



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: October 4, 2016
MAHS Docket No.: 16-010550
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 September 6, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], supervisor, and [REDACTED], medical contact worker.

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. 8-14).
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 (see Exhibit 1, pp. 2-3).

6. As of the date of the administrative hearing, Petitioner was a 54-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 a Bachelor of Science degree (with a major of business).
9. Petitioner has a history of semi-skilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on restrictions related to breast cancer and headaches.

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 (July 2015), 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 (January 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.*

Petitioner testified she attended a Social Security Administration hearing in August 2016 and was told by the presiding judge that she would be found to be disabled. Petitioner's testimony was not supported by any documentation verifying certification of disability. Without documentation to support certification of disability, it will be found that Petitioner has not yet been certified as disabled.

Petitioner requested a hearing to dispute the denial of an SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 4-7) dated [REDACTED],

verifying Petitioner's application was denied based on a determination that Petitioner was not disabled.

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 [90 days for SDA eligibility]. 20 CFR 416.905.

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.

Neurologist office visit notes (Exhibit 1, pp. 111-113) dated [REDACTED], were presented. A complaint of persistent headaches was noted. It was noted Petitioner had a medical history of fluid collection in the brain (hydrocephalus). An EEG was planned.

Neurologist office visit notes (Exhibit 1, pp. 59-63) dated [REDACTED], were presented. A complaint of intermittent headaches with blurry vision was noted. A low dose of Topamax was prescribed.

Oncologist office visit notes (Exhibit 1, pp. 86-89) dated [REDACTED], were presented. It was noted Petitioner was an ongoing breast cancer patient. It was noted Petitioner

completed radiation and began taking Arimidex in June 2013; it was noted Petitioner would continue taking Arimidex until June 2018. It was noted Petitioner complained of right shoulder pain though radiology was negative. It was noted Petitioner recently underwent fluid drainage to address right hip pain. It was noted Petitioner had no performance restrictions.

Neurologist office visit notes (Exhibit 1, pp. 56-58) dated [REDACTED], were presented. An ongoing complaint of headaches was noted. It was noted Petitioner reported Topamax did little to alleviate headaches.

Oncologist office visit notes (Exhibit 1, pp. 82-85) dated [REDACTED], were presented. It was noted Petitioner complained of right breast pain. A continuing impression of cancer remission was noted.

Neurologist office visit notes (Exhibit 1, pp. 53-55) dated [REDACTED], were presented. An ongoing complaint of headaches was noted. A brain MRI was planned. It was noted Petitioner took Pamelor and Topamax for headaches.

Neurologist office visit notes (Exhibit 1, pp. 50-52) dated [REDACTED], were presented. A complaint of headaches was noted. An MRI was noted to indicate lateral ventricular prominence; suspicion of aqueductal stenosis was indicated.

Neurologist office visit notes (Exhibit 1, pp. 47-49) dated [REDACTED] were presented. A complaint of headaches was noted. A recommendation of surgery was indicated. It was noted Petitioner would seek a second opinion concerning surgery.

Neurologist office visit notes (Exhibit 1, pp. 44-46) dated [REDACTED], were presented. A complaint of unchanged headaches was noted to be reported. It was noted that surgical intervention was recommended for aqueductal stenosis. It was noted Petitioner preferred the shunt insertion be performed by a different physician.

Spine and brain physician office visit notes (Exhibit 1, pp. 27-30) dated [REDACTED], were presented. It was noted that Petitioner reported ongoing headaches, which "she can no longer tolerate." A plan of shunt placement surgery was indicated.

Oncologist office visit notes (Exhibit 1, pp. 73-76) dated [REDACTED], were presented. It was noted a mammogram from March 2016 was negative for cancer recurrence (see Exhibit 1, pp. 77, 80-81). A plan to continue Arimidex, Norco, and Xanax was indicated.

Various brain surgery documents (Exhibit 1, pp. 40-43, 64-68) dated [REDACTED], were presented. It was noted Petitioner underwent shunt placement for a diagnosis of obstructive hydrocephalus. Post-surgery radiology indicated shunt placement (see Exhibit 1, pp. 32-35).

A medical supply order (Exhibit 1, p. 37) dated [REDACTED], was presented. It was noted Petitioner was ordered a walker in response to complaints of muscle weakness and ambulation difficulty.

Spine and brain physician office visit notes (Exhibit 1, pp. 24-26) dated [REDACTED], were presented. It was noted that Petitioner was satisfied with surgery results, though ongoing neck and right shoulder discomfort was reported.

Spine and brain physician office visit notes (Exhibit 1, pp. 21-23) dated [REDACTED], were presented. It was noted that Petitioner's headaches were resolved for 3 months before she reported experiencing right-side headaches. A CT scan of Petitioner's brain was noted to show a small extra axial fluid collection on the right (see Exhibit 1, p. 31). Oxycodone-Acetaminophen was prescribed. A brain MRI was recommended.

Neurologist office visit notes (Exhibit 1, pp. 108-110) dated [REDACTED], were presented. It was noted Petitioner reported no significant change in headaches since shunt replacement. Depakote was prescribed.

Petitioner testified she sees a psychiatrist every 2-3 months. No psychiatric treatment was verified. Without any verification of treatment, psychiatric restrictions will not be further considered.

Petitioner testified she's experienced back pain for 10 years. Petitioner testified she has not yet been treated. Restrictions related to back pain cannot be inferred without treatment records.

Petitioner testified she has right-sided pain. Petitioner testified she is need of physical therapy. A complaint of right-side pain was verified within presented records through not much else was documented concerning the complaint. Related radiology and treatment was not verified. A referral for physical therapy was not verified. Due to insufficient treatment history, right-side restrictions will not be further considered.

Petitioner testified she was diagnosed with breast cancer in 2012 and has been in remission since 2013. Petitioner testified she has to see a physician every 3 months for ongoing treatment. Petitioner testified she takes anastrozole as an ongoing medication. Petitioner testified her medications make her feel weak.

Petitioner testified she has headaches "constantly, all day." Petitioner testified her headaches are worse since undergoing shunt surgery. Petitioner also testified she has standing, ambulation, and lifting restrictions.

Presented medical records generally verified a medical treatment history consistent with Petitioner's allegations of restrictions. The treatment history was established to have lasted at least 90 days and at least since Petitioner's date of SDA application.

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 treatment for hip and shoulder pain. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively or is unable to perform fine and gross movements with two extremities.

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

A listing for breast cancer (Listing 13.10) was considered based on Petitioner's treatment history. The listing was rejected due to a failure to establish ongoing advanced carcinoma, carcinoma with metastases, or recurrent carcinoma.

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

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

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

Petitioner testified she last worked in 2011. Petitioner testified she worked for 8 years as a postal carrier. Petitioner testified she also performed medical deliveries. Petitioner testimony credibly implied she would be unable to perform the lifting/carrying and ambulation required of her past employment.

Petitioner performed employment as a title processor. Petitioner testified her work was primarily at a computer. Petitioner testified the employer required her to repeatedly pull files which required extensive periods of standing and/or bending. Petitioner testimony implied she would be unable to perform the standing and/or bending necessary to return to title processing employment.

On [REDACTED], a hospital physician cited Petitioner was restricted from performing strenuous activity though she was ambulatory and could perform light or sedentary work. Office and light housework were specifically indicated as performable. The guidelines appear to be consistent with an ability to perform title processing work.

Petitioner's testimony that she was unable to perform past employment as a title processor was not particularly convincing, though Petitioner is the best (and only presented) source for the expectations of her previous employment. This evidence suggests Petitioner cannot perform past employment.

Presumably, title processing employment is semi-complex requiring attention to detail and extensive periods of concentration. Petitioner's ongoing headaches would likely render Petitioner to have difficulty performing any employment requiring analysis or non-repetitive type of work.

It is found Petitioner is not capable of performing 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 light 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.

Petitioner testified she does not utilize a cane or walker. Petitioner testified she can only walk a ½ block before feeling tired and weak. Petitioner testified she has a 3-step limit, in part, because looking downward makes her dizzy. Petitioner testified she can stand for 40 minutes before being too weak to stand longer. Petitioner testified she is restricted to sitting for 30-40 minute periods due to back pain. Petitioner testified she is restricted to 5 pounds of lifting.

Petitioner testified she independently showers, though she sometimes get weak from standing. Petitioner testified she can dress herself. Petitioner testified she can do housework, but only when she feels like it. Petitioner testified her kids perform her shopping and laundry. Petitioner testified she avoids shopping because she does not want to be around people.

Generally, Petitioner's testimony was consistent with an inability to perform light employment. In particular, Petitioner's stated lifting and ambulation restrictions would preclude the performance of light employment. Petitioner's testimony will be considered in light of presented medical evidence.

As noted in the fourth step analysis, Petitioner was deemed capable of performing light employment by her oncologist. Presumably, the statement was solely based on her breast cancer treatment history. Thus, Petitioner's headaches and joint problems were presumably not factored by the oncologist.

Presented records documented recurring complaint of headache. Though Petitioner underwent surgical intervention, presented documents generally verified little relief for Petitioner. Petitioner's headaches appear to restrict her from performing highly social and/or non-repetitive employment.

Presented records verified Petitioner was prescribed a walker. Generally, a need for a walker (even though Petitioner can apparently walk short distances without one) is consistent with an inability to perform the ambulation necessary for light employment.

It is concerning that Petitioner alleges back pain but presented no evidence of treatment or radiology. Despite an absence of orthopedic specialist treatment, a need for cancer medication, abnormal radiology causing headaches, and a need for walking assistance device was established. The combination of evidence is likely to preclude Petitioner's performance of light employment. It is found Petitioner is limited to sedentary employment (of a repetitive and simple nature).

Based on Petitioner's exertional work level (sedentary), age (approaching advanced age), education (college degree with no known direct entry into skilled employment), employment history (semi-skilled with no known transferrable skills), Medical-Vocational

Rule 201.14 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]