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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 17, 2017
MAHS Docket No.: 17-000477
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 [REDACTED], [REDACTED], 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. 123-129).
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. Since applying for SDA benefits, Petitioner has been unable to ambulate effectively due to right knee dysfunction.
7. Petitioner underwent knee replacement surgery on [REDACTED], which should improve Petitioner's condition within 6-8 months.

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 an SDA dispute. 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. 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. 130-131) 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 \$ [REDACTED].

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.

Physician office visit notes (Exhibit 1, pp. 116-120) dated [REDACTED], were presented. It was noted that Petitioner reported recurrent knee pain halfway through a 7-hour shift as a cook. A knee brace was reportedly unhelpful. Norco was prescribed. A steroid knee injection was performed.

Physician office visit notes (Exhibit 1, pp. 113-116) dated [REDACTED] were presented. It was noted that Petitioner reported improved knee pain after a knee injection from 2 months earlier. Treatment for left wrist CTS, HTN, and hyperlipidemia was noted.

Physician office visit notes (Exhibit 1, pp. 109-113) dated [REDACTED], were presented. It was noted that Petitioner reported swelling after working for a few hours. A knee wrap was provided. X-rays were ordered. HTN was noted to be controlled.

Physician office visit notes (Exhibit 1, pp. 106-109) dated [REDACTED] were presented. It was noted that Petitioner presented for follow-up of right knee pain. An x-

ray was noted to demonstrate osteoarthritis. Petitioner reported some relief with steroid injections. Norco was continued. HTN was noted to be uncontrolled; medications and a care plan were given.

Sleep study testing results (Exhibit 1, pp. 81-83) dated [REDACTED] were presented. It was noted Petitioner's sleep efficiency was 85.54%. An impression of severe obstructive sleep apnea (OSA) was noted. A plan of PAP titration and HTN follow-up was noted. Weight loss was recommended.

Physician office visit notes (Exhibit 1, pp. 102-106) dated [REDACTED], were presented. It was noted that Petitioner presented for follow-up of right knee pain. Norco was prescribed for knee pain. Petitioner was referred to an orthopedist. HTN and foot callous treatment was also noted.

Sleep specialist physician notes (Exhibit 1, pp. 84-86) dated [REDACTED] were presented. Severe OSA was noted to be controlled by CPAP. Recommendations included CPAP, HTN follow-up, and weight loss.

Physician office visit notes (Exhibit 1, pp. 98-102) dated [REDACTED], were presented. It was noted that Petitioner presented for follow-up of knee pain, OSA, HTN, and depression. Depression was noted to be uncontrolled; a recommendation of behavioral health treatment was recommended. Norco and Naprosyn were continued for knee pain.

Physician office visit notes (Exhibit 1, pp. 94-98) dated [REDACTED], were presented. It was noted that Petitioner presented for follow-up of knee pain, HTN, and depression. Moderate improvement in knee pain was noted following 3rd week of physical therapy. Depression and knee pain were noted as moderately controlled. Norco and Naprosyn were continued.

Physician office visit notes (Exhibit 1, pp. 91-94) dated [REDACTED], were presented. It was noted that Petitioner presented for follow-up of knee pain and HTN. Petitioner reported knee pain worsening after PT, including that her knee sometimes gives-out. Examination demonstrated edema, and pain on palpation and when pressure is on knee joint. A plan of extended PT was noted. Norco and Naprosyn were continued.

A right knee MRI report (Exhibit 1, pp. 53-55; Exhibit A, p. 5 and 7) dated [REDACTED], was presented. An impression of multi-directional complex tear of meniscus, which included a near full-thickness radial tear, was noted. Advanced tri-compartmental osteoarthritis was noted. Moderate edema was noted. Moderate-to-large slightly complex joint effusion was noted. Moderate-to-severe medial meniscal extrusion was noted. Moderate thinning and fissuring of articular cartilage was noted.

A physician letter (Exhibit A, p. 5) dated [REDACTED] was presented. It was noted Petitioner was diagnosed with right knee osteoarthritis and was scheduled for a knee replacement on [REDACTED].

A surgery checklist and pre-op instructions for a total knee replacement (Exhibit A, pp. 2-3) was presented. It was noted Petitioner was scheduled for surgery on [REDACTED].

Petitioner testified she underwent a right knee replacement on [REDACTED]. Petitioner testified the surgery took 2 days. Petitioner testified she spent the last 4 weeks undergoing in-home physical therapy. Petitioner testified her therapy includes walking, biking, range of motions, and knee lifts. Petitioner testified she expects to begin 8 weeks of outpatient physical therapy soon.

