

**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.: 15-015582
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: November 19, 2015
County: KALKASKA

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, a telephone hearing¹ was held on November 19, 2015, from Lansing, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. The Department was represented by [REDACTED], General Services Program Manager.

The following Exhibits were entered into the record during the hearing:

- Department's Hearing Summary (Department Exhibit A, p. 1)
- Petitioner's Hearing Request (Department Exhibit A, pp. 2-3)
- August 4, 2015, Notice of Case Action (Department Exhibit A, pp. 4-7)
- June 3, 2015, Assistance Application (Department Exhibit A, pp. 8-29)
- July 30, 2015 Medical-Social Eligibility Certification (Department Exhibit A, pp. 30-36)
- June 18, 2015, Activities of Daily Living-Third Party (Department Exhibit A, pp. 37-44)
- July 6, 2015, Activities of Daily Living (Department Exhibit A, pp. 45-49)
- July 6, 2015, Work History Questionnaire (Department Exhibit A, pp. 50-55)
- May 1, 2015, General Medical Examination Report (Department Exhibit A, pp. 56-57)
- May 1, 2015, medical records from Dr. Nathan Sailor (Department Exhibit A, pp. 58-64)
- May 13, 2015, Patient Itinerary from Kalkaska Memorial Health Center (Department Exhibit A, p. 65)
- June 16, 2015, Medical-Social Questionnaire (Department Exhibit A, pp. 66-69)

¹ The hearing was originally scheduled to be held in-person at the local Department office in Kalkaska Michigan. Petitioner's November 6, 2015 written request for a 3-way phone conference was received and granted.

- June 16, 2015, Authorization to Release Protected Health Information (Department Exhibit A, pp. 70-72)

During the hearing, Petitioner waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. On November 19, 2015, an Interim Order Extending the Record was issued giving the Department 30 days to submit the specified additional medical records. However, no additional evidence was received and no extensions of time requested. Accordingly, a decision will be made based on the available evidence.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

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 June 3, 2015, Petitioner applied for SDA. (Department Exhibit A, pp. 8-29)
2. On July 30, 2015, the Medical Review Team (MRT) found Petitioner not disabled. (Department Exhibit A, pp. 30-36)
3. On August 4, 2015, the Department notified Petitioner of the MRT determination. (Department Exhibit A, pp. 4-7)
4. On September 9, 2015, the Department received Petitioner's timely written request for hearing. (Department Exhibit A, pp. 2-3)
5. Petitioner alleged disabling impairments including arthritis and pain in her hips and lower spine; left knee injury and pain; and depression. (Petitioner Testimony)
6. At the time of hearing, Petitioner was 47 years old with a September 5, 1968, birth date; was 5'2" in height; and weighed 240 pounds. (Department Exhibit A, pp. 66-69; Petitioner Testimony)
7. Petitioner completed the 12th grade and has a work history including kitchen worker and machine operator. (Department Exhibit A, pp. 50-55 and Petitioner Testimony)

8. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity 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(a). The person claiming a physical or mental disability has the burden to establish it 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 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(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 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Petitioner is not involved in substantial gainful activity. Therefore, Petitioner is not ineligible for disability benefits under Step 1.

The severity of the Petitioner's alleged impairment(s) is considered under Step 2. The Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). 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 means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleged disabling impairments including arthritis and pain in her hips and lower spine; left knee injury and pain; and depression. (Petitioner Testimony)

A May 1, 2015, General Medical Examination Report was completed by Dr. Sailor. The listed diagnoses were: severe degenerative arthritis in right hip- likely requires hip replacement; and osteoarthritis in lumbar spine. The doctor indicated Petitioner would have limitations with walking, kneeling, standing, lifting, pushing, stooping, climbing, and pulling. The doctor wrote that Petitioner could not walk, sit, or stand for more than 10 minutes without position change. Petitioner was noted to be physically able to enter employment or training with sit down jobs only. Limitations were noted as "must be a seated job that allows frequent change of position." The doctor again noted that the right hip requires surgical evaluation and a referral was made. (Department Exhibit A, pp. 56-57) May 1, 2015, medical records from Dr. Nathan Sailor were submitted supporting his opinion on the General Medical Examination Report. (Department

Exhibit A, pp. 58-64) Physical therapy was ordered and scheduled for the right hip pain and degenerative arthritis. (Department Exhibit A, pp. 63-65)

