

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

IN THE MATTER OF:

██████████
██████████
██████████

MAHS Reg. No.: 15-021335
Issue No.: 4009
Agency Case No.: ██████████
Hearing Date: February 01, 2016
County: Genesee-
Union St District

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on February 1, 2016, from Detroit, Michigan. Petitioner appeared and represented herself. The Department was represented by ██████████, Eligibility Specialist.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. A consultative physical exam was received and admitted into evidence as Exhibit C. Although the requested psychiatric/psychological examination, DHS-49D, and mental residual functional capacity assessment, DHS-49E, requested from Petitioner's psychiatrist were not received, psychiatric records from ██████████ were received and admitted into evidence as Exhibit E. X-rays from ██████████ that were also requested in the interim order were not received. The record closed on March 2, 2016, and the matter is now before the undersigned for a final determination based on the evidence presented.

ISSUE

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On August 18, 2015, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On October 26, 2015, the Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 4-10).

3. On November 5, 2015, the Department sent Petitioner a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 22-25).
4. On November 16, 2015, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 3).
5. Petitioner alleged disabling impairment due to back pain, leg numbness, and depression.
6. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED] birth date; she is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Petitioner is a high school graduate.
8. Petitioner has an employment history of work as a fast food worker and stocker/cashier.
9. At the time of application, Petitioner was not employed.
10. Petitioner has a pending disability claim with the Social Security Administration (Exhibit B).

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner has not engaged in SGA activity during the period for which assistance might be available. Therefore, Petitioner is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

In the present case, Petitioner alleges disabling impairment due to back pain, leg numbness, and depression. The medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below.

Beginning March 23, 2015, Petitioner was seen by [REDACTED] concerning complaints of depressed mood, anxiety, mood swings, obsessions, and panic attacks. In an April 1, 2015 psychiatric evaluation by a nurse practitioner, it was noted that her thought content was appropriate, she was fully oriented, her insight appeared fair, her judgment appeared impulsive, her memory was intact, her attention/concentration appeared appropriate, and her fund of knowledge appeared adequate. (Exhibit E, pp. 23-28.) Petitioner's file includes therapy progress notes for April 8, 2015; April 22, 2015; May 27, 2015; June 9, 2015; July 20, 2015, August 4, 2015; August 27, 2015; October 5, 2015; October 19, 2015; November 9, 2015; November 23, 2015; December 9, 2015; and January 27, 2016. The notes show diagnoses of depression, major, single episode, severe and panic disorder without agoraphobia. (Exhibit E, p. 32-38, 43-44, 57, 60, 66, 72, 82, 84, 95, 100, 106, 113, 122). The notes from the October 19, 2015 therapy session showed that Petitioner had made progress resulting in a finding that she was in partial remission (Exhibit E, p. 95½). Medical evaluation notes from October 5, 2015 show Petitioner was prescribed Celexa, neurontin, Norco, Synthroid, Lisinopril, lorazepam, and trazodone (Exhibit E, p. 88).

Petitioner provided January 2016 notes from office visits with her primary care physician that showed a problem list of chronic back pain greater than three months' duration; history of lipoma, status post April 17, 2014 surgery; thyroid nodule; hypertension; depression; and insomnia. The notes indicate she was diagnosed with degenerative joint disease (DJD) of the cervical spine and cervico-occipital neuralgia of the left side. Petitioner's doctor wrote a note on January 28, 2016 to indicate that Petitioner had medical conditions that could be exacerbated by heavy work including lifting, bending etc. and she was advised not to do activities that exacerbated her symptoms (Exhibit 1.)

Petitioner has a history of multiple thyroid nodules. Notes from a November 16, 2015 office visit with her primary care physician showed that she was referred to and evaluated by an endocrinologist. A biopsy showed atypical cells but no cancer. She was put on Synthroid. She was evaluated for possible surgery but conservative management was recommend. (Exhibit 2, pp. 1-2). The notes also indicated uncontrolled hypertension (Exhibit 2, p. 2).

On February 16, 2016, Petitioner was examined by a doctor at the Department's request. Petitioner reported sharp lower back pain with pain sometimes radiating down into the right lower leg causing difficulty walking but no paresthesia in the lower extremities. She also reported pain in the left shoulder area that markedly restricted her shoulder movement and resulted in slightly poor hand grip. The doctor noted that Petitioner was not in acute distress and did not use a walking aid. Her blood pressure was 114/70 and her pulse was 86 bpm. There were no abnormalities in the doctor's physical examination of Petitioner except with respect to the musculoskeletal system. The doctor noted vague tenderness in the lower part of the spine, especially the area of L4-5 and both the S1 joints; negative bilateral straight leg raise; limited abduction and forward flexion to 90 degrees in the left shoulder but normal internal rotation in both shoulders; tenderness over the trapezius muscle and supraspinatus muscle; no swelling in the metacarpophalangeal (MP) or proximal interphalangeal joints (PIP) joints and no specific pain but slightly weak grip. The doctor diagnosed Petitioner with back pain secondary to degenerative osteoarthritis of the spine; left shoulder pain probably due to arthritis with no signs of radiculopathy; and depression and anxiety. The doctor commented that Petitioner's homelessness was contributing to her symptomatology of anxiety and depression and exacerbating her pain in various joints without swelling. He concluded that she was not totally disabled. (Exhibit C.)

