



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 10, 2016
MAHS Docket No.: 16-004506
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 May 16, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

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. 173-179).
4. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action (Exhibit 1, pp. 180-182) informing Petitioner of the denial.

5. On [REDACTED], Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 1, pp. 170-172).
6. As of the date of the administrative hearing, Petitioner was a 58-year-old female.
7. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
8. Petitioner's highest education year completed was an associate degree in liberal arts.
9. Petitioner has a history of semi-skilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on restrictions related to hip pain, back pain, and cardiac problems.

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's hearing request checked a dispute concerning Family Independence Program (FIP) benefits. Petitioner testified a dispute of cash assistance based on disability (i.e. SDA) was intended. MDHHS was not confused by Petitioner's error and prepared for a SDA dispute. MDHHS agreed to defend the denial of SDA benefits and the hearing was conducted accordingly.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (July 2015), p. 5. 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 (July 2015), p. 1. A person is disabled for SDA purposes if he [or she]:

- Receives other specified disability-related benefits or services..., 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.*, pp. 1-2.

Petitioner alleged SDA eligibility based on a disability lasting longer than 90 days. 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.

Primary care physician office visit notes (Exhibit 1, pp. 93-94) dated [REDACTED], were presented. It was noted Petitioner complained of hip pain. Tylenol-Codeine, Zocor, Lantus and other medications were noted as planned.

Hospital emergency room documents (Exhibit 1, pp. 21-27) dated [REDACTED], were presented. It was noted that Petitioner presented with complaints of radiating lower back pain, ongoing for 2-3 weeks. A pelvic ultrasound was noted to demonstrate 2 fibroids within the uterus. Multiple pulmonary nodules were noted following pelvic radiology. Petitioner was discharged following unspecified treatment and reduced pain.

Hospital documents (Exhibit 1, pp. 28-58, 97-107) dated [REDACTED] were presented. It was noted that Petitioner was summoned back to the hospital after bloodwork showed staph infections. Petitioner complaints of lower back pain, right hip pain, and fever were noted. Decreased right hip motion was noted. A CT of Petitioner's lumbar was noted to demonstrate moderate disc bulges from L2-L5 resulting in moderate spinal stenosis at L2-L3 and L3-L4 and severe spinal canal stenosis at L4-L5. An assessment of epidural abscess at L2 with likely osteomyelitis was noted. Petitioner underwent a L1 and L2 bilateral laminectomy which included abscess excision. Petitioner reported improved right-sided back pain and denied weakness. A recommendation of 3 months of antibiotics was noted. A discharge date of [REDACTED] was noted.

Cardiac treatment documents from Petitioner's hospitalization (Exhibit 1, pp. 159-161) were separately presented. Petitioner's ejection fraction was noted to be 50%. Mild-to-moderate concentric left ventricular hypertrophy was noted.

A documented telephone encounter (Exhibit 1, p. 59) dated [REDACTED], from Petitioner's surgical center was presented. Petitioner reported "doing fairly well" following surgery.

Spine surgeon office visit notes (Exhibit 1, pp. 64-66) dated [REDACTED], was presented. It was noted Petitioner had some drainage from her wound. Full muscle strength was noted.

Primary care physician office visit notes (Exhibit 1, pp. 91-92) dated [REDACTED] were presented. It was noted Petitioner obtained a referral so she could follow-up with a back surgery specialist.

Spine surgeon office visit notes (Exhibit 1, pp. 67-73) dated [REDACTED], were presented. Petitioner reported ongoing 2/10 back and leg pain. It was noted Petitioner used a cane, though she could walk without one. Full muscle strength was noted.

Infectious disease physician office visit notes (Exhibit 1, p. 123) dated [REDACTED], were presented. A recommendation of continued weaning Petitioner off of antibiotics was noted.

Primary care physician office visit notes (Exhibit 1, pp. 89-90) dated [REDACTED], were presented. It was noted Petitioner presented for fibroid treatment. An ultrasound was planned. Back pain and bilateral hip pain complaints were noted.

Primary care physician office visit notes (Exhibit 1, pp. 87-88) dated [REDACTED], were presented. Assessments of bilateral hip pain, uncontrolled diabetes (Type 1), malignant HTN, and acute stress disorder were noted. Medications included Norco and Tylenol-Codeine.

Primary care physician office visit notes (Exhibit 1, pp. 81-83) dated [REDACTED], were presented. An impression of a stable uterine leiomyomata and stable polyp was noted following a pelvic ultrasound. A plan to continue observation of uterine fibroids was noted.

Primary care physician office visit notes (Exhibit 1, p. 80) dated [REDACTED], were presented. It was noted Petitioner underwent bloodwork.

Cardiologist office visit notes (Exhibit 1, pp. 134-137) dated [REDACTED], were presented. It was noted Petitioner reported dyspnea and tingling in lower extremities, and muscle spasms in legs. Assessments of hyperlipidemia, HTN, neuropathy, CHF and DM. A NYHA functional assessment of II-III was noted.

A mammogram report (Exhibit 1, pp. 95-96) dated [REDACTED], was presented. A stable mammogram was noted.

Primary care physician office visit notes (Exhibit 1, pp. 78-79) dated [REDACTED], were presented. It was noted Petitioner appeared for mammogram results. Assessments of fibroids and DM were noted.

Petitioner testified her back feels much better since undergoing laminectomies in 2015. Petitioner testified the surgery removed an abscess, but also a part of her spine. Petitioner testified she still has ongoing back pain, likely due to arthritis.

