



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: [REDACTED] June 26, 2017  
MAHS Docket No.: 16-019314-RECON  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Vicki Armstrong

### HEARING DECISION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the Petitioner's timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned ALJ at the conclusion of the hearing conducted on [REDACTED], and mailed on [REDACTED], in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the petitioner's benefits application, and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Rehearing was mailed on [REDACTED].

After due notice, a telephone hearing was held on [REDACTED], from [REDACTED], Michigan. Petitioner personally appeared and testified. Petitioner submitted 19 Exhibits, labeled Exhibit C, pp 1-19.

The Department of Health and Human Services (Department) was represented by Hearing Facilitator, [REDACTED]. [REDACTED] testified on behalf of the Department. The Department submitted 164 exhibits previously labeled, Petitioner's Exhibit A, pp 1-20; Petitioner's Exhibit B, pp 1-24 and Department Exhibits 1-120. The record was closed at the conclusion 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 ALJ, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Findings of Fact No. 1 through 15 under Registration Number 16-019314 are incorporated by reference.
2. On [REDACTED], a hearing was held resulting in a Hearing Decision mailed on [REDACTED], which found Petitioner was not disabled.
3. On [REDACTED], Petitioner requested reconsideration/rehearing.
4. The Request for Rehearing was GRANTED and mailed out on April 25, 2017, based on newly discovered evidence of medical tests and records, which appeared both relevant to the issue presented and existed at the time of the original hearing.
5. On [REDACTED], Petitioner's MRI of the cervical spine showed straightening of the cervical lordotic curvature and mild cervical degenerative changes from C3 to C6, resulting in mild canal narrowing at C4-C5 and C5-C8. The MRI of Petitioner's lumbar spine showed multilevel lumbar degenerative changes, most likely from a left paracentral protrusion at L5-S1 abutting the traversing left S1 nerve root. There was also moderate left L5-S1 neuroforaminal narrowing. In addition, a 7 mm STIR hyperintense lesion was seen in the posterior L1 vertebral body that is favored to represent an atypical hemangioma, and a 6-12 month follow-up MRI was suggested to exclude a more aggressive process. There was also a dilation of the left renal collecting system and left ureter, thought to be related to compression by a bulky fibroid uterus. [Petitioner Exh. C, pp 11-13].
6. On [REDACTED], Petitioner was seen by [REDACTED] for chronic bilateral low back pain without sciatica and spondylosis of the lumbar region without myelopathy or radiculopathy. Petitioner reported that her pain limited her activities of daily living, including her ability to stand, sit and walk. Petitioner had not responded to conservative management with rest, exercise, physical maneuvers and medication. Petitioner's thoracic lumbar spine was tender to palpitation over the bilateral thoracic lumbar facet joints at T12-L1 to L5-S1. The thoracic lumbar axial loading maneuvers, including lateral flexion and extension reproduced the Petitioner's pain pattern. [Petitioner Exh. C, pp 5-10].
7. On [REDACTED], Petitioner's Nurse Practitioner (NP) wrote that Petitioner was currently under her medical care and was unable to work. She had previously

been receiving care in California for injuries sustained in a motor vehicle accident. The NP indicated that she had been treating Petitioner since [REDACTED], and that Petitioner was also being treated by pain management along with other specialists for additional health issues. [Petitioner Exh. C, p 4].

8. On [REDACTED], Petitioner presented to an orthopedist complaining of lumbar spine pain radiating to the right thigh with symptoms aggravated by daily activities. Petitioner was receiving injections to the back as well as physical and massage therapy and using a TENS unit. She was also using tramadol for pain control. The MRI showed multilevel bulging disc disease at L3-L4, L4-L5, and L5-S1 with mild left neuroforaminal narrowing with L5-S1 disc protrusion. Petitioner's cervical spine pain was moderate. Location of pain was in the bilateral neck, causing weakness and numbing in the arm. Aggravating factors include changing positions. On exam, Petitioner was found to have blurred vision, back pain, muscle weakness, irregular heartbeat/palpitations, difficulty walking, dizziness, headache, hair loss, anxiety, depression, insomnia, cold intolerance, weight loss, and night sweats. Petitioner was assessed with chronic cervicgia, chronic cervical degenerative disc disease, chronic acute bilateral low back pain without sciatica, chronic displacement of lumbar intervertebral disc without myelopathy, and chronic stenosis of the lateral recess of lumbosacral spine, in addition to spinal enthesopathy of the thoracic region. [Petitioner Exh. C, pp 14-18].