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), 11.14 (peripheral neuropathies), 12.04 (affective disorders), 12.06 (anxiety-related disorders) were considered. A listing under 1.02 requires gross anatomical deformity and chronic joint pain and stiffness with signs

of limitation of motion and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankyloses of the affected joint with involvement of one major peripheral weight-bearing joint resulting in an inability to ambulate effectively or involvement of one major peripheral joint in each upper extremity resulting in an inability to perform fine and gross movements effectively. A listing under 1.04 requires evidence of nerve root compression, spinal arachnoiditis, or lumbar spinal stenosis resulting in pseudoclaudication established by findings on appropriate medically acceptable imaging and resulting in an inability to ambulate effectively. To meet or equal a listing under 11.14, there must be significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station. The medical evidence does not support a finding that Petitioner's impairments meet or equal a listing under 1.02, 1.04, or 11.14.

A listing under 12.04 requires either (i) medically documented persistence of depressive, manic, or bipolar syndrome resulting in marked limitations in functioning or (ii) medically documented history of a chronic affective disorder of at least two years' duration that has caused more than a minimal limitation of ability to do basic work activities with either repeated episodes of decompensation, residual disease process, or one or more years' current inability to function outside a highly supportive living arrangement. A listing under 12.06 requires (i) marked limitations in functioning or repeated episodes of decompensation or (ii) complete inability to function independently outside the area of one's home. The evidence does not show that Petitioner's mental condition met or equaled a listing under 12.04 or 12.06.

Because the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). 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). 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). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).

In this case, Petitioner alleges both exertional and nonexertional limitations due to her medical condition. Petitioner testified that she had right leg numbness. She could walk up to a block, though she did not usually walk that far. She had sharp pain and burning across her shoulders. She could not lift more than 10 pounds. She could stand up to 15 minutes and sit not more than 30 minutes, and would have to switch between the two. She lived at a shelter and took care of her bathing and personal hygiene. She could dress herself although she wore sweatpants because they were easier to put on. She did some limited household chores. She shopped but rode the electric scooter. She testified that she was depressed because of her financial and physical condition.

She suffered from anxiety, and her concentration and memory were sometimes affected. She admitted that her medications helped reduce her pain to a 6 out of 10 but that they caused dizziness and drowsiness.

The medical record shows that Petitioner was engaged in ongoing therapy with [REDACTED] following a diagnosis of depression, major, single episode, severe and panic disorder without agoraphobia. At the time of her initial psychiatric evaluation, it was noted she had appropriate content, fair insight, impulsive judgment, intact memory, appropriate attention/concentration, and adequate fund of knowledge appeared adequate. Notes from her therapy sessions show an improvement in her mental condition although the doctor who examined Petitioner on February 16, 2016 noted that Petitioner's mental condition was exacerbated by her current financial situation and homelessness. Based on the medical record presented, as well as Petitioner's testimony, Petitioner has mild limitations on her mental ability to perform basic work activities.

The record shows that Petitioner reported chronic back pain to her doctor and has a diagnosis of DJD of the cervical spine resulting in cervico-occipital neuralgia of the left side, which her doctor determined precluded her from engaging in heavy work. At the February 16, 2016 physical consultative exam, the doctor found vague tenderness in the lower part of the spine, especially the area of L4-5 and both the S1 joints and negative bilateral straight leg raise. He noted limited abduction and forward flexion to 90 degrees in the left shoulder but normal internal rotation in both shoulders; tenderness over the trapezius muscle and supraspinatus muscle; and no swelling in the MP or PIP joints with no specific pain but slightly weak hand grip. The consultative doctor diagnosed Petitioner with back pain secondary to degenerative osteoarthritis of the spine and left shoulder pain probably due to arthritis with no signs of radiculopathy. The shoulder pain and weakened hand grip supports Petitioner's testimony concerning her ability to lift more than 10 pounds. Consequently, it is found that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a).

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a fast food worker and stocker/cashier. Both jobs involve substantial standing, and the job as stocker/cashier involved lifting up to 20 pounds. Petitioner's prior employment involved light to medium exertion. Based on the RFC analysis above, Petitioner is limited to no more than sedentary work activities. Based on her exertional RFC, Petitioner is unable to perform past relevant work. Accordingly, Petitioner cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Petitioner's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). However, 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). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was [REDACTED] years old at the time of application and at the time of hearing and, thus, considered to be a younger individual ([REDACTED]) for purposes of Appendix 2. She is a high school graduate with a history of unskilled, and therefore nontransferable, work. As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities and has mild limitations on her mental ability to perform work activities. In this case, the Medical-Vocational Guidelines, 201.21, result in a finding that Petitioner is not disabled based on exertional limitations. Petitioner's mental RFC does not preclude her ability to perform the non-exertional aspects of work-related activities.

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**.



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

Date Signed: **3/22/2016**

Date Mailed: **3/22/2016**

ACE / tlf

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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]