Petitioner testified she underwent a left hip replacement in June 2011. Petitioner testified she has ongoing hip pain, due to an absence of cartilage in her hip joints. Petitioner testified her physician recently advised her she will need to have her right hip replaced. Petitioner testified hip pain causes her legs to "go out."

Petitioner testified she has recurring muscle spasms throughout her body. She estimates they happen 2-3 days per week (15-20 minutes each time). Petitioner testified the spasms affect her fingers, feet, calves, and stomach. She is not sure what causes them. Petitioner testified she treats spasms with muscle relaxers, pain medication, and consumption of water.

Presented evidence sufficiently verified degrees of walking, standing, and lifting/carrying restrictions, ongoing for at least 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 joint dysfunction (Listing 1.02) was considered based on Petitioner's complaints of hip pain. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively.

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 an ongoing spinal disorder resulting in a compromised nerve root.

Cardiac-related listings (Listing 4.00) were considered based on Petitioner's cardiac treatment history. Petitioner failed to meet any cardiac listings.

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

The fourth and fifth step of the disability analysis requires an assessment of Petitioner's functional capacity.

Petitioner testified she can walk 1-2 blocks before her back hurts and her legs tire. Petitioner testified the same problems prevent standing longer than 20-30 minutes. Petitioner estimated she could sit for an hour before needing 10-15 minutes of standing before sitting for a return to sitting. Petitioner testified she is restricted to 5 pounds of lifting/carrying. Petitioner testified she requires daily use of a cane.

Petitioner testified she can shower, but sometimes she has to use a shower chair. Petitioner testified she has difficulty putting on socks and shoes due to bending difficulty. Petitioner testified she gets help from her family in completing housework. Petitioner testified she can shop, but she utilizes a scooter when she can. Petitioner testified she can drive.

Physician statements of ongoing restrictions were not presented. Restrictions can be inferred based on presented documents.

Cardiologist office visit notes dated [REDACTED], indicated a NYHA functional assessment of II-III. A class II assessment is representative of patients with cardiac disease resulting in slight limitation of physical activity; they are comfortable at rest, but ordinary physical activity results in fatigue, palpitation, dyspnea or anginal pain. A class III assessment is indicative of marked limitations of physical activity. The patient may be comfortable at rest while less than ordinary physical activity causes fatigue, palpitation, dyspnea or anginal pain.

Petitioner's particular NYHA classification is indicative that Petitioner is able to perform "less than ordinary physical activity" without heart problems, but not as much physical activity as a persons with a class II classification. The classification is consistent with performing sitting without restriction, though long periods of standing and/or ambulation would likely be difficult.

Spine surgeon letters (Exhibit 1, pp. 128-129) dated [REDACTED], was presented. It was noted Petitioner was restricted to lifting/carrying of 5 pounds. A work restriction until May 20, 2015, was noted. The presented letter only confirms a physician-imposed restriction within the weeks after Petitioner's back surgery. It is unknown if the lifting/carrying restriction was intended to be permanent; a temporary restriction is likely as no further restriction was documented.

Presented radiology from Petitioner's back surgery hospitalization verified moderate spinal stenosis at L2-L3 and L3-L4 and severe spinal canal stenosis at L4-L5. Spinal stenosis to a "severe" degree is indicative of an inability to perform any employment; this is particularly true when multiple vertebrae spaces are affected by "moderate" stenosis. It is not known whether Petitioner's stenosis improved following laminectomy and spinal abscess removal. Petitioner testimony was suggestive of significant improvement as her primary complaint seemed to be hip pain.

Recurring complaints of hip pain and issuance of strong pain medication was verified. Radiology was not verified. PT records were not presented. The evidence was suggestive of restrictions that would limit ambulation, standing, and carrying.

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.

A Work History Questionnaire (Exhibit 1, p. 4) dated [REDACTED], was presented. Petitioner wrote that she worked as a case manager advocate. Petitioner testified she also held an essentially identical job as an intake coordinator. Petitioner testified her duties included interviewing clients and providing them food vouchers and/or bus tickets. Petitioner testified her duties included some computer work and public speaking at workshops.

Petitioner testimony suggested she might be able to perform her previous job. Petitioner's testimony was likely overly-optimistic.

Petitioner wrote that her previous employment required 4 hours of walking and 1 hour of standing per workday. Petitioner's statement of work requirements likely exceeds her

capabilities. This conclusion, in part, factors Petitioner's combined spinal, hip, and cardiac restrictions. It is notable that Petitioner also takes very strong pain medication which would make it difficult for her to maintain the necessary concentration for public speaking.

It is found Petitioner is unable to 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).

Given Petitioner's age, education and employment history a determination of disability is dependent on Petitioner's ability to perform medium employment. 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. Medium employment requires comparable standing and walking standards, but with a heavier lifting requirement than light employment.

During the functional assessment analysis, Petitioner was deemed incapable of performing her previous sedentary-type employment due to various diagnoses and restrictions. Though Petitioner cannot perform her past employment, she is likely capable of performing sedentary employment requiring less ambulation and concentration. Petitioner could not reasonably be expected to perform a more physically demanding type of employment.

It is found Petitioner is capable of performing some types of sedentary employment. For purposes of this decision, it is presumed that ample sedentary employment opportunities are available to Petitioner.

Based on Petitioner's exertional work level (sedentary), age (advanced age), education (more than high school with no known direct entry into skilled employment), employment history (semi-skilled with no known direct entry into skilled employment),

Medical-Vocational Rule 201.04 is found to apply. This rule dictates a finding that Petitioner is disabled. Accordingly, it is found that MDHHS improperly 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 improperly denied Petitioner's application for SDA benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

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

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

CG/hw



Christian Gardocki

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]