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.: 15-018731
Issue No.: 4009
Agency Case No.: [redacted]
Hearing Date: January 28, 2016
County: Muskegon

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 January 28, 2016, from Detroit, Michigan. Petitioner appeared and was represented by her attorney, [redacted]. The Michigan Department of Health and Human Services (MDHHS) was represented by [redacted], hearing facilitator/manager.

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. 101-99).

4. On [redacted], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action informing Petitioner of the denial.

5. On [redacted], Petitioner requested a hearing disputing the denial of SDA benefits.

6. As of the date of the administrative hearing, Petitioner was a 29-year-old female.

7. As of the date of the administrative hearing Petitioner has no employment earnings.

8. Petitioner's highest education year completed was the 12th grade.

9. Petitioner has a history of unskilled employment, with no known transferrable job skills.

10. Petitioner alleged disability based on restrictions related to depression, cerebral palsy, bilateral clubfoot, restless leg syndrome, and attention deficit disorder.

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).

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 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 F2d 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. It should be noted that MDHHS exhibits were presented in reverse number order and that the documents will be cited in the same way they were presented.

Vascular specialist office visit notes (Exhibit 1, pp.10-9) dated [redacted], were presented. An impression of normal bilateral ankle brachial indices were noted.

Physician assistant and medical assistant notes (Exhibit 1, pp. 33-31) from October 2014 (three appointments) were presented. Assessments of back pain, onychogryphosis, and poor ankle circulation were noted.

Physician office visit notes (Exhibit 1, pp.12-11) dated [redacted], were presented. It was noted that Petitioner was treated for onychogryphosis.

Social worker encounter notes (Exhibit 1, pp. 39-34) from December 2014 (two appointments) were presented. A medication review for anxiety was noted as performed by a physician assistant.

Social worker encounter notes (Exhibit 1, pp. 47-40) from January 2015 (four appointments) were presented. Petitioner's complaints of foot pain and anxiety were noted.

Physician office visit notes (Exhibit 1, pp. 22-19) dated [redacted], were presented. It was noted that Petitioner complained of itchy ears and tinnitus. It was noted Petitioner was given ear drop medication.

Social worker encounter notes (Exhibit 1, pp. 64-60) from February 2015 (five appointments) were presented. A physical examination conducted by a physician assistant noted a congenital foot deformity and restless leg syndrome. A right foot x-ray was noted to show a "question bony coalition." Left ankle and foot x-rays were noted to be negative. Petitioner's right leg was noted to be 5 mm longer than her left leg. Ongoing anxiety complaints were noted.

Social worker encounter notes (Exhibit 1, pp. 64-60) from March 2015 (five appointments). It was noted Petitioner reported complaints of anxiety.

Orthopedic office visit notes (Exhibit 1, p. 25) dated [redacted], was presented. It was noted Petitioner underwent a CAT scan based on a history of clubfoot and right ankle impingement. Abnormalities were noted though Petitioner reported not hurting anymore. It was noted Petitioner's impingement and inflammation were resolved.

Health center documents (Exhibit 1, pp. 24-23) dated [redacted], were presented. An impression of no abnormalities was noted following bilateral ankle CT scans.

Social worker encounter notes (Exhibit 1, pp. 71-65) from April 2015 (four appointments) were presented. Ongoing difficulties (e.g. anger with boyfriend, difficulties with mother's dog…) were noted. A medication review was performed by a certified medical assistant (MAC).

Social worker encounter notes (Exhibit 1, pp. 74-72) from May 2015 (three appointments) were presented. Ongoing complaints of anxiety were noted. Lab work was performed (see Exhibit 1, pp. 7-1).

Social worker encounter notes (Exhibit 1, p. 75) dated [redacted], were presented. It was noted Petitioner was afraid of stairs since she was a child. It was noted Petitioner insisted on undergoing CPT-II (Conners' Continuous Performance Test) testing. It was noted Petitioner was encouraged to focus on problem solving rather than her fears.

Social worker encounter notes (Exhibit 1, pp. 79-77) dated [redacted], were presented. It was noted Petitioner presented for a medical review (the review was done by a CMA). It was noted Petitioner was anxious. Impaired problem solving and abstract reasoning skills were noted. Various medications were prescribed for bipolar depression and anxiety. It was noted Petitioner recently underwent CPT-II testing with inconclusive results. A plan for a follow-up with a behavioral health center was noted.

Social worker encounter notes (Exhibit 1, p. 80) dated [redacted], were presented. It was noted that Petitioner presented for a recheck of anxiety. It was noted Petitioner reported the following symptoms; easily irritated, frustration, indecisiveness, poor concentration, poor self-esteem, social isolation, and feeling overwhelmed. The examiner noted Petitioner lacked coping skills. The examiner also noted Petitioner struggles with reading and verbal comprehension.

A mental status examination report (Exhibit 1, pp. 98-94) dated [redacted], was presented. The report was noted as completed by a consultative licensed psychologist. The following symptoms were reported by Petitioner: gait imbalance, depression since being a pre-teen, social withdrawal, feelings of worthlessness, forgetfulness, and lack of concentration. Petitioner reported daily activities including eating, cooking, napping, listening to music, watching television, and light cleaning. It was noted Petitioner cried while she ascended stairs. Diagnoses of depressive disorder, anxiety disorder, and ADHD were noted. The examiner stated Petitioner had fair potential in performing simple and unskilled work. It was noted job training would benefit Petitioner. The examiner noted “there appear to be few restrictions” in Petitioner’s ability to perform simple and repetitive work.

Petitioner testified she has clubfeet and ankle pain. Petitioner testified calluses on her big toes cause her additional pain. Petitioner testified she could only stand 2-3 hours (over an 8 hour workday) on a bad day and for 5 hours on a good day. Petitioner testified she uses a cane for her balance. Petitioner testified cerebral palsy adversely affects her equilibrium. Petitioner testified she uses an ankle brace for clubfoot. Petitioner estimated she could only walk for a 10-15 minute period.

Presented documents were highly unsupportive in a finding of a severe impairment. Clubfoot was referenced, but no notable abnormalities were documented within presented radiology. Some treatment for abnormal toenails was noted (a diagnosis for onychogryphosis), but no documentation was indicative of severe physical impairments. A need for a cane was not noted. A diagnosis of cerebral palsy was not noted. Petitioner failed to establish a severe exertional impairment.

Mental restrictions appeared to be Petitioner’s primary basis for disability. Petitioner testified she has days when she cannot leave her bed. Petitioner testified she is afraid of stairs and driving (though she testified she uses the stairs to enter her residence). Petitioner testified she has difficulty with finishing tasks (e.g. doing dishes). Petitioner testified she finished school but required the help of a para-professional. Petitioner

testified she thinks she needs to take a stronger ADD medication but her insurance will not cover the expense. Petitioner testified she has not been able to hold a job since high school. Petitioner testified she has racing thoughts. Petitioner testified she is very forgetful (e.g. she does not remember people's names or phone numbers). Petitioner testified her anxiety causes her to pick-off the skin on her fingers. Petitioner testified she sees a counselor weekly. Overall, Petitioner's testimony was indicative of severe psychological impairments.

SSR 06-03p provides guidance on what SSA accepts as "acceptable medical sources". Licensed physicians and licensed or certified psychologists are acceptable medical sources. Nurse practitioners and social workers are not "acceptable medical sources". SSR 06-03p goes on to state why the distinction between medical sources and non-medical sources is important.

> First, we need evidence from "acceptable medical sources" to establish the existence of a medically determinable impairment. Second, only "acceptable medical sources" can give us medical opinions. Third, only "acceptable medical sources" can be considered treating sources, as defined in 20 CFR 404.1502 and 416.902, whose medical opinions may be entitled to controlling weight.

Social workers, certified medical assistants, and certified physician assistants are not acceptable medical sources. All of Petitioner's mental health treatment came from these sources. A consultative physician report was provided, however, nothing within the report justifies an inference of a severe impairment. For example, mental examination observations were unremarkable (e.g. contact with reality, alert and oriented, clear and coherent speech, and appropriate affect). It was noted Petitioner cried while ascending stairs, though this statement is not particularly insightful into mental health restrictions. Consideration was given to inferring a restriction that Petitioner cannot perform complex work based on the consultative physician's statements. The inference was rejected due to the lack of records from acceptable treating sources.

It is found that Petitioner failed to establish a significant impairment to basic work activities for a period longer than 90 days. Accordingly, Petitioner is found to be not disabled and that MDHHS properly 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 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: **2/3/2016**

Date Mailed: **2/3/2016**

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 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: [redacted]