Presented records verified knee pain restricted Petitioner's ability to ambulate, sit, stand, and lift/carry. Petitioner's 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.

Petitioner's primary restriction was based on right knee dysfunction related to various problems. Disability by joint degeneration is established by the following SSA listing:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

The ability to ambulate effectively is the crux of the joint deformity listing. Listing 1.00B2b defines what SSA requires for effective ambulation:

To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail.

A medical examination report (Exhibit 1, pp. 31-37) dated [REDACTED], was presented. The report was noted as completed by a consultative physician. Petitioner reported chronic right knee pain. Petitioner reported difficulty with walking more than a block. It was noted Petitioner reported arthroscopic surgery was scheduled. Petitioner reported knee pain inhibits her ability to dress herself, drive, and clean. Physical examination assessments noted Petitioner could arise from a seated position and ambulate normally. A positive McMurray's test was noted for Petitioner's right knee. It was noted Petitioner would need 8 weeks of limitation on the right knee following surgery. It was noted Petitioner had no sitting, standing, ambulation, or lifting/carrying, squatting, or crawling restrictions. It was noted Petitioner's MRI from [REDACTED] was considered in the assessments.

The assessment from the consultative physician was highly indicative that Petitioner did not meet SSA listing requirements. The assessment was not persuasive.

Radiology verified numerous problems with Petitioner's right knee. It was verified that the problems were severe enough to require a total knee replacement. It is not appreciated how the consultative physician determined Petitioner retained an unlimited ability to stand, crawl, lift/carry, and even squat. The physician essentially deemed Petitioner to be capable of performing strenuous physical labor. The assessments were ludicrous given presented radiology.

A Physical Residual Functional Capacity Assessment (Exhibit 1, pp. 41-48) dated [REDACTED], was presented. The assessment appeared to be completed by a consultative physician as part of Petitioner's SSA claim of disability. The stated basis for assessments were uncited medical records. Stated restrictions included occasional lifting of 20 pounds, frequent ability to lift/carry 10 pounds, standing or sitting about 6 hours in an 8 hour workday, unlimited pushing/pulling, occasional kneeling, occasional crawling, and occasional crouching.

Again the consultative physician's assessments were indicative of not meeting listing requirements. Again, the physician's assessments were not persuasive.

The second consultative physician at least found some restriction in Petitioner's knee by limiting Petitioner to only occasional crawling, kneeling, and crouching. Again, it is not understood, given Petitioner's need for knee replacement and presented radiology reports, how she could perform any degree of crawling, crouching, or kneeling.

It is found that presented assessments were unreliable indicators of Petitioner's abilities. No other assessments were presented. Petitioner's abilities can be inferred based on other evidence.

Petitioner testified she currently can only walk ½ block before knee pain prevents further walking. Petitioner testified she can stand for 15-20 minutes periods. Petitioner testified she can sit for 30 minute periods before needing to stand for a break. Petitioner testified she currently relies on a walker.

Petitioner testified she needs help with entering and exiting the bathtub. Petitioner testified she has difficulty dressing her lower body (e.g. pants, shoes, and socks). Petitioner testified she can wash dishes, though she sits when doing so. Petitioner testified she does not do laundry because it requires traveling 12 stairs. Petitioner testified she currently neither drives nor shops.

Petitioner testified towards the end of her employment as a cook, she continued working for employer, but not as a cook. Petitioner testified her employer accommodated her physical limitations by allowing her to work at the front desk. Petitioner testified there were not enough available hours from her former employer for her to continue performing the employment. Petitioner also testified that her knee pain eventually prevented performance the sedentary employment of working at the front desk.

The need for knee replacement surgery, the multiple problems verified by radiology, the need for in-home physical therapy, and the need for a walker all support a finding that Petitioner is unable to ambulate effectively. Given Petitioner's multiple sources of knee dysfunction and inability to perform her employment, it is found that the inability has lasted since Petitioner's SDA application date.

Petitioner testified her physician advised her knee is currently at about 70%. Petitioner testified she is encouraged by her progress and that she expects to return to employment as a cook in 4-5 months. Petitioner's testimony essentially conceded she is not permanently disabled.

Typically, MDHHS reviews SDA disability on an annual basis; in the present case, a shorter time period is justified. A conservative estimate of recovery from knee replacement surgery is 8 months. Petitioner will be given that approximate timeframe to recover before SDA eligibility is reconsidered.

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 **6 months** 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]
[REDACTED]

[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]