

**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.: 15-022117
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: February 3, 2016
County: Wayne (55)

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on February 3, 2016, 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 [REDACTED], Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 7-12).
4. On [REDACTED] MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action (see Exhibit 1, pp. 5-6) informing Petitioner of the denial.

5. On [REDACTED], Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 1, pp. 2-4).
6. As of the date of the administrative hearing, Petitioner was a 52-year-old female.
7. As of the date of the administrative hearing Petitioner had no employment earnings.
8. Petitioner earned an associate's degree in social work/mental health treatment.
9. Petitioner has a history of semi-skilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on restrictions related to depression, cervical spine pain, lumbar pain, and neuropathy.

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).

Petitioner requested a hearing to dispute a denial of SDA benefits. Petitioner testified that she thought her due process was denied.

MDHHS denied Petitioner's SDA application on [REDACTED]. It was not disputed that MDHHS mailed Petitioner an appointment for a consultative examination after the denial. MDHHS testimony indicated the appointment was mailed in error.

Petitioner essentially contended that MDHHS should have not denied her SDA application before she attended the scheduled appointment. Petitioner's contention essentially is an argument that she had a right to see a consultative examination before her SDA eligibility was denied. Petitioner presented no policy support for her argument. MDHHS policy is not known to require SDA applicants to be seen by a consultative physician before the application is processed.

It is found MDHHS did not err by not sending Petitioner to a physician before denying Petitioner's application. The analysis will proceed to determine whether the SDA denial was proper, given presented evidence.

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 2016 monthly income limit considered SGA for non-blind individuals is \$1,130.00.

Petitioner credibly denied performing current employment; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA. Accordingly, the disability analysis may proceed to the second step.

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 Psychiatric Evaluation (Exhibit 1, pp. 19-26) dated [REDACTED], was presented. It was noted Petitioner received treatment since 2013. It was noted Petitioner reported a history of depression and anxiety. It was noted Petitioner's symptoms began in 2007 and coincided with the loss of her job and home. Symptoms reappeared in 2011 when Petitioner's son went to prison and Petitioner had further financial difficulties. It was noted Petitioner reported good sleep and fair energy. Normal musculoskeletal and normal neck/head appearance was noted. Mental examination notes included the following: normal appearance, good judgment, appropriate concentration, appropriate attitude, appropriate concentration, age appropriate insight, appropriate memory, appropriate mood/affect, appropriate psychomotor activity, appropriate speech, and appropriate thought content. An Axis I diagnosis of major depressive disorder (recurrent and moderate) was noted. Petitioner's GAF was noted to be 55.

A Psychiatric/Psychological Examination Report (Exhibit 1, pp. 13-15) dated [REDACTED] was presented. The form was completed by a treating limited licensed psychologist with an approximate 3 month history of treating Petitioner. It was noted Petitioner attended 1-3 appointments per month.

The limited licensed psychologist also completed a Mental Residual Functional Capacity Assessment (Exhibit 1, pp. 17-18) on [REDACTED]. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". Petitioner was determined to be markedly restricted in the ability of maintaining concentration and attention for extended periods. Petitioner was deemed moderately restricted in remembering locations and other work-like procedures, carrying out detailed instructions, performing activities within a schedule and maintaining attendance and punctuality, completing a normal workday without psychological symptom interruption, and in using public transportation or traveling to unfamiliar places.

A Medical Examination Report (Exhibit 1, pp. 32-34) dated [REDACTED], was presented. The form was completed by an internal medicine physician with an approximate 2½ month history of treating Petitioner. Petitioner's physician listed diagnoses of cervical radiculopathy and back pain. Active medications included HCTZ, Zantac, Celexa, and Complera. An impression was given that Petitioner's condition was stable. It was noted that Petitioner can meet household needs. A need for a walking assistance device was not indicated.

A Medical Needs form dated [REDACTED] (Exhibit A, p. 3) was presented. Petitioner's physician noted Petitioner was diagnosed with cervical radiculopathy,

bilateral CTS, and an illegible third diagnosis. It was noted Petitioner needed assistance with bathing, grooming, transferring, meal preparation, shopping, laundry, and housework. It was noted Petitioner was incapable of working at any job, including her most recent employment.

Petitioner testified she has back pain from her employment as a home help provider took a toll on her back. Petitioner testified her pain is exacerbated in rainy and cold weather.

Petitioner testified she has cervical pain from a car accident in 2014. Petitioner testified she has difficulty holding up her neck.

Petitioner testified she has neuropathy in her legs and feet. Petitioner testimony suggested it is caused by spinal damage.

Petitioner testified she is depressed. Petitioner testified she has seen a psychiatrist since 2009. Petitioner testified she sees a therapist and psychiatrist on a monthly basis. Petitioner testified she sometimes does not want to get out of bed and it feels like she is in a dark hole. Petitioner testified she has suicidal ideation but has never attempted suicide.

Petitioner did not present many treatment records. The treatment records that were presented support an inference that back pain limits Petitioner's exertional abilities and depression restricts Petitioner's concentration.

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.