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that she does have some limitations on the ability to perform basic work activities. The medical evidence has established that the Petitioner has an impairment, or combination thereof, that has more than a de minimis effect on the Petitioner's basic work activities. Further, the impairments have lasted, or can be expected to last, continuously for 90 days; therefore, the Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms recent diagnosis and treatment of severe degenerative arthritis in right hip and osteoarthritis in lumbar spine. (Department Exhibit A, pp. 56-64)

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. For example, the limited evidence submitted for this hearing does not include any medically acceptable imaging reports or records documenting the specific findings from appropriate medically acceptable imaging reports. Further, there is no documentation that hip replacement surgery was determined to be necessary, let alone that the procedure was completed. (See Department Exhibit A, pp. 56-65) Accordingly, the Petitioner cannot be found disabled, or not disabled, at Step 3 based on the limited objective medical evidence available; therefore, the Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (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 (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function 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. 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.*

The evidence confirms recent diagnosis and treatment of severe degenerative arthritis in right hip and osteoarthritis in lumbar spine. (Department Exhibit A, pp. 56-64) Petitioner's testimony indicated that prior to a September 9, 2015, hip replacement surgery, she could walk a couple of minutes using a cane, stand a couple of minutes using a cane, sit 5-10 minutes, and lift a gallon of milk. Petitioner's testimony regarding her limitations is not fully supported by the medical evidence and found only partially

credible. As noted above, only limited records were submitted for this hearing, despite the record being left open to obtain updated medical documentation. The available evidence does not document the alleged problems with the left hip or depression. Further, on the May 1, 2015, General Medical Examination Report, Dr. Sailor specified that Petitioner was physically able to enter employment or training with sit down jobs that would allow frequent changes of position. (Department Exhibit A, pp. 56-64) This treating physician's opinion is supported by the available medical records and is given controlling weight. After review of the entire record it is found, at this point, that Petitioner maintains the residual functional capacity to perform limited sedentary work as defined by 20 CFR 416.967(a) on a sustained basis. Limitations would include sedentary work allowing for frequent position changes at will.

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 he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). 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 considered. 20 CFR 416.960(b)(3).

Petitioner has a work history including kitchen worker and machine operator. As described by Petitioner, the kitchen worker was close to the light exertional level. (Department Exhibit A, pp. 50-55 and Petitioner Testimony) In her testimony, Petitioner described the machine operator work as involving a combination of sitting, standing, walking, with about 7 hours of standing and walking, as well as lifting up to 30-40 pound boxes. However, on the July 6, 2015, Work History Questionnaire, Petitioner marked that the machine operator work involved no walking, standing 2 hours, sitting 6 hours, lifting less than 10 pounds frequently, and lifting up to 10 pounds at the heaviest. (Department Exhibit A, pp. 50-55) Accordingly, Petitioner has provided conflicting reports about the exertional requirements of the machine operator work. However, even if the machine operator work was sedentary, it has not been established that Petitioner would be allowed frequent position changes at will. In light of the entire record and Petitioner's RFC (see above), it is found that Petitioner is not able to perform her past relevant work. Accordingly, the Petitioner cannot be found disabled, or not disabled, at Step 4; therefore, the Petitioner's eligibility is considered under Step 5. 20 CFR 416.905(a).

In Step 5, an assessment of Petitioner's residual functional capacity 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). At the time of hearing, Petitioner was 47 years old and, thus, considered to be a younger individual for disability purposes. Petitioner completed the 12th grade and has a work history including kitchen worker and machine operator. (Department Exhibit A, pp. 66—69 and 50-55; Petitioner Testimony) Disability is found if an individual is unable to adjust to other work. *Id.* At this point in

the analysis, the burden shifts from the Petitioner to the Department to present proof that the Petitioner has the residual capacity to 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). 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).

The evidence confirms recent diagnosis and treatment of severe degenerative arthritis in right hip and osteoarthritis in lumbar spine. (Department Exhibit A, pp. 56-64) As noted above, Petitioner maintains the residual functional capacity to perform limited sedentary work as defined by 20 CFR 416.967(a) on a sustained basis. Limitations would include sedentary work allowing for frequent position changes at will. Even considering these limitations, significant jobs would still exist in the national economy.


After review of the entire record, and in consideration of the Petitioner's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.21, Petitioner is found not disabled at Step 5.

In this case, the Petitioner is found not disabled for purposes SDA benefits as the objective medical evidence does not establish a physical or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Petitioner's impairments did not preclude work at the above stated level for at least 90 days.

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**.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human
Services

Date Signed: **1/4/2016**

Date Mailed: **1/4/2016**

CL / 

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:

