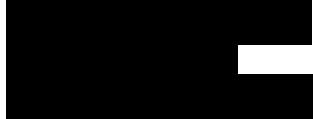


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:



MAHS Reg. No.: 15-018372
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: December 03, 2015
County: WAYNE-DISTRICT 17
(GREENFIELD/JOY)

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, telephone hearing was held on December 3, 2015, from Detroit, Michigan. Petitioner participated via 3-way telephone conference 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. 7-13).
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. 62-65).
4. On [REDACTED], the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 2-5).

5. Petitioner alleged disabling impairment due to arthritis, chronic pain, hypertension, limited left arm mobility, and post-traumatic stress disorder (PTSD).
6. On the date of the hearing, Petitioner was 47 years old with an [REDACTED] birth date; she is 5'3" in height and weighs about 139 pounds.
7. Petitioner graduated from high school.
8. Petitioner was last employed in June 2014.
9. Petitioner has an employment history of work as a retail sales associate/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).

To determine whether an individual is disabled for SSI purposes, the trier of fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in substantial gainful activity (SGA);
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and

(5) whether the individual 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, 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

As outlined above, 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 of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and 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 regardless of age, education and work experience. 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. 20 CFR 416.921(b). Examples include (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).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., 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. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In the present case, Petitioner alleges disabling arthritis, chronic pain, hypertension, limited left arm mobility, and PTSD. 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. The doctor noted that Petitioner's blood pressure was 130/86 at examination and she was on medication to control her blood pressure. Petitioner informed the doctor that she had arthritis of the knees and chronic pain following a June 2014 incident when she was shot three times in the chest and forearm. The doctor noted that Petitioner had her left arm in a sling and she concluded that Petitioner had limited use of her left upper extremity secondary to multiple gunshot wounds. The doctor noted the following limitations in range of motion: lumbar spine flexion was 80 degrees (normal is 0 to 90), elbow flexion was 0 to 140 degrees (normal is 0 to 150), elbow extension was less than 0 degrees (normal is 0), forward flexion of the both hips was 90 degrees (normal is 0 to 100), the left wrist dorsiflexion was 40 degrees (normal is 0 to 60), and the left palmar flexion was 40 degrees (normal is 0 to 60). Elbow supination and pronation was not evaluated, and shoulder motions were not assessed because of Petitioner's refusal. The doctor noted that Petitioner could perform basic activities but had complaints of difficulty in carrying, pushing, pulling, buttoning clothes, tying shoes, dressing/undressing, dialing the telephone, opening the door making a fist, picking up a coin, and picking up a pencil. Petitioner's right Jamar grip strength was 40 pounds, but the doctor noted that, because Petitioner had an arm cast on her left arm, she could not perform a Jamar grip test on the left. (Exhibit A, pp. 15-23.)

On [REDACTED], Petitioner also underwent a psychological examination at the Department's request. The psychologist concluded that Petitioner suffered from depression secondary to her general medical conditions and her prognosis was fair. He

also concluded that, in light of some difficulties she had with calculation tasks, she would be expected to have some problems in managing her own benefit funds. (Exhibit A, pp. 24-27.)

On [REDACTED], Petitioner's primary care physician completed a medical examination report, DHS-49, listing Petitioner's medical history neuropathy of the left arm, left shoulder surgery, gunshot wound to the left shoulder in June 2014, and vascular and neurological surgery to the left shoulder. The doctor noted in her neurological and musculoskeletal examination that Petitioner had significantly decreased range of motion of the left shoulder secondary to her gunshot wound and chronic pain in her left upper extremity. The doctor concluded that Petitioner's condition was stable and identified the following limitations: (i) she could not lift and carry any weight; (ii) she could stand and/or walk less than 2 hours in an 8-hour workday; (iii) she could sit less than 6 hours in an 8-hour workday; and (v) she could use only the right arm or hand to grasp, reach, push/pull, and fine manipulate. She also noted that Petitioner needed assistance with groceries, laundry, cooking, cleaning, toiletry, bathing, and grooming. Although the DHS-49 identifies mental limitations, the reference to "P.T.S.D." is in a different handwriting than the remainder of the form. (Exhibit A, pp. 30-32.)

An [REDACTED] neck ultrasound showed normal thyroid lobes, subcentimeter nonspecific nodules without concerning sonographic features, and a large isthmus nodule leading to a recommendation of a fine needle aspiration (Exhibit A, pp. 34-35).

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.

In light of Petitioner's medical history, listings 1.02 (major dysfunction of a joint), 1.08 (soft tissue injury), 4.00 (heart), 11.00 (neurological disorders), 12.06 (anxiety-related disorders), and 14.09 (inflammatory arthritis) 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. Because Petitioner's impairments are insufficient to meet, or to equal, the severity of a listing, 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 Step 4, 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 the limitations and restrictions imposed by the individual's impairment(s) 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). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

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.

Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, [an individual] must have the ability to do substantially all of these activities. If someone can do light work, ... he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, ... he or she can also do sedentary and light work.

Heavy work.

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

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. If someone can do very heavy work, ... he or she can also do heavy, medium, light, and sedentary work.

20 CFR 416.967.

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, because of her chronic pain and arthritis, she could not walk more than the length of two houses, use her left hand to lift anything, lift a gallon of milk with her right hand, or sit longer than 3 hours before experiencing pain. She lived on her own but relied on a family member to assist her with her grooming, dressing, and household chores. She also testified that she suffered from PTSD stemming from the June 2014 incident when she was shot three times, with anxiety triggered by fireworks, night time or going out. Her PTSD, as well as the medication she took for her neuropathy, affected her memory.

Petitioner's medical record supports Petitioner's testimony that she has significant limitations in her ability to use her left arm and chronic pain in her left upper extremity. The consulting doctor noted that she had limitations in the use of her left arm and hand. As a result, she found that Petitioner could carry, push, pull, button clothes, tie shoes, dress/undress, dial a telephone, open door, make a fist, pick up coins, pick up a pencil, and write with difficulty due to her issues with her left arm. Petitioner's doctor identified

more significant limitations, finding that Petitioner could not lift any weight, could stand/walk less than two hours in an 8-hour day, and could sit for less than six hours in an 8-hour day and that she needed assistance with groceries, laundry, cooking, cleaning, toiletry, bathing and grooming.

While Petitioner testified that she had PTSD and the DHS-49 completed by her primary care physician has all the mental limitations listed marked off and a handwritten notation of "P.T.S.D.," the hand-written notation is in a different handwriting and is next to an "N/A" notation, calling to question the authenticity of the mental limitations identified. However, the doctor who examined Petitioner for the consultative psychological examination concluded that Petitioner suffered from depression secondary to her general medical conditions and her prognosis was fair.

With respect to Petitioner's exertional limitations, it is found based on a review of the entire record, including Petitioner's testimony and her doctor's medical opinion that Petitioner could not care for her own personal grooming and care and the significant standing, sitting, and weight limitations identified by her doctor, that Petitioner maintains the physical capacity to perform less than sedentary work as defined by 20 CFR 416.967(a). Based on the medical record presented, Petitioner has mild limitations on her mental ability to perform basic work activities. 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 retail sales associate and "customer experienced coordinator," jobs that Petitioner described requiring her to stand most of the day and to lift between 25 and 50 pounds on a daily basis. The work history questionnaire shows that Petitioner's job duties involved cashier duties. Based on the type of duties required and the weight she was required to lift at these jobs, Petitioner's past employment involved medium work. As determined in the RFC analysis above, Petitioner is limited to less than sedentary work activities and has mild limitations in her mental capacity to perform basic work activities. In light of the entire record and Petitioner's RFC, including her mental limitations, it is found that Petitioner is unable to perform past relevant work. 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). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

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, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was 46 years old at application and 47 years old at hearing and, thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. She is a high school graduate with a history of unskilled work experience. As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform less than sedentary work activities and has mild limitations on her mental ability to perform work activities. The Medical-Vocational Guidelines, Appendix 2 do not support a finding that Petitioner is not disabled based on her exertional limitations, and the Department has failed to counter with evidence of significant numbers of jobs in the national economy which Petitioner could perform despite her limitations. See SSR 96-9p (providing that, where there is more than a slight impact on the individual's ability to perform the full range of sedentary work, there must be examples of occupations the individual can do with a statement of the incident of such work in the region where the individual resides). Petitioner's mental RFC further limits her ability to perform basic work activities. In this case, the Department has failed to establish that, based on her RFC and age, education, and work experience, Petitioner can adjust to other work. Therefore, Petitioner is disabled at Step 5.

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 BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reregister and process Petitioner's [REDACTED] SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;
3. Review Petitioner's continued eligibility in April 2016.



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

Date Signed: **12/29/2015**

Date Mailed: **12/29/2015**

ACE / hw

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:

