

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

IN THE MATTER OF:



MAHS Reg. No.: 15-018374
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: December 21, 2015
County: Wayne (41)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on December 21, 2015, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner is not a disabled individual.

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 December 1, 2014, Petitioner applied for SDA benefits (see Exhibits 51-55).
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On September 1, 2015, the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibits 43-50).
4. On September 2, 2015, MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action (Exhibit 6) informing Petitioner of the denial.
5. On September 6, 2015, Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibits 2-5).

6. Petitioner has not earned substantial gainful activity since before the first month of benefits sought.
7. Petitioner alleged disability based on restrictions related to paranoid schizophrenia, diabetes, and carpal-tunnel syndrome (CTS).

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Prior to a substantive analysis, it should be noted that Petitioner noted special arrangements in order to participate in the hearing; specifically, "ride assistance" was noted. Petitioner testified that she did not need assistance with transportation. The hearing was conducted with no further concern for Petitioner's transportation to or from the hearing.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1. A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
 - resides in a qualified Special Living Arrangement facility, or
 - is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
 - is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*

There was no evidence that any of the above circumstances apply to Petitioner. Accordingly, Petitioner may not be considered for SDA eligibility without undergoing a medical review process (see BAM 815) which determines whether Petitioner is a disabled individual. *Id.*, p. 3.

Generally, state agencies such as MDHHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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. SDA differs in that a 90 day period is required to establish disability.

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id.*, p. 9. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute SGA. *Id.*

The person claiming a physical or mental disability has the burden 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2015 monthly income limit considered SGA for non-blind individuals is \$1,090.

Petitioner credibly denied performing any employment since the date of the SDA application; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA and has not performed SGA since the date of application. Accordingly, the disability analysis may proceed to Step 2.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon Petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Petitioner's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented medical documentation.

A referral to occupational therapy (Exhibit 17) dated October 24, 2013, was presented. A diagnosis of fibromyalgia was noted.

A Medical Statement (Exhibit 13) dated July 29, 2014, was presented. The statement was completed by a physician with an unstated history of treating Petitioner. It was stated that Petitioner had limitations beginning May 2014. It was noted Petitioner could not type or perform tasks in the full extended wrist position. It was noted Petitioner could not perform former employment of a typist or call center employee. An ending date of limitation was noted to be September 2014.

An Electromyography Report (Exhibits 15-16) dated July 24, 2014, was presented. It was noted Petitioner complained of bilateral wrist pain (right more than left) radiating through arm to the shoulder. A conclusion of no electrodiagnostic evidence of mononeuropathy, plexopathy, radiculopathy, peripheral neuropathy, or inflammatory myopathy was noted. It was noted the findings did not correspond to Petitioner's complaints.

A Psychiatric Evaluation (Exhibits 8-11) dated November 26, 2014, was presented. The evaluation was completed by a psychiatrist, presumed to have no history of treating Petitioner. It was noted that Petitioner reported she was a paranoid schizophrenic who was harassed by other tenants in her building. Reported symptoms included lack of motivation, anhedonia, racing thoughts, poor ADL completion, stress difficulties, adapting difficulties, poor sleep, and poor eating. A history of unreported sexual and physical abuse by family members was noted. Petitioner also reported that she overhears people telling her that they will kill her. Noted observations included poor hygiene, evasive and avoidant behavior, poor eye contact, unremarkable motor status, blunted affect, anxious mood, paranoid ideation, non-commanding hallucinations, unremarkable memory, poor insight, and poor judgment. Axis I diagnoses of recurrent and severe major depressive disorder and schizophrenia (paranoid type) were noted. Petitioner's GAF was noted to be 48.

Physician office visit notes (Exhibits A9-A21) dated December 15, 2014, were presented. It was noted that Petitioner complained of a sore throat, ongoing for one month. A 20 pound weight loss, related to swallowing difficulties, was noted.

A radiology report (Exhibit A8) dated January 22, 2015, was presented. An impression of no evidence of mass in Petitioner's esophagus was noted.

An internal medicine examination report (Exhibits 34-42) dated May 19, 2015, was presented. It should be noted that the first two pages of the report were not presented. The report was noted as completed by a consultative physician. Tandem walk, toe walk, and heel walk were noted as slowly performed. Reduced ranges of motion were noted in Petitioner's lumbar flexion (70°- normal 90°) and bilateral hip forward flexion (50°- normal 100°). It was noted that Petitioner was able to perform all 23 listed work-related activities which included sitting, standing, lifting, carrying, stooping, bending, and reaching, though most were performed with pain. Petitioner was noted to be capable of performing and recovering from 80% of bending and 70% of squatting. An impression of no acute osseous injury was noted following multiple views of Petitioner's hands. Impressions of chronic back pain, asthma, HTN, non-insulin dependent diabetes, and CTS, and mental illness were noted.

An Operative Report (Exhibit A22) dated September 3, 2015, was presented. It was noted Petitioner underwent an average risk-screening colonoscopy. A post-operative diagnosis of a sigmoid polyp was noted.

Physician office visit notes (Exhibits A1-A7) dated October 1, 2015, were presented. Present illnesses of diabetes, schizophrenia, and mild (as described by Petitioner) anemia were noted. An assessment of DM Type 2 without complications was noted. It was noted that anemia was likely caused by a low iron level; it was noted Petitioner responded to iron replacement treatment. It was noted Petitioner reported that drug dealers were sending rays through her foot and that the drug dealers were trying to kill her. Petitioner reported her foot burned because of these rays. It was noted Petitioner

was psychotic that day. It was noted Petitioner's hallucinations were not well-controlled by medications. Active medications included Flexeril, Naprosyn, Lisinopril, and Metformin.

