RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: January 25, 2017
MAHS Docket No.: 16-018175
Agency No.:
Petitioner:

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on January 9, 2017, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by , 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 , Petitioner applied for SDA benefits.

2. Petitioner's only basis for SDA benefits was as a disabled individual.

3. On , the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 14-20).

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

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

6. On [redacted], an administrative hearing was held.

7. During the hearing, Petitioner and MDHHS waived the right to receive a timely hearing decision.

8. During the hearing, the record was extended 7 days to allow Petitioner to submit neurologist treatment records; an Interim Order Extending the Record was subsequently mailed to both parties.

9. On [redacted], Petitioner submitted additional documents (Exhibit A pp. 1-56).

10. Petitioner has transverse myelitis (TM) which causes extreme disorganization of multiple extremities.

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 requested a hearing to dispute the denial of a 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 4-8) 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 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Petitioner's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with background information from Petitioner's testimony and a summary of presented medical documentation.

Hospital emergency room documents (Exhibit 1, p. 38) dated [redacted], were presented. It was noted that Petitioner presented with complaints of dental pain. Acetaminophen-codeine was prescribed.

Hospital documents (Exhibit 1, pp. 13-20) from an admission dated [redacted], were presented. It was noted that Petitioner presented with complaints of numbness, ongoing for 2 weeks. An MRI was noted to demonstrate a spine lesion at T8-T9. Impressions of MS or TM were indicated. A discharge date of [redacted], was noted.

Physician office visit notes (Exhibit 1, pp. 33-35) dated [redacted], were presented. It was noted Petitioner reported lumbar pain since undergoing a spinal tap. "Significant improvement" in leg pain was noted following steroid treatments. It was

noted neurologist records were indicative of a diagnosis of either transverse myelitis or multiple sclerosis. A MRI of lesion at T8-T9 was recommended. Use of a cane or walker was recommended due to gait difficulty. It was noted Petitioner was concerned about a MS diagnosis. GERD symptoms were noted as "well controlled" on current meds.

Physician office visit notes (Exhibit 1, pp. 39-42) dated [REDACTED], were presented. Treatment history noted Petitioner reported toe numbness beginning in November 2015. An ER visit and 5 day hospitalization followed. A steroid treatment was noted to improve, but not resolve, symptoms. Gait problems were noted as ongoing. Symptoms were noted to be "highly suggestive" of incomplete TM.

Physician office visit notes (Exhibit 1, pp. 43-46) dated [REDACTED], were presented. It was noted MRIs indicated a segment within the t-spine, possibly indicative of longitudinal myelitis. A follow-up lumbar puncture was recommended.

Physician office visit notes (Exhibit 1, pp. 47-50) dated [REDACTED], were presented. It was noted Petitioner reported no new symptoms. A referral to PT and follow-up MRI was planned.

A thoracic spine radiological report (Exhibit A, p. 12, 26) dated [REDACTED], was presented. An impression of signal abnormality at T8-T9 was noted. Petitioner's lesion was noted to be less prominent.

Physician office visit notes (Exhibit 1, pp. 30-32) dated [REDACTED], were presented. It was noted Petitioner reported ongoing back pain and feet tingling. Anxiety over gait change was noted. GERD was noted as "well controlled" on current meds.

Physician office visit notes (Exhibit 1, pp. 27-30) dated [REDACTED], were presented. It was noted Petitioner complained of an increase in lumbar pain since the day before. It was noted Petitioner reported urinary incontinence twice in past day. Improvement in the lesion was noted following a repeat MRI. An impaired gait was noted. Normal reflexes and coordination were noted. Power and pinprick sensation were noted as decreased on the right side. A recommendation of an emergency room visit was noted in light of new symptoms.

Physician office visit notes (Exhibit 1, pp. 24-27) dated [REDACTED] were presented. It was noted Petitioner presented for ongoing transverse myelitis treatment. An impaired gait was noted. Recommended use of Zoloft was noted following a recent hospitalization.

Physician office visit notes (Exhibit 1, pp. 21-24) dated [REDACTED], were presented. It was noted Petitioner presented for ongoing transverse myelitis treatment. Chronic back pain was noted as reported since November 2015. PT was noted as started and helping with report of pain. An impaired gait was noted. Continued use of a cane or walker was recommended. Cymbalta was prescribed for pain. It was noted a previous neurologist

referred Petitioner to a psychologist because of discrepancies between Petitioner's symptoms and clinical findings. It was also noted Petitioner was prescribed, but had not started medication treatment. PTSD and unstated "significant stressors" were noted. A recommendation for psychiatric treatment was noted. It was noted Petitioner was "very much affected" by her body habitus, and weight; a BMI of 48 was noted.

Neurologist office visit notes (Exhibit A, pp. 9-11) dated [redacted], were presented. It was noted Petitioner sought the second opinion of a neurologist for primary complaints of bilateral leg numbness. Complaints of recent right arm numbness, day sleepiness, urinary urgency, and spinal pain were noted. Petitioner was noted to ambulate with difficulty. An impression of transverse myelitis related to infection vs. morbid obesity was noted. Radiological testing was recommended.

A thoracic spine radiological report (Exhibit A, pp. 27-28, 30-31) dated [redacted] was presented. An impression of persistent, but fewer, signal abnormalities was noted at T8-T10.

Various neurology test results (Exhibit A, pp. 44-49) dated [redacted], were presented. An impression of abnormal extremity somatosensory evoked potentials were noted. It was noted the findings were consistent with a central conduction delay and/or peripheral neuropathy.

Hospital emergency room documents (Exhibit A, pp. 50-56) dated [redacted], were presented. It was noted that Petitioner presented with complaints of headaches, lumbar pain, and bilateral leg numbness. Various medications were prescribed.

Neurologist office visit notes (Exhibit A, pp. 6-8) dated [redacted], were presented. It was noted an MRI of the thoracic spine showed the lesion indicative of TM. Ongoing falls related to TM were reported. Petitioner was noted to be crying. A plan of a leg brace was noted. A sleep study was planned in response to complaints of snoring, day sleep, and difficulty breathing while sleeping.

Neurologist office visit notes (Exhibit A, pp. 3-5) dated [redacted], were presented. It was noted Petitioner was not taking Florinef and Propranolol as recommended. A plan of Botox injections was planned.

Neurologist office visit notes (Exhibit A, pp. 1-2) dated [redacted], were presented. It was noted Petitioner reported ongoing falling. It was noted Petitioner underwent her first Botox treatment for dystonia of the right leg/foot. Follow-up in 2 weeks was noted. Petitioner testified the treatment did not improve her condition.

Petitioner reported she was told her spinal lesion will never vanish. Petitioner testified PT did not improve her condition.

Petitioner testified her right foot points at her left. Petitioner testified she has always been pigeon-toed, but her conditioning is worsening. The testifying specialist estimated Petitioner's right foot pointed inward at a 45 degree angle. Petitioner testified she wears a boot on her right foot wired to a belt to try and turn her leg outward.

Petitioner testified she was diagnosed with Pot's syndrome. Petitioner testified it causes her to have a rapid heartbeat. Petitioner testified she notices it when she goes from a sitting-to-standing position. Petitioner testified her neurologist prescribes 2 medicines for the condition.

Petitioner did not provide a sitting restriction other than needing to move in her seat. Petitioner's specialist testified she did not notice any shifting by Petitioner during the hearing.

Petitioner testified she needs help lifting her legs to get into a bathtub. Petitioner testified she needs assistance with putting on her shoes. Petitioner testified she can put on her own pants, but she sits down to do it. Petitioner testified she does her own laundry, but needs help putting clothes into a dryer. Petitioner testified she can shop, but utilizes a scooter, and sometimes needs help when bending for items is needed.

Petitioner testified she has a learning disability. Petitioner testified she was in special education classes.

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 diagnosis of transverse myelitis was verified. The most relevant SSA listing justifies a finding of disability by the following:

> **11.08 Spinal cord disorders**, characterized by A, B, or C:
> A. Complete loss of function, as described in 11.00M2, persisting for 3 consecutive months after the disorder (see 11.00M4).
> OR
> B. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated

position, balance while standing or walking, or use the upper extremities persisting for 3 consecutive months after the disorder (see 11.00M4).
OR
C. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a) and in one of the following areas of mental functioning, both persisting for 3 consecutive months after the disorder (see 11.00M4):
1. Understanding, remembering, or applying information (see 11.00G3b(i)); or
2. Interacting with others (see 11.00G3b(ii)); or
3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
4. Adapting or managing oneself (see 11.00G3b(iv)).

Petitioner testified she can only walk 30-40 feet before needing to rest; Petitioner later testified she could walk a further distance. Petitioner testified she is restricted in standing for 5 minutes before feeling back pain and light-headedness. Petitioner testified she can ascend stairs, but needs a railing.

Petitioner's statements were indicative of bilateral leg dysfunction resulting in an "extreme limitation." Generally, presented evidence was consistent with Petitioner's testimony.

Presented medical records documented ongoing complaints of leg numbness and lumbar pain since 2015. The complaints were consistent with the diagnosis of TM.

Petitioner testified she does not use a walking assistance device. Petitioner testified use of a walker hurts her back. It was noted in Petitioner's medical records that a walking assistance device was recommended. Ambulation difficulty was documented throughout Petitioner's medical records.

A neurologist noted on [redacted] that TM has not yet evolved into MS, but Petitioner was still unable to work. The statement was consistent with an extreme limitation in multiple extremities.

It should be noted that Petitioner's condition has shown some signs of improvement. Petitioner's spinal lesion has grown smaller over time. It is also notable that Petitioner's morbid obesity appears to be partially contributing to her limitations. Thus, Petitioner appears to have hope for a reduction in symptoms. A redetermination in 12 months will be for the purpose of reexamining Petitioner's condition.

It is found that Petitioner sufficiently meets SSA listing 11.08 (B). Accordingly, Petitioner is disabled and it is found that MDHHS improperly denied Petitioner's SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS 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

Petitioner