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GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: August 23, 2017  
MAHS Docket No.: [REDACTED] 17-008313  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on [REDACTED] [REDACTED] from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] hearing facilitator.

**ISSUE**

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

**FINDINGS OF FACT**

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

1. On [REDACTED], Petitioner applied for SDA benefits (see Exhibit 1, pp. 3-35).
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED] [REDACTED], the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 40-69).
4. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits.
5. On [REDACTED], Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 1, p. 74)

6. On [REDACTED] an administrative hearing was held.
7. During the hearing, Petitioner and MDHHS waived the right to receive a timely hearing decision.
8. During the hearing, the record was extended 14 days to allow Petitioner to submit a lumbar MRI report; an Interim Order Extending the Record was subsequently mailed to both parties.
9. On [REDACTED], Petitioner submitted additional documents (Exhibits A, pp. 1-2).
10. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
11. As of the date of the administrative hearing, Petitioner was a 45-year-old female.
12. Petitioner is unable to ambulate effectively due to bilateral knee dysfunction.

### **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 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. June 9, 2017) dated [REDACTED], 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 2017 monthly income limit considered SGA for non-blind individuals is [REDACTED]

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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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.

Various treatment documents for Petitioner's right knee (Exhibit 1, pp. 174-186) from [REDACTED] were presented. Treatments included knee injections, a knee scope, and arthroscopy with lateral meniscectomy.

Physician office visit notes (Exhibit 1, pp. 172-173) dated [REDACTED], were presented. It was noted that Petitioner complained of persistent right knee swelling and pain. An antalgic gait was noted. Petitioner received a cortisone injection.

Physician office visit notes (Exhibit 1, pp. 197-200, 279-281) dated [REDACTED], were presented. STD treatment was noted. Right knee swelling was noted. Various medications were prescribed.

A right knee x-ray report (Exhibit 1, p. 273) dated [REDACTED] was presented. Moderate tricompartmental osteoarthritis was noted.

Physician encounter notes (Exhibit 1, pp. 201-204, 277-279) dated [REDACTED] were presented. Petitioner underwent a right knee injection. Various medications were updated.

Physician office visit notes (Exhibit 1, pp. 276-277) dated [REDACTED], were presented. Petitioner reported ongoing right knee pain. Knee swelling was noted. Various meds were prescribed.

Physician office visit notes (Exhibit 1, p. 276) dated [REDACTED], were presented. Petitioner reported ongoing right knee pain. Rest and NSAIDs were advised.

Physician office visit notes (Exhibit 1, pp. 275-276) dated [REDACTED], were presented. Petitioner reported ongoing right knee pain. A right-knee lidocaine injection was performed.

Physician office visit notes (Exhibit 1, pp. 274-275) dated [REDACTED], were presented. Petitioner reported ongoing right knee pain. Various pain medications were continued.

Physician office visit notes (Exhibit 1, pp. 205-218) dated [REDACTED], were presented. Petitioner complained of right knee and left foot pain. Left foot tenderness and an abnormal gait were noted. An MRI was ordered for Petitioner's knee. A heel spur was diagnosed as the cause of Petitioner's foot pain. Pain medication was prescribed. A follow-up for back pain was planned.

Physician office visit notes (Exhibit 1, pp. 219-221) dated [REDACTED], were presented. A diagnosis of somatic dysfunction of cervical spine was noted.

A right knee MRI report (Exhibit 1, pp. 165-166) dated [REDACTED], was presented. An impression of severe end-stage lateral compartment osteoarthritis with complete grade 4 cartilage loss was noted. Severe deformity of lateral meniscus and degenerated internal meniscus was noted. Numerous loose bodies and moderate patellofemoral osteoarthritis was also noted.

A left foot x-ray report (Exhibit 1, p. 167) dated [REDACTED] was presented. No visible injury was concluded.

Physician office visit notes (Exhibit 1, pp. 222-239) dated [REDACTED], were presented. Petitioner reported orthopedic manipulation treatment (OMT) to her back were helpful. Physical exam assessments included spinal tenderness, spinal spasms, decreased spinal motion ranges, and right knee effusion. Orthotics were recommended for left foot pain though Petitioner reported she was unable to afford them. It was noted that knee injections were helpful and they could allow her to return to work. An OMT was performed. A primary diagnosis of long-term use of opioids was noted. Secondary diagnoses included somatic lumbar dysfunction, right knee joint derangement, and left foot plantar fasciitis. Norco was refilled.

Physician office visit notes (Exhibit 1, pp. 240-247) dated [REDACTED] were presented. An OMT was performed on Petitioner's spine.

Physician office visit notes (Exhibit 1, pp. 248-256) dated [REDACTED], were presented. Petitioner reported continued complaints of left foot, right knee, and spinal pain. A right knee injection was performed.

Physician office visit notes (Exhibit 1, pp. 257-265) dated [REDACTED], were presented. Ongoing back pain was reported. Spinal pain was reported to be worse during menstrual periods. An OMT