A listing for spinal disorders (Listing 1.04) was considered based on Petitioner's lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for peripheral neuropathies (Listing 11.14) was factored based on a documented diagnosis. The listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

A listing for affective disorder (Listing 12.04) was considered based on a diagnosis of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Petitioner required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

It is found that Petitioner failed to establish meeting a SSA listing. Accordingly, the analysis moves to the fourth step.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a petitioner can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Petitioner testified she last worked full-time as a home help aide. Petitioner testified her duties required her to lift and support patients. Petitioner testified she could not perform the employment due to back pain. Petitioner testified she also has employment history as a care planner, youth specialist, and teacher of adults with disabilities.

For purposes of this decision, it will be found that Petitioner cannot perform past employment. Accordingly, the analysis may proceed to the final step.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. 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). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, 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). To determine the physical demands (i.e. exertional requirements) of work in the national

economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* 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. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

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). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

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). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered non-exertional. 20 CFR 416.969a(a). Examples of non-exertional limitations 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 (e.g. can't 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) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday. The analysis will examine whether Petitioner can perform light employment.

Petitioner testified she can only walk a ½ block before her legs get weak. Petitioner testified back pain restricts standing to 15 minutes. Petitioner testified spinal pain restricts her sitting ability to 15 minutes (though client had been sitting for 25 minutes when she stated this). Petitioner testified she utilizes a cane which was prescribed by her physician. Petitioner testimony estimated she can only lift 25 pounds.

Petitioner testified back pain also inhibits her ADLs. Petitioner testified she cannot vacuum or do laundry. Petitioner testified she can drive and shop. Petitioner testified she has difficulty with putting on pants if the weather is cold or rainy (because her back pain is worse in that type of weather). Petitioner testified she cannot bathe because she is unable to push herself upright; Petitioner blamed this on her lack of wrist strength stemming from a 1999 injury.

Petitioner's testimony concerning standing, walking, and sitting restrictions was indicative of an inability to perform any employment. Petitioner's testimony will be weighed against presented medical records.

Physician statements of restrictions were provided. SSR 96-2p states that if a treating source's medical opinion is well-supported and not inconsistent with the other substantial evidence in the case record, it must be given controlling weight (i.e. it must be adopted). Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*.

On a Medical Examination Report dated [REDACTED], Petitioner's physician stated Petitioner was capable of frequent lifting/carrying of 25 pounds; a 25 pound ability to frequently lift/carry is compatible with performing light employment; this restriction would not preclude Petitioner from performing light employment. A restriction of standing/walking of under 2 hours in an 8 hour workday was also noted; this restriction is indicative of an inability to perform light employment.

It should be noted that an ability to frequently lift/carry 25 pounds is not often seen with a restriction to less than 2 hours of walking. Though the pairing is unusual, it is not implausible. The analysis will proceed to consider the merits of the walking restriction.

Petitioner's physician also indicated Petitioner needed assistance with bathing, grooming, transferring, meal preparation, shopping, laundry, and housework while opining that Petitioner was incapable of working at any job. These statements are highly indicative that Petitioner cannot perform light employment.

The basis for physician-stated restrictions was an MRI from 2013 indicating L4-L5 stenosis with a small disc protrusion. It was also noted that stated restrictions were based strictly on Petitioner's reporting and not from supportive medical findings.

Generally, physician-provided restrictions are not persuasive when solely based on a patient's statements. This generality is especially compelling when radiology is available but not presented. Petitioner testified she has had MRIs on her lumbar spine and cervical spine. Petitioner also stated a diagnosis of neuropathy is verified by radiology. Zero radiology was presented. Even if the physician's statement of what was on the MRI was accepted, a small disc protrusion is insufficient support that Petitioner cannot perform the requisite standing/walking for light employment.

Petitioner's physician also stated Petitioner needs significant household assistance. The need for household assistance and walking restrictions are found to be unsupported due to the absence of radiological records and sparse treatment records. It is found Petitioner can perform the exertional requirements of light employment.

Petitioner also alleged she has mental health restrictions affecting her employment potential. Third party statements of restriction were provided.

Petitioner's limited licensed psychologist determined Petitioner was markedly restricted in maintaining concentration and attention for extended periods. The analysis will overlook that a limited licensed psychologist is not an acceptable medical source (see SSR 06-03p). The analysis will overlook that treatment records were not provided to support the stated restriction. The single marked restriction should still allow Petitioner to perform employment not requiring significant concentration or attention. The same treater also opined Petitioner was not significantly limited in understanding 1-2 step instructions, or in carrying out such instructions.

A consultative examiner noted Petitioner had a GAF of 55. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. The GAF is consistent with an ability to perform unskilled employment.

Examples of unskilled employment that Petitioner is capable of performing was not presented. Light assembly, retail, and cashier are examples of jobs that are unskilled, non-complex, and require light exertion. Evidence of the availability of such jobs was not

presented, however, such jobs are presumed to be sufficiently available. It is found Petitioner is capable of performing light employment.

Based on Petitioner's exertional work level (light), age (approaching advanced age), education (associate's degree), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 202.14 is found to apply. This rule dictates a finding that Petitioner is not disabled. Accordingly, it is found that MDHHS properly found Petitioner to be not disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's SDA benefit application dated [REDACTED], based on a determination that Petitioner is not disabled. The actions taken by MDHHS are **AFFIRMED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **2/9/2016**

Date Mailed: **2/9/2016**

CG / 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 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:

