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

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

Date Mailed: June 6, 2017
MAHS Docket No.: 17-003819
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 May 10, 2017, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by , specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner is not a disabled individual.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On , Petitioner applied for SDA benefits.

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

3. On , the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 5-24

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

5. On , Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 1, pp. 2-3).

6. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.

7. As of the date of the administrative hearing, Petitioner was a 46-year-old female.

8. Petitioner's highest education year completed was the 12th grade (via general equivalency degree).

9. Petitioner has a history of unskilled employment, with no known transferrable job skills.

10. Petitioner has restrictions and symptoms which meet the listing for psychotic disorders.

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. MDHHS had no objections to proceeding with a hearing to resolve the SDA dispute and the hearing was conducted accordingly.

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. 695-696) dated March 9, 2017, verifying Petitioner's application was denied based on a determination that Petitioner was not disabled.

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.

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 a summary of presented medical documentation.

Hospital documents (Exhibit 1, pp. 338-627, 643-646) from an admission dated [redacted], [redacted] were presented. It was noted that Petitioner was admitted after being found while wandering in woods. Petitioner reported she had been in the woods for 3 weeks because people were trying to kill her for her money. Petitioner reported no history of substance abuse other than smoking marijuana daily to manage knee pain. Petitioner reported a history of leaving multiple states because people were trying to kill her. Petitioner also reported audio hallucinations and concern that her family was trying to kill her. At admission, Petitioner's GAF was 21-30. Treatment for leg rashes were noted. It was noted Petitioner was treated with Risperidone and Klonopin. During hospitalization, Petitioner was noted to show less anxiety, less paranoia, improved sleep and improved appetite. Petitioner underwent group therapies and counseling. A discharge date of [redacted], was noted. Noted diagnoses included acute exacerbation of chronic schizophrenia. At discharge mental health examination

assessments included goal directed thought, normal mood, normal affect, normal speech, fair judgment, fair memory, and intact memory.

Hospital emergency room documents (Exhibit 1, pp. 673-679) dated ██████████, were presented. It was noted that Petitioner presented with complaints of right knee pain, ongoing for 2 weeks. Radiology indicated a small osteochondral defect. Follow-up with a sports medicine physician was recommended.

A biopsychosocial assessment (Exhibit 1, pp. 314-330) dated ██████████, was presented. The assessment was completed by a social worker from a newly treating mental health agency. It was noted Petitioner was living in a homeless shelter. Reported mental health symptoms included crying spells, flashbacks, anxiety, and depressed mood. PTSD was reported to be the root of Petitioner's insomnia. A GAF of 49 was noted.

Primary care nurse office visit notes (Exhibit 1, pp. 297-301) dated ██████████ were presented. Complaints of pain in right knee and left foot were reported; it was noted both problems were treated by specialists. It was noted Petitioner had bilateral fallen arches. Cataflam was prescribed. Social worker notes indicated Petitioner was given housing information to address homelessness (see Exhibit 1, pp. 302-305).

A Psychiatric Evaluation (Exhibit 1, pp. 287-294, 635-642) dated ██████████, was presented. The evaluation was completed as an initial evaluation with a mental health agency. It was noted Petitioner was residing in a homeless shelter. It was noted Petitioner reported no previous outpatient therapy. Ongoing complaints of flashbacks, sleep difficulties, and anxiety were noted. Mental health exam assessments included intact memory, alert, good judgment, unremarkable thought content, slowed stream of mental activity, paranoid thought process, and soft speech. An Axis I diagnosis of psychotic disorder was noted. Petitioner's GAF was 55. Risperdal was prescribed.

Sports medicine physician office visit notes (Exhibit 1, pp. 686-694) dated ██████, ███ were presented. Ongoing right knee pain (6/10) was reported. McMurray's testing was positive. Tenderness at medial joint line was noted. An assessment of right knee osteoarthritis with chondral malacia patella was noted. Lodine and Tramadol were prescribed. Physical therapy was recommended.

Primary care nurse office visit notes (Exhibit 1, pp. 256-260) dated ██████████, were presented. "Moderate" relief to left foot and right knee pain due to Tramadol was noted. Current pain level was reported as 10/10. A right-knee pain medication injection was administered.

Social worker notes (Exhibit 1, pp. 261-274) dated ██████████, were presented. It was noted Petitioner presented for initial treatment with a mental health agency. Petitioner reported a need for immediate housing. A plan of outpatient therapy was noted.

Psychiatric Progress Notes (Exhibit 1, pp. 247-251) dated 6, were presented. Petitioner reported insomnia for 3 nights, racing thoughts, and mood swings. Various medications were continued, including an increase in Risperdal dosage.

Counseling notes (Exhibit 1, pp. 252-253) dated were presented. Petitioner reported concern over recent insomnia.

Primary care nurse office visit notes (Exhibit 1, pp. 242-246) dated , were presented. Left foot pain (8/10), was reported. It was noted Petitioner was tearful and reported no sleep the last 3 days due to pain. It was noted Petitioner did not consistently wear a prescribed orthopedic cast. A plan of continued treatment from a podiatrist was noted.

Primary care nurse office visit notes (Exhibit 1, pp. 228-235) dated were presented. Ongoing left foot pain (7/10), was reported. A podiatrist appointment was planned.

Counseling notes (Exhibit 1, pp. 236-238) dated , were presented. Petitioner reported ongoing feelings of depression. It was noted Petitioner was in the action stage of change.

Hospital documents (Exhibit 1, pp. 173-205) from an admission dated were presented. It was noted that Petitioner was brought by fire department personnel after Petitioner was found agitated and combative while threatening other tenants. Petitioner reportedly said that spiders were after her. It was noted Petitioner required 4-point restraint and seclusion during hospital admission. On , Petitioner reported exhaustion and irritability; hallucinations were denied. Petitioner participated in group therapies. On , it was noted Petitioner reported restful sleep and increased activity; Petitioner also moved her mattress to the floor and didn't think it would be safe to return to her apartment. Moderate-to-severe psychosis was noted, improved by rest and medication. Symptoms were noted to be constant. A discharge date of , was noted. Noted discharge diagnoses included schizoaffective disorder. At discharge, it was noted Petitioner did not fully appreciate clinical condition, Outpatient psychiatric care was recommended. Prescribed discharge medications included benztropine, haloperidol, and a haloperidol injection.

Psychiatric Progress Notes (Exhibit 1, pp. 212-216) dated , were presented. Petitioner reported December 2016 hospitalization was due to a “meltdown.” Petitioner refused continuing Halodol injections. Petitioner reported that persistent auditory hallucinations were ignorable. Medications were continued. A GAF of 55 was noted.

Counseling notes (Exhibit 1, pp. 218-219) dated , were presented. Petitioner reported feeling “very stressed” since last appointment. Petitioner denied hallucinations. Petitioner reported mental stability.

Primary care nurse office visit notes (Exhibit 1, pp. 220-225) dated [redacted]7, were presented. Ongoing right knee pain was noted. It was noted Petitioner was tearful. A plan to follow-up with podiatrist and sports-medicine physician was noted. Tramadol and Etodolac were continued.

A mental status examination report (Exhibit 1, pp. 166-170) dated [redacted], was presented. The report was noted as completed by a consultative licensed psychologist and a limited-licensed psychologist. It was noted Petitioner reported she was not compliant with medication at time of her previous hospitalization, but that she was now compliant. Petitioner denied ongoing psychotic symptoms. Arthritic pain was reported. It was noted Petitioner was living in subsidized housing. Mental health exam assessments included constricted affect, tearful and depressed mood, and goal-directed stream of mental activity. It was noted limited information was obtained due to possible substance abuse and/or severe sleep deprivation. Diagnoses of cannabis abuse, PTSD, and psychotic episodes managed with medication. A fair prognosis was noted.

Petitioner alleged impairments, in part, due to left foot dysfunction. Petitioner reported that her ankle rolls and that her arches have fallen. Petitioner reported she has to wear a foot brace. Petitioner testified there was no surgical correction. Petitioner testified her foot problems were likely a result from over-compensating for her right knee pain.

Petitioner testimony alleged impairments, in part, due to right knee osteoarthritis. Petitioner testimony characterized the problem as bone-on-bone friction. Petitioner testified she is in need of a knee replacement, though no surgery was yet scheduled. Petitioner testified ongoing treatments include pain medication and home exercise. Petitioner testified that home exercises were painful. Petitioner testified she declined physical therapy because it is pointless.

MDHHS provided Petitioner's Work History Report (Exhibit 1, pp. 82-92). The report was completed by Petitioner as part of her SSA application. A work history from 1998-2016, with no lapse in years, was listed. Petitioner's previous jobs included nanny, customer care associate, student aide, lead teacher, paraprofessional, licensed childcare provider, community center director, nurse technician, and trainer. Petitioner testified she could probably perform customer-service representative employment on a part-time basis, if she is medication compliant and has no psychotic episodes.

Petitioner testified she has a recurring history of insomnia caused by post-traumatic stress. Petitioner testified she has nightmares and flashbacks. Petitioner testified insomnia spirals into psychotic episodes. Petitioner testified she had 5 notable psychotic episodes in her life. When asked if she had any recent hallucinations, Petitioner testified she thought she saw a planet fall out of the sky in the previous month.
Petitioner testified she always uses the cane prescribed by her orthopedist. Petitioner testified she is limited to 1 block of walking due to knee pain. Petitioner testified standing is limited to 20-30 minute periods. Petitioner testified she had no sitting restrictions. Petitioner testified she is limited to 15 pounds of lifting/carrying.

Petitioner testified she sits on the side of her bathtub when bathing. Petitioner testified she has no problems with dressing. Petitioner testified she unable to lift laundry baskets. Petitioner testified she does not like shopping due to the crowds.

Presented medical records generally verified social and concentration impairments due to psychological disorders. Presented records also verified a degree of standing, ambulation, and lifting/carrying restrictions due to foot and knee pain. 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.

Petitioner alleged disability, in part, based on schizoaffective disorder and related symptoms. The applicable disorder reads as follows:

> **12.03** ***Schizophrenic, paranoid and other psychotic disorders***:
> **Schizophrenic spectrum and other psychotic disorders (see 12.00B2), satisfied by A and B, or A and C:**
>
> A. Medical documentation of one or more of the following:
>   1. Delusions or hallucinations;
>   2. Disorganized thinking (speech); or
>   3. Grossly disorganized behavior or catatonia.
>
> AND
>
> B. Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning (see 12.00F):
>   1. Understand, remember, or apply information (see 12.00E1).
>   2. Interact with others (see 12.00E2).
>   3. Concentrate, persist, or maintain pace (see 12.00E3).
>   4. Adapt or manage oneself (see 12.00E4).
>
> OR
>
> C. Your mental disorder in this listing category is "serious and persistent;" that is, you have a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both:
>   1. Medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder (see 12.00G2b); and
>   2. Marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life (see 12.00G2c).

Petitioner established a treatment history for schizoaffective disorder. Petitioner also established a history of delusions, paranoia, and grossly disorganized behavior. Petitioner meets Part A of the listing for schizoaffective disorders.

Presented evidence established two psychiatric-related hospitalizations within a period of 7 months. Petitioner's first hospitalization lasted 18 days; the second hospitalization lasted 7 days. The second hospitalization occurred despite ongoing counseling and psychiatric treatment. The history is highly indicative of a "serious and persistent" disorder.

Sleep deprivation appeared to be the genesis of Petitioner's psychotic episodes. At Petitioner's most recent mental health assessment (on [redacted]), signs of sleep deprivation were noted. The recurrence of the problem is indicative of a minimal capacity to adapt to the environment and marginal adjustment despite treatment.

Consideration was given to rejecting listing requirements based on Petitioner's apparent medical noncompliance. Such consideration was rejected as Petitioner's psychotic episodes are not likely triggered by an intent to have psychotic episodes. Presented records sufficiently verified body pain and PTSD contribute to insomnia which appeared to be the primary cause of Petitioner's erratic behavior.

Petitioner's history is indicative of periods of sufficient functioning so that periods of employment may be expected. Petitioner's history was also indicative of unpredictable decompensation resulting in hospitalization. Even with treatment, Petitioner's symptoms appear to persist in excessive degrees. There may come a time when Petitioner does not decompensate and is capable of maintaining employment; that time has not yet come.

It is found Petitioner sufficiently meets the listing for psychotic disorders. Accordingly, Petitioner is disabled and it is found that MDHHS improperly denied Petitioner's SDA application.

It should be noted that Petitioner reported residency within New York. Petitioner's SDA eligibility is subject to meeting MDHHS' residency requirements. That determination is left for MDHHS to make.

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