



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: April 3, 2017
MAHS Docket No.: 17-001663
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was held on [REDACTED], from [REDACTED], Michigan. Petitioner was represented by Attorney, [REDACTED]. Petitioner submitted 57 exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist, [REDACTED]. [REDACTED] testified on behalf of the Department. The Department submitted 458 exhibits which were admitted into evidence. The record was closed at the completion of the hearing.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

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. [Dept. Exh. 1-13].
2. On [REDACTED], the Medical Review Team denied Petitioner's application for SDA. [Dept. Exh. 429-435].
3. On [REDACTED], the Department issued a Notice of Case Action to Petitioner informing Petitioner that her request for SDA was denied. [Dept. Exh. 459-460].

4. Petitioner reports a history of disabling impairments including irritable bowel syndrome (IBS), Barrett's esophagus, a constant tremor, chronic inner mastoiditis, arthritis, chronic vertigo, neuropathy, stage 3 kidney disease, emphysema, asthma, and diabetes.
5. On [REDACTED], Petitioner underwent a CT internal auditory canals-posterior fossa without contrast. The CT revealed possible right and left mastoiditis, and apparent chronic right and left otitis media. The soft tissue density in the medial aspect of the left external auditory canal was thought to represent an inflammatory process. [Dept. Exh. 26-27].
6. On [REDACTED], Petitioner presented to her primary care physician complaining of ear pain. She was diagnosed with chronic middle ear infection of both ears. [Dept. Exh. 31].
7. On [REDACTED], Petitioner had a consultation with her allergist. The allergist found that Petitioner's asthma was uncontrolled and began Petitioner on [REDACTED] L and [REDACTED]. Petitioner was also instructed to continue the [REDACTED] and [REDACTED], and was referred to pulmonology. [Dept. Exh. 313-321].
8. On [REDACTED], Petitioner was evaluated by an orthopedist. She was diagnosed with a bunion on the left foot. Surgery was discussed but Petitioner was not a surgical candidate due to her poorly controlled diabetes and smoking. [Dept. Exh. 147-149].
9. On [REDACTED], Petitioner met with her primary care physician to discuss the results of her breast ultrasound. The ultrasound found lymph node enlargement under Petitioner's right arm. She was started on [REDACTED], and a [REDACTED]. If the node did not shrink, she was to be scheduled for a biopsy. [Petitioner Exh. 35-39].
10. On [REDACTED], Petitioner underwent an excisional biopsy of the right axillary lymph node. [Petitioner Exhibit 40].
11. On [REDACTED], Petitioner presented to her primary care physician with a fever for the past five days. Petitioner reported that she had a problem with an elevated white blood count, even in her twenties. She also reported a bladder lift with mesh, which was unsuccessful. Petitioner was referred to hematology for evaluation of the chronic elevation of her white blood cell count and scheduled for an ultrasound of her bladder and kidneys. [Petitioner Exh. 18-22].
12. On [REDACTED], Petitioner saw her primary care physician complaining of not feeling well. Her labs returned with abnormal findings. Petitioner was referred to the [REDACTED] for the chronic ear infections, vertigo and elevated white blood cell count. [Petitioner Exh. 23-28].

13. On [REDACTED], Petitioner presented to her primary care physician complaining of diarrhea in a persistent pattern for the past two months. Petitioner also reported gradual increasing dizziness occurring in a persistent pattern for years. Petitioner reported lightheadedness, spinning of the environment and feeling in the head. The dizziness begins with position changes, like head turning, standing suddenly, and riding in a car. Petitioner believed the chronic ear infections cause her dizziness. Petitioner was instructed to keep her ENT appointment and labs were taken. [Petitioner Exh. 29-34].
14. On [REDACTED], Petitioner underwent an evaluation and was found unable to stoop, carry, squat and arise, get on and off the examining table, climb stairs, or walk on heels and toes. Petitioner was prescribed a scooter, based on her recent surgery. [Dept. Exh. 132-133].
15. On [REDACTED], Petitioner underwent an independent medical examination on behalf of the Department. Petitioner was wearing a boot on her left foot. During the pulmonary function test, Petitioner had a significant cough with pre and post testing. She was unable to go six seconds. She was dizzy and red-faced due to inner ear mastoid. The test was completed with Petitioner seated. Clinically, Petitioner appeared to have mild to moderate persistent disease. She uses oxygen at night. Petitioner had findings of peripheral neuropathy as well as diminished pulsations. She had diminished sensation from the knees down. Petitioner had findings of degenerative arthritis predominantly in her knees and post-surgical changes to her feet. She was unable to do orthopedic maneuvers and was unable to effectively ambulate due to her recent surgery. Petitioner was able to hear normal volume at four feet without aids. She had a resting tremor in her right hand, which did not appear related to underlying vertigo. She complained of continued chronic ear infections and was on ear drop therapy. She was at risk for continued progressive hearing loss and associated sequelae related chronic ear infections especially given her relatively uncontrolled diabetes. [Dept. Exh. 134-141].
16. Petitioner has a history of Barrett's esophagus, post cardiac catheterization, allergic rhinitis, asthma, diabetes type II, diabetic peripheral neuropathy, hyperlipidemia, hypertension, post bladder lift in [REDACTED] with mesh, chronic kidney disease – stage 3, chronic elevated white blood cell count, a coarse tremor, chronic bilateral ear infections, vocal cord polyps, hepatitis A, Chiari malformation type 1, hypoxemia, arthritis, fatigue, tinnitus, blood disorder, gastroesophageal reflux disease, skin disorder, nausea, vomiting, chronic plaque psoriasis, phymatous rosacea, obesity, and a failed bunion surgery of the right foot.
17. Petitioner is a [REDACTED]-year-old woman, whose birthday is [REDACTED]. She is [REDACTED] and weighs [REDACTED] pounds. She has a high school education, and last worked in [REDACTED], as a manager in a beauty salon.
18. Petitioner was appealing the denial of Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed

to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and testified that she has not worked since [REDACTED]. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleges disability due to Barrett's esophagus, post cardiac catheterization, allergic rhinitis, asthma, diabetes type II, diabetic peripheral neuropathy, hyperlipidemia, hypertension, post bladder lift in [REDACTED] with mesh, chronic kidney disease – stage 3, chronic elevated white blood cell count, a coarse tremor, chronic bilateral ear infections, vocal cord polyps, hepatitis A, Chiari malformation type 1, hypoxemia, arthritis, fatigue, tinnitus, blood disorder, gastroesophageal reflux disease, skin disorder, nausea, vomiting, chronic plaque psoriasis, phymatous rosacea, obesity, and a failed bunion surgery of the right foot.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented some limited medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on the Petitioner's basic work activities. Further, the impairments have lasted continuously for 12 months; therefore, Petitioner is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Petitioner has alleged physical disabling

impairments due to Barrett's esophagus, post cardiac catheterization, allergic rhinitis, asthma, diabetes type II, diabetic peripheral neuropathy, hyperlipidemia, hypertension, post bladder lift in [REDACTED] with mesh, chronic kidney disease – stage 3, chronic elevated white blood cell count, a coarse tremor, chronic bilateral ear infections, vocal cord polyps, hepatitis A, Chiari malformation type 1, hypoxemia, arthritis, fatigue, tinnitus, blood disorder, gastroesophageal reflux disease, skin disorder, nausea, vomiting, chronic plaque psoriasis, phymatous rosacea, obesity, and a failed bunion surgery of the right foot.

Listing 1.00 (musculoskeletal system), Listing 2.00 (Special Senses and Speech), Listing 3.00 (Respiratory Disorders), Listing 4.00 (cardiovascular system), Listing 5.00 (Digestive System), Listing 7.00 (Hematological Disorders), and Listing 8.00 (Skin Disorders), were considered in light of the objective evidence. Based on the foregoing, it is found that Petitioner's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Petitioner cannot be found disabled at Step 3. Accordingly, Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). 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 are 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.

To determine the physical demands (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 additional 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 (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions 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.*

Petitioner's prior work history consists of work as a manager of a beauty salon. Petitioner credibly testified that she was unable to work due to her dizziness and was let go. In light of Petitioner's testimony, and in consideration of the Occupational Code, Petitioner's prior work is classified as unskilled, sedentary work.

Petitioner testified that she is able to walk very short distances and can lift/carry approximately 8 pounds. Petitioner stated that she is often unable to stand at all, due to the dizziness, and falls asleep if she is sitting. Her sleep is interrupted due to her foot pain. She also has a bench installed in her shower that she uses when she bathes and she has someone over to assist her in getting into and out of the shower. If the impairment or combination of impairments does not limit an individual's physical or mental ability to do basic work activities, it is not a severe impairment(s), and disability does not exist. 20 CFR 416.920. In consideration of Petitioner's testimony, medical

records, and current limitations, Petitioner cannot be found able to return to past relevant work. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Petitioner was 58 years old and was, thus, considered to be advanced age for MA-P purposes. Petitioner has a high school education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984).

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). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds Petitioner meets statutory disability using Medical/Vocation Grid Rule 201.04 as a guide.

Accordingly, this Administrative Law Judge concludes that Petitioner is disabled for purposes of the MA program. Consequently, the Department's denial of her June 6, 2011, SDA application cannot be upheld.

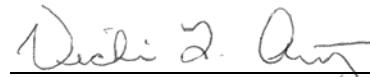
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Petitioner is not currently disabled for SDA eligibility purposes.

Accordingly, the Department's decision is REVERSED, and it is Ordered that:

1. The Department shall process Petitioner's [REDACTED], SDA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in [REDACTED], unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress, and prognosis at review.

VLA/bb



Vicki Armstrong
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]

Petitioner

[REDACTED]