### **CONCLUSIONS OF LAW**

In the instant case, Petitioner requested rehearing/reconsideration based on newly discovered evidence of medical tests and records which were available and appeared relevant to the issue presented at the original hearing.

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 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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

A person is disabled for SDA purposes if he or 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.
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2015).

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 **or 90 days for the SDA program**. 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).

The ALJ is responsible for making the determination or decision about whether the statutory definition of disability is met. The ALJ reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

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] and has never been able to hold a job for one year. Therefore, she is not disqualified from receiving SDA 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 means 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 migraines, diabetes and back pain due to a motor vehicle accident.

Petitioner credibly testified that she has a very limited tolerance for physical activities and is unable to stand, sit, or walk for more than 5-15 minutes. Petitioner stated that her pain interferes with her ability to do her activities of daily living.

The MRI's of the cervical and lumbar spine dated [REDACTED], revealed straightening of the cervical lordotic curvature and mild cervical degenerative changes from C3 to C6, resulting in mild canal narrowing at C4-C5 and C5-C8. Also seen were multilevel lumbar degenerative changes, most likely from a left paracentral protrusion at L5-S1 abutting the traversing left S1 nerve root. There was also moderate left L5-S1 neuroforaminal narrowing. In addition, a 7 mm STIR hyperintense lesion was seen in the posterior L1 vertebral body that is favored to represent an atypical hemangioma.

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 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 Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner is not disqualified from receipt of SDA 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 chronic back and neck pain, cervical and lumbar disc herniation and spondylosis of the lumbar region.

Listing 1.00 (musculoskeletal system) was considered in light of the objective evidence. Based on the Listing 1.04, Petitioner's impairments are severe, in combination, if not singly, (20 CFR 404.15.20 (c), 416.920(c)), in that Petitioner is significantly affected in her ability to perform basic work activities (20 CFR 404.1521(b) and 416.921(b)(1)).

Listing 1.04 requires a disorder of the spine such as a herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture, resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With evidence of nerve root compression characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine) and lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

As indicated by Petitioner during her testimony, and supported by the medical evidence in the file, the MRI indicates nerve root compression, resulting in limitation of motion of the spine, motor loss, muscle spasms, and associated muscle weakness displayed by Petitioner's weakness and inability to stand or sit for long periods of time or walk long distances. Accordingly, this ALJ finds that Petitioner's impairments meet Listing 1.04 and concludes Petitioner is disabled for purposes of the SDA program.

The ALJ, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds Petitioner disabled for purposes of the State Disability Assistance program.

As a result, the ALJ's determination which found Petitioner not disabled at Step 5 (residual functional capacity), is **VACATED** and the Department's determination which found Petitioner is not disabled is **REVERSED**.

### **DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, it is determined that the ALJ erred in affirming the Department's determination which found Petitioner not disabled.

Accordingly, it is **ORDERED**:

1. The ALJ's Hearing Decision mailed on [REDACTED], under registration Number 16-019314, which found Petitioner not disabled is **VACATED**.
2. The Department's determination which found Petitioner not disabled is **REVERSED**.
3. The Department shall initiate processing of the [REDACTED] application to include any applicable requested retroactive months, determine if all other non-medical criteria are met and inform Petitioner of the determination in accordance with Department policy.
4. The Department shall supplement for any lost benefits (if any) that Petitioner was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
5. The Department shall review Petitioner's continued eligibility in [REDACTED], in accordance with Department policy.

**IT IS SO ORDERED.**

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]