and glipizide. She told the doctor that, although her blood sugar was as high as 160, when she last checked three days earlier it was 89 and her excessive thirst and frequency of urination had gone away. Petitioner reported that she had surgery to correct the ankle dislocation in March 2013 and a second surgery in May 2013 to remove the pins. The doctor noted that Petitioner wore a right ankle brace, and the ankle was swollen and tender. Petitioner used a walker. She told the doctor that she used her walker to walk long distances, her ankle bothered her with prolonged standing, and pain medication made the pain bearable. The doctor concluded that Petitioner's blood pressure and diabetes was well-controlled but her range of movement was diminished because of her right ankle, she could not walk on her toes or heels, and she used a brace and a walker for support. He indicated that she had no range of motion limitations other than of her right ankle. He found no limitations in her current abilities other than she could not squat and rise from sitting or heel-shin touch and could climb stairs with difficulty. The doctor also noted that Petitioner was obese (Exhibit A, pp. 10-17).

On [REDACTED], Petitioner's primary care physician completed a medical examination report, DHS-49, listing Petitioner's diagnoses as right ankle osteoarthritis, obesity, uncontrolled diabetes, and hypertension. The doctor noted that Petitioner was morbidly obese and had a right ankle deformity. The doctor concluded that Petitioner's condition was deteriorating and unstable and she had standing and walking restrictions due to her right ankle osteoarthritis. He did not identify any other limitations. He also indicated that Petitioner was depressed (Exhibit A, pp. 20-22).

The medical record included notes from Petitioner's primary care physician. Notes from the [REDACTED] visit indicated that Petitioner was ambulating normally. She had good judgment, normal mood, and normal recent and remote memory. At 282 pounds and 5'3", she had a body mass index (BMI) of 50, making her morbidly obese. She had a fractured ankle for which she was prescribed Percocet and osteoarthritis of the ankle for which she was prescribed Keflex (Exhibit A, pp. 55-57). The [REDACTED] and

█ notes also indicate rupture of ankle ligament (Exhibit A, pp. 59-61). The medical file also showed that from December 2014 through █, Petitioner participated in weekly physical therapy (Exhibit A, pp. 50-54).

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 Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual'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 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint), 1.03 (reconstructive surgery or surgical arthrodesis of a major weight-bearing joint), 4.00 (cardiovascular diseases), and 9.00 (endocrine disorders) were considered. Because Petitioner's blood pressure and diabetes is medically controlled, the severity of these impairments does not meet or equal any listings in 4.00 or 9.00. Because there was no medically acceptable imaging of joint space narrowing, bony destruction or ankyloses of the ankle, the evidence does not support a listing under 1.02. While Petitioner testified that she had had surgery to repair her ankle, there was no evidence of reconstructive surgery or surgical arthrodesis to support a listing under 1.03.

Because 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, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s)

provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 20 CFR 416.967(a). Light work involves (i) lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds, or (ii) a good deal of walking or standing, or (iii) sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).

In this case, Petitioner testified that she walked with a doctor-prescribed walker that included a seat so she could rest while walking, and she appeared at the hearing with her walker. She always wore an ankle brace. She testified that she could stand up to five minutes, as long as she put her weight on her left leg. She could sit for a half-hour and would then need to put her leg up, which she did at the hearing. She had difficulty with stairs. She could lift up to 15 pounds and had no problems using her hands to grip and grasp. She took medication that helped reduce her pain and made it easier to walk but her medication made her sleepy and groggy. She had had physical therapy in the past which had helped a bit and had been advised that she would eventually need ankle fusion surgery. She was depressed over her circumstances but was not seeing a therapist.

She testified that she lived alone. She bathed herself but used a shower chair and took about 45 minutes. She could dress herself. She did her household chores while seated and had to take frequent breaks resulting in tasks taking much longer than they used to prior to her injury. She testified that she could drive and make short shopping trips although she would need someone with her to help her when she needed to make large purchases.

The medical evidence presented supported Petitioner's testimony that she had limitations on her ability to stand and walk due to her ankle injury. The evidence also showed that Petitioner was morbidly obese, which would support her exertional limitations. With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a). Her depression concerning her condition and the side effects of her medication would limit her to performing simple, unskilled work. Petitioner's RFC is considered at both steps four and five. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

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 within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). 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 15 years prior to the application consists of work as a caregiver, employment involving very heavy work, and cashier, employment involving light work. As discussed above, Petitioner's exertional RFC is limited to performing no more than sedentary work activities. Therefore, Petitioner is unable to perform past

relevant work based on her exertional RFC. Accordingly, Petitioner cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Petitioner's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). When a person has a combination of exertional and nonexertional limitations or restrictions, unless there is a rule that directs a conclusion that the individual is disabled based upon strength limitations, the rules pertaining to the strength limitations provide only a framework to guide the disability determination. 20 CFR 416.969a(d).

In this case, at the time of application and hearing, Petitioner was 41 years old and, thus, considered to be a younger individual (age 18-44) for purposes of Appendix 2. She is a high school graduate with a history of unskilled employment. As discussed above, she maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities and is limited to simple, unskilled work activities. In this case, the Medical-Vocational Guidelines, 201.27, result in a finding that Petitioner is not disabled based on exertional limitations. Her mental RFC does not affect her ability to perform the non-exertional aspects of simple, unskilled work-related activities.

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.

DECISION AND ORDER

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



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **12/23/2015**

Date Mailed: **12/23/2015**

ACE / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

