



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: September 9, 2016  
MAHS Docket No.: 16-010648  
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 1, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED], Petitioner's friend, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

### **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. 5-12).
4. On [REDACTED], MDHHS determined Petitioner was not disabled and denied Petitioner's SDA application.

5. On [REDACTED], Petitioner requested a hearing to dispute the denial of SDA benefits (see Exhibit 1, pp. 3-4).
6. As of the date of the administrative hearing, Petitioner was a 52-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 the 11<sup>th</sup> grade.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on restrictions related to vision loss, lumbar pain, chronic obstructive pulmonary disease (COPD), and diabetes mellitus (DM).

### **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).

Prior to a substantive analysis of Petitioner's hearing request, it should be noted that Petitioner's hearing request listed special arrangements needed for hearing participation. Petitioner's hearing request indicated she was unable to stand, did not see well, and had hand tendonitis. Petitioner testimony conceded the conditions did not require special arrangements for her hearing participation. Based on Petitioner's testimony, the hearing was conducted without special arrangements for Petitioner.

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 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. 80-84) 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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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.

Hospital emergency room documents (Exhibit 1, pp. 13-16, 55) dated [REDACTED], [REDACTED] and [REDACTED], were presented. It was noted that Petitioner presented with complaints of left eye complaints of chronic pain, blurry vision, and decreased vision. Petitioner's right eye vision was noted to be 20/20. A plan of enucleation (eye removal) surgery was indicated.

Hospital emergency room documents (Exhibit 1, pp. 19-23, 28, 56) dated [REDACTED], [REDACTED] and [REDACTED], were presented. It was noted Petitioner presented with a

complaint of left eye pain, ongoing for 1-2 days. A left eye surgery was noted to be pending for a later date. Petitioner's uncorrected right eye vision was noted to be 20/50. A diagnosis of chronic glaucoma was indicated. It was noted Petitioner was supposed to take eye drops for glaucoma but had not done so. It was noted Petitioner received medication and was discharged.

Hospital documents (Exhibit 1, pp. 25-27, 53-54) dated [REDACTED], were presented. It was noted Petitioner underwent left eye enucleation with orbital implant placement surgery.

Ophthalmologist office visit notes (Exhibit 1, pp. 57-58) dated [REDACTED], were presented. Petitioner reported continuing left eye pain. Hydrocodone-acetaminophen was prescribed.

Hospital emergency room documents (Exhibit 1, pp. 29-32) dated [REDACTED], were presented. It was noted Petitioner reported left eye pain and swelling. It was noted Petitioner's symptoms were likely post-surgical and not emergent. Petitioner was given pain medication and discharged.

Ophthalmologist office visit notes (Exhibit 1, pp. 32-34) dated [REDACTED], were presented. Petitioner reported ongoing left eye pain. It was noted Petitioner's pain was "much improved." A follow-up in 1-2 months was indicated. Petitioner was provided with Norco to be "sparingly" used.

Petitioner testified she was robbed and beaten in 2013 by two persons. Petitioner testified the perpetrators hit her in the head with a brick and milk crate. Petitioner also testified the perpetrators repeatedly hit her in her left eye. Petitioner testified she has suffered medical problems since the assault.

Petitioner testified she has lumbar pain. Petitioner testified her physician referred her to an in-house physical therapist. Petitioner testified she only completed one appointment because the therapist left her doctor's office. Petitioner could not explain why she was not referred to a different therapist.

Petitioner testified she has COPD. The diagnosis was listed in Petitioner's records, but treatment was not apparent. Petitioner testified she continues to smoke despite the diagnosis.

Petitioner testified she suffers from depression. Petitioner testified she attended a psychiatric appointment in July 2016, but did not continue seeing the psychiatrist because she did not like him. Petitioner testified she has an appointment with a new psychiatrist on the date of hearing.

Petitioner testified she has leg and foot pain. Petitioner testified she's had 2 pain injections in her right foot, which did not reduce her pain. Petitioner testified she takes Norco and Valium for pain.

Petitioner testified she is restricted to ½ block of walking before her legs “shut down” and she runs out of breath. Petitioner testified she is limited to 30 minutes of standing because of leg pain and swelling. Petitioner testified it causes her to use a cane for ambulation.