A biopsychosocial assessment (Exhibits A31-A42) dated November 11, 2015, was presented. Reported symptoms included sadness, loss of pleasure in activities, nervousness, worrying, feeling hyper, racing thoughts, and paranoia.

A Psychiatric Evaluation (Exhibits A27-A30) dated November 13, 2015, was presented. The evaluation was noted to be an annual review and was completed by a nurse practitioner from Petitioner's treating mental health agency. It was noted Petitioner reported ongoing problems with her neighbors. Petitioner testified she was worried a neighbor had a key to Petitioner's apartment. Examination notes included flat affect, poor eye contact, slumped posture, unremarkable appearance, anxious mood, withdrawn behavior, fair insight, fair judgment, unremarkable thought process, unremarkable perception, and preoccupied cognition. An Axis I diagnosis of schizophrenia (paranoid type) was noted. Petitioner's problems included the following: economic, support group, social environment, personality/behavior issues.

Treatment plan meeting notes (Exhibits A23-A26) dated November 18, 2015, were presented. The report was signed by someone with credentials of "SST" (these credentials are not known). It was noted Petitioner wanted to find employment and a new residence. Plan of ongoing therapy, psychiatric, and supportive services were noted. A GAF of 48 was noted. A plan of 1-4 times/month of psychiatric meetings was noted.

A list of medications from Petitioner's treating mental health agency (Exhibits A43-A44) dated December 16, 2015, was presented. It was noted the agency prescribed Abilify and Benztropine.

Petitioner testified she has numbness in her right leg and knee. Petitioner testified that she is unsure of the cause. Petitioner testimony implied that the pain restricted her walking to less than 2 blocks. Petitioner presented no treatment records for right leg pain. Due to insufficient evidence, a severe impairment was not established for leg and/or knee pain.

Petitioner testified she was diagnosed with fibromyalgia. Fibromyalgia is understood to be a condition which could cause inexplicable body pain. A fibromyalgia diagnosis from 2013 was documented. Fibromyalgia treatment and/or a diagnosis since 2013 were not verified. Petitioner testimony conceded she is not currently treated for fibromyalgia. An outdated and isolated diagnosis, without further treatment, is insufficient evidence to infer a severe impairment for fibromyalgia.

Some treatment for diabetes and a sore throat was verified. The treatment was not established to relate to any exertional impairments.

Petitioner alleged she is unable to return to perform her previous employment of a call center employee because of CTS. Some treatment for CTS was established, including a temporary restriction from performing previous employment. Neurological and radiology were not supportive of ongoing restrictions. Again, presented evidence was insufficient to infer ongoing exertional restrictions.

Petitioner's most compelling testimony concerned paranoid schizophrenia. Petitioner spent much of the hearing expressing concerns for her safety. Petitioner's concerns appeared to be very sincere. Petitioner insisted on showing videos of moving lights which she interpreted as proof that her neighbors were intimidating her. The diagnosis and treatment history was highly suggestive of concentration and social interaction difficulties.

It is found that Petitioner established significant impairment to basic work activities for a period longer than 90 days. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

The third step of the sequential analysis requires determining whether the Petitioner's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a Petitioner's impairments are listed and deemed to meet the durational requirement, then the Petitioner is deemed disabled. If the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

Petitioner alleged disability, in part, based on paranoid schizophrenia disorder. The disorder is covered by schizoaffective disorders and reads as follows

12.03 Schizophrenic, paranoid and other psychotic disorders:

Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect; OR
4. Emotional withdrawal and/or isolation;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration;
- OR
- C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
1. Repeated episodes of decompensation, each of extended duration; or
 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Starting with Part A, multiple physicians documented Petitioner's paranoia. A physician treating Petitioner for diabetes noted she was psychotic at her appointment in October 2015. Petitioner psychiatrist noted she had recurring paranoia concerning her neighbors. The same impressions were provided by a nurse practitioner at Petitioner's psychiatric review. The evidence was highly indicative of delusions sufficient to meet part A of the above listing.

Part B of the listing considers the severity of a petitioner's symptoms. Physician statements of restrictions were not presented. Restrictions can be inferred based on presented documents.

A GAF of 48 was noted at Petitioner's 2014 and 2015 psychiatric evaluation. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." The GAF was consistent with Petitioner's symptoms and is indicative of marked restrictions.

It was odd that Petitioner's functioning level remained stagnant despite psychiatric and therapy appointments. Ongoing treatment records would have been interesting to see, though none were presented. Part of Petitioner's lack of progress could be attributed to Petitioner's persuasiveness in alleging that her neighbors are threatening her. During the hearing, it was difficult to discern if Petitioner's paranoia was justified or imagined.

Another problem may be the failure to address Petitioner's past history of abuse victimization which was referenced in records, though it was not indicated to be discussed with Petitioner.

One of the factors in determining whether the evidence was or was not sufficient was Petitioner's credibility. She appeared to be sincere about her concerns. She also has a 13 year work history (2001-2014) with an employer and she stated that she has searched for employment. Petitioner's hearing appearance was not indicative of malingering. Petitioner also credibly testified that she received psychiatric treatment since 2009 due to stress and anxiety.

Presented evidence established that Petitioner's paranoia caused marked social and concentration difficulties. Accordingly, Petitioner meets Part B of the above listing. Accordingly, it is found that Petitioner is a disabled individual and that MDHHS improperly denied Petitioner's SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly denied Petitioner's application for SDA benefits. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's SDA benefit application dated December 1, 2014;
- (2) evaluate Petitioner's eligibility subject to the finding that Petitioner is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Petitioner is found eligible for future benefits.

The actions taken by MDHHS are **REVERSED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

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

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

CG/tm

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

