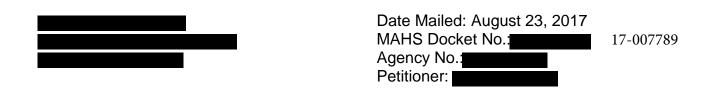
RICK SNYDER GOVERNOR

STATE OF MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON



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 from Detroit, Michigan. Petitioner appeared and was unrepresented. Petitioner's sister, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by hearing facilitator.

ISSUE

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

FINDINGS OF FACT

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

- 1. On _____, Petitioner applied for SDA benefits.
- 2. Petitioner's only basis for SDA benefits was as a disabled individual.
- 3. On the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 8-15).
- 4. On Month Month

- 5. On 1, Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 1, p. 2).
- 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 36-year-old female.
- 8. Petitioner's highest education year completed was the 10th grade.
- 9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
- 10. Petitioner has restrictions which allow the performance of non-complex medium employment without heavy reliance on social interactions.

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 requested a hearing to dispute the denial of a SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 3-7) dated 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 (April 2017), p. 5. 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 (April 2017), p. 1. A person is disabled for SDA purposes if he or she meets any of the following criteria:

- Receives other specified disability-related benefits or services....
- Resides in a qualified Special Living Arrangement (SLA) facility.
- 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)... *Id.*, pp. 1-2.

When the person does not meet one of the [above] criteria, [MDHHS is to] follow the instructions in BAM 815, Medical Determination and Disability Determination Service (DDS), Steps for Medical Determination Applications. *Id.*, p. 4. The DDS will gather and review the medical evidence and either certify or deny the disability claim based on the medical evidence. *Id.* The review of medical evidence is primarily outlined by federal law.

[State agencies] must use the same definition of disability as used under SSI... 42 C.F.R. § 435.540(a). [Federal] law defines disability 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 C.F.R. § 416.905(a).

MDHHS adopted a functionally identical definition of disability (see BEM 260 (July 2015), p. 10). The same definition applies to SDA, though SDA eligibility factors only a 90-day period of disability.

In general, you have to prove... that you are blind or disabled. 20 C.F.R. § 416.912(a). You must inform us about or submit all evidence known... that relates to whether or not you are blind or disabled. *Id.* Evidence includes, but is not limited to objective medical evidence e.g. medical signs and laboratory findings), evidence from other medical sources (e.g. medical history and opinions), and non-medical statements about symptoms (e.g. testimony) (see *Id.*).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled (see 20 C.F.R. § 416.920). If there is no finding of disability or lack of disability at each step, the process moves to the next step (see *Id*.)

The first step in the process considers a person's current work activity (see 20 C.F.R. §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.

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.*

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.

At the second step, we consider the medical severity of your impairment(s). 20 C.F.R. §416.920 (a)(4)(ii). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in §416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. *Id*.

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, SSR 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).

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. 20 C.F.R. § 416.920 (5)(c). We will not consider your age, education, and work experience. *Id.* The second step analysis will begin with a summary of presented medical documentation and Petitioner's testimony.

Handwritten primary care physician (PCP) office visit notes (Exhibit 1, p. 36) dated _____, ____, were presented. Petitioner reported bilateral knee pain. A fall from 2 weeks earlier was noted. Norco, metformin, and Buspar were prescribed.

Handwritten PCP office visit notes (Exhibit 1, p. 35) dated _____, were presented. Petitioner reported shooting pains in her feet and fingers. Norco was prescribed for back pain. Referrals to a pain management and orthopedist were given for lumbar and bilateral knee pain.

Handwritten PCP office visit notes (Exhibit 1, p. 33) dated presented. Right-sided abdominal pain was noted. It was noted that an orthopedist prescribed an MRI for Petitioner's right knee. A recent week long hospitalization for pneumonia was noted. Various medications were prescribed.

Handwritten PCP office visit notes (Exhibit 1, p. 34) dated presented. It was noted Petitioner did not follow-up on MRI due to a lack of transportation. Gynecology complaints were noted. It was noted Petitioner lost her glucometer.

Handwritten PCP office visit notes (Exhibit 1, p. 32) dated . were presented. Petitioner reported left foot pain ongoing for a month. Swelling was notably absent. A foot x-ray was noted but a report was not presented. Handwritten PCP office visit notes (Exhibit 1, pp. 30-31) dated presented. Petitioner's weight was 325 pounds. Petitioner reported right ear pain, sore throat, decreased appetite, cough, and nasal congestion. A diagnosis of an acute respiratory infection was noted. Handwritten PCP office visit notes (Exhibit 1, p. 29) dated ■ presented. Petitioner reported body aches, diarrhea, cough due to the flu. Norco was prescribed for knee osteoarthritis. Diagnoses of acute gastroenteritis and an upper respiratory infection were noted. Handwritten PCP office visit notes (Exhibit 1, p. 28) dated | , were presented. Petitioner complained of "all over" body aches, ongoing for a week. Incontinence was reportedly resolved. Tenderness to palpation on lumbar spine was noted. Physician summary notes (Exhibit A, pp. 1-3) were presented. The form was undated

Physician summary notes (Exhibit A, pp. 1-3) were presented. The form was undated but appeared to be from 2017. Diagnoses included morbid obesity, allergic rhinitis, diabetes mellitus (DM) (type 2), unspecified osteoarthritis, major depression, hyperlipidemia, vitamin D deficiency, bilateral knee osteoarthritis, and left shoulder osteoarthritis. Current medications included Neurontin, Zantac, Norco, and Prozac.

A Psychiatric Evaluation (Exhibit A, pp. 5-12) dated ______, was presented. The evaluation was completed by a treating nurse practitioner. Petitioner reported recurrent depression since childhood. A suicide attempt in the 2000s was reported. Petitioner reported hearing voices telling her she is worthless. Mental examination assessments included good grooming, impaired remote memory, alert, distractible concentration, fair judgment, limited insight, normal stream of mental activity, and unremarkable speech. Listed diagnoses included major depressive disorder (recurrent and severe). A GAF of 40 was noted.

A letter from a social worker (Exhibit A, p. 4) dated , was presented. It was noted Petitioner attended an outpatient program since . Noted diagnoses included generalized anxiety disorder. Prescribed medications included Abilify, buspirone, Lexapro, and Mirtazapine.

Petitioner testified back pain began in 2003 following a fall. Petitioner testified she last had physical therapy in 2009. Petitioner testified she last received lumbar injections in 2014.

Petitioner testified she has seen a therapist and psychiatrist since May 2017. Petitioner testified symptoms include anxiety in social situations and fidgetiness when nervous.

Presented medical records generally verified a medical treatment history consistent with physical restrictions due to bilateral knee osteoarthritis. Presented records also generally verified degrees of concentration and social interaction restrictions due to depression and/or anxiety. 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.

At the third step, we also consider the medical severity of your impairment(s). 20 C.F.R. § 416.920 (4)(iii). If you have an impairment(s) that meets or equal one of our listings in appendix 1 to subpart P of part 404 of this chapter and meets the duration requirement, we will find that you are disabled. *Id.* If you have an impairment(s) which meets the duration requirement and is listed in appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. *Id.* 20 C.F.R. § 416.920 (d).

A listing for joint dysfunction (Listing 1.02) was considered based on Petitioner's complaints of knee pain. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively.

A listing for spinal disorders (Listing 1.04) was considered based on Petitioner's lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

Listings for affective disorders (Listing 12.04) and anxiety disorders (Listing 12.06) were considered based on Petitioner's treatment history. The listing was rejected due to a failure to establish an extreme restriction or multiple marked restrictions to understanding or applying information, interacting with others, concentration or persistence, and/or adaptation. It was also not established that Petitioner had minimal capacity to adapt to changes in environment or to demands that are not already part of daily life.

It is found Petitioner does not meets any SSA listings. Accordingly, the analysis may proceed.

If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record.... 20 C.F.R. § 416.920 (e). We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work... and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can adjust to other work... *Id*.

Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. 20 C.F.R. § 416.945 (a)(1). Your residual functional capacity is the most you can still do despite your

limitations. *Id.* We will assess your residual functional capacity based on all the relevant evidence in your case record. *Id.* We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not "severe,"... when we assess your residual functional capacity. 20 C.F.R. § 416.945 (a)(2). We will assess your residual functional capacity based on all of the relevant medical and other evidence. 20 C.F.R. § 416.945(a)(3).

We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. 20 C.F.R. § 416.945(a)(5). For purposes of this decision, an RFC analysis will be undertaken within the analyses of the fourth and fifth steps.

At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. 20 C.F.R. § 416.920(a)(4)(iv). If you can still do your past relevant work, we will find that you are not disabled. *Id.*

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 C.F.R. § 416.960(b)(1). We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy. 20 C.F.R. § 416.960(b)(3).

Petitioner testified her past employment primarily consisted of home care for a family member which paid her member/month. Petitioner also testified she worked as a day care provider in which paid her approximately every 2 weeks. Petitioner testified she could not remember when she last sought employment.

Petitioner testimony implied that she lacks the focus and/or physical abilities to perform her past employment. For purposes of this decision, Petitioner's testimony will be accepted. It is found that Petitioner cannot perform past employment and the analysis may proceed to the final step.

If we find that your residual functional capacity does not enable you to do any of your past relevant work or if we use the procedures in § 416.920(h), we will use the same residual functional capacity assessment when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and the vocational factors of age, education, and work experience, as appropriate in your case. (See § 416.920(h) for an exception to this rule.) Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. 20 C.F.R. § 416.920(a)(4)(v). If you can make an adjustment to other work, we will find that you are not disabled. *Id.* If you cannot make an adjustment to other work, we will find that you are disabled. *Id.*

Your impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit your ability to meet certain demands of jobs. 20 C.F.R. § 416.969a(a). These limitations may be exertional, nonexertional, or a combination of both. *Id*.

When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), we consider that you have only exertional limitations. 20 C.F.R. § 416.969a(b). When your impairment(s) and related symptoms only impose exertional limitations and your specific vocational profile is listed in a rule contained in appendix 2, we will directly apply that rule to decide whether you are disabled. *Id*.

When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the demands of jobs other than the strength demands, we consider that you have only nonexertional limitations or restrictions. 20 C.F.R. § 416.969a(c)(1). Some examples of nonexertional limitations or restrictions include the following... nervousness, anxiousness, depression, attention or concentration deficits, difficulty remembering instructions, vision loss, hearing loss, difficulty with environment (e.g. fumes), hand manipulation, bending, crouching, kneeling, or other body maneuvers (see *Id.*).

If your impairment(s) and related symptoms, such as pain, only affect your ability to perform the nonexertional aspects of work-related activities, the rules in appendix 2 do not direct factual conclusions of disabled or not disabled. 20 C.F.R. § 416.969a(c)(2)

Limitations are classified as exertional if they affect your ability to meet the strength demands of jobs. *Id.* To determine the physical exertion requirements of work in the national economy, we classify jobs as *sedentary*, *light*, *medium*, *heavy*, and *very heavy*. 20 C.F.R. § 416.967.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 C.F.R. § 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. *Id.*

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. 20 C.F.R. § 416.967(b). Even though the 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, you must have the ability to do substantially all of these activities. *Id.* If someone can do light work, we determine that he or she can also do 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 C.F.R. § 416.967(c). If someone can do medium work, we determine that he or she can also do sedentary and light 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 C.F.R. § 416.967(d). If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. *Id.*

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 C.F.R. § 416.967(e). If someone can do very heavy work, we determine that he or she can also do heavy, medium, light, and sedentary work. *Id*.

Petitioner testified she does not utilize a walking aid. Petitioner testified she is limited to walking of less than a block, though her physician recommends that Petitioner walk more often. Petitioner testified her standing is limited to 5-10 minutes due to anxiety; Petitioner could not explain why standing makes her anxious. Petitioner testified her sitting is restricted to 10-minute periods due to back pain (Petitioner made this statement during the 19th minute of the hearing). Petitioner testified she is limited to lifting/carrying of 20 pounds. Petitioner testified that stairs are difficult due to knee bending. Petitioner was unable to state how many hours out of 40 she could sit or stand/walk.

Petitioner testified she has no problems with bathing. Petitioner testified that her daughter assists with putting on undergarments. Petitioner testified that her daughter performs all housework, laundry, and shopping.

Petitioner testified she has weighed at least 300 pounds since 2014. Petitioner testified she has made attempts to lose weight, though specifics of attempts were not verbalized. Petitioner testified that DM causes her weight to fluctuate.

Petitioner's statements concerning sitting, walking, and standing were indicative of an inability to perform any employment. The analysis will proceed to consider whether Petitioner's statements were supported by presented medical records.

Physician statements of Petitioner restrictions were not presented. Restrictions can be inferred based on presented documents.

Diagnoses of left shoulder arthritis, bilateral knee arthritis, and lumbar dysfunction were noted. Petitioner's prescriptions were consistent with a degree of pain consistent with the diagnoses. Lumbar tenderness in physical examinations was also documented.

Generally, diagnoses of osteoarthritis and lumbar tenderness are insufficient to establish degrees of restriction. Petitioner presented no supporting radiology which might have identified specific dysfunction which is insightful to a degree of restriction. The lack of radiology is particularly problematic because Petitioner had a referral for an MRI. Petitioner presented no documented attempts at treatment other than pain medication.

Given presented evidence, it is found that Petitioner is physically capable of performing medium employment. The analysis will proceed to consider Petitioner's non-exertional impairments.

Petitioner's sister testified her sister is "very depressed." Petitioner's sister testified her sister has mood swings, a lack of focus, and "moments of paranoia." As an example, she said that Petitioner was hysterical over her sister not answering phone. Petitioner's sister testified her sister's depression worsened after the passing of their mother. The testimony was indicative of multiple impairments that could preclude the performance of most types of employment.

A diagnosis of "severe" and "recurrent" depression was noted. "Severe" and "recurrent" depression is indicative of a degree of depression causing multiple symptoms that would impair most types of employment.

A nurse practitioner documented Petitioner's GAF as 40. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF level of 31-40 is described as "some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood." Petitioner's complaints of hallucinations are consistent with such a low GAF. Such a low GAF is consistent with severe impairments that could preclude the performance of any employment.

It is notable that Petitioner's GAF was documented at the beginning of mental health treatment occurring only a few weeks before the hearing. Thus, the GAF could have been an outlier based on Petitioner having a particularly bad day; it cannot be determined because follow-up treatment records were not provided. It is also notable because the GAF appeared to be assessed before any psychiatric treatment occurred. Thus, if Petitioner's GAF was consistently low, an increase in function would be expected upon medication compliance. Zero follow-up treatment documents were presented to indicate how well Petitioner responded to medications or other treatment.

Given presented records, a degree of concentration and social interaction restrictions can be inferred. Given the limitation of presented records, only mild impairments will be inferred. Mild impairments would preclude Petitioner from employment that was complex and/or highly reliant on social encounters.

MDHHS did not present the availability of employment within Petitioner's capabilities. Preclusion of complex or highly social sedentary, light, or medium employment is not

deemed to be so restrictive that a need for the availability of such employment is necessary; in other words, the restrictions are not deemed to erode Petitioner's exertional employment base such that application of medical-vocational rules is inappropriate.

Based on Petitioner's exertional work level (medium), age (younger individual), education (limited), employment history (unskilled or none), Medical-Vocational Rule 203.25 is found to apply. This rule dictates a finding that Petitioner is not disabled. Accordingly, it is found that MDHHS properly found Petitioner to be not disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's SDA benefit application dated based, based on a determination that Petitioner is not disabled. The actions taken by MDHHS are **AFFIRMED**.

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	
Datitionar	
Petitioner	