Petitioner testified she has recurring lumbar pain. Petitioner testified she is restricted in sitting (presumably because of back pain) to 20 minute periods.

Petitioner testified she has difficulty getting in and out of the bathtub and needs help from her daughter-in-law. Petitioner testified she sometimes needs help dressing herself because she has difficulty raising her left arm. Petitioner testified she cannot perform any housework; Petitioner testified when she tried to wash dishes, she dropped two. Petitioner testified she shops, but utilizes a scooter. Petitioner testified she also cannot cook; she testified when she tried, she ended up burning her belly. Petitioner testified she spends her days crying, listening to church music, and reading the Bible.

Petitioner’s friend testified he visits Petitioner multiple times per week. Petitioner’s friend testified Petitioner is capable of very little activity. Petitioner’s friend testified he witnessed Petitioner fall multiple times. Petitioner’s friend testified he also witnessed Petitioner get dizzy when she tries to do more than she should.

Petitioner testimony alleged standing, sitting, lifting/carrying, ambulation, respiratory and psychological restrictions. Diagnoses of asthma, COPD, HTN, and DM were noted as part of Petitioner’s history, however, no treatment records for the problems were presented. Radiology was not presented concerning foot, leg, or back pain. Spirometry testing was not presented. Psychiatric and/or therapist treatment records were not presented. Presented evidence was insufficient to infer any restrictions outside of those related to Petitioner’s left eye.

The most recently presented record indicated Petitioner’s reported eye pain was significantly lessened by surgery. Petitioner testimony conceded the same. Insufficient evidence of restrictions related to continuing eye pain were presented.

The only restriction that was established was loss of vision. It was verified Petitioner’s left eye was surgically removed. A loss of an eye could reasonably limit a person’s basic work activity function.

It is found Petitioner has a severe restriction related to visual acuity. The restriction has 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 visual acuity (Listing 2.02) was considered based on loss of vision. This listing was rejected due to a failure to establish a corrected eyesight of worse than 20/200 in Petitioner's best eye.

It is found Petitioner failed to establish meeting a SSA listing. Accordingly, the analysis may proceed 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 testimony indicated she held only part-time employment in the past 15 years. Petitioner testified she earned [REDACTED] per month as a home help aide. Petitioner testimony implied her employment earnings did not approach SGA levels. Petitioner's testimony was credible and un rebutted. It is found Petitioner has no past, relevant employment amounting to SGA in the 15 years before her SDA application.

Without past, relevant employment amounting to SGA, it can only be found that Petitioner cannot return to past employment performance. 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.

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

As noted in the second step of the analysis, the only verified restriction was vision loss. Petitioner testified her right eye vision was suboptimal.

Petitioner testified she has particular problems with vision because she fell in July and broke her glasses after they were run over by a car. Petitioner testified she is unable to afford a replacement pair and has to wait until 2017 before her insurance will cover a new pair. For purposes of this decision, Petitioner's testimony will be accepted.

There are occasions when a lack of finances is a reasonable barrier to maximizing function. For example, it is unrealistic to expect most persons to pay out-of-pocket for many complex surgeries. Evidence was not presented concerning how much eyeglasses would cost Petitioner, however, it is presumed that the cost is not particularly excessive if that is all preventing Petitioner from performing employment. Even if it is found that Petitioner has a valid excuse for not having eyeglasses, evidence was not suggestive that Petitioner is unable to perform light employment.

Presented document verified 20/50 uncorrected vision in Petitioner's right eye. Though the vision is not ideal, it is far from SSA listing requirements. Petitioner's reduced vision would preclude the performance of some employment (e.g. employment involving driving, heavy machinery, heights). MDHHS did not present evidence of employment Petitioner could perform. Light employment Petitioner should be expected to perform includes retail sales, child care, unarmed security guard, and cashier. MDHHS did not present evidence of the availability of such employment, however, it is probable that ample employment opportunities exist for Petitioner within her residential area. It is found Petitioner is capable of performing, at minimum, sufficiently available light employment.

Based on Petitioner's exertional work level (light), age (approaching advanced age), education (limited, but literate and capable of communicating in English), employment history (none), Medical-Vocational Rule 202.10 is found to apply. This rule dictates a finding that Petitioner is not disabled. Accordingly, it is found that MDHHS properly 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 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**.

CG/hw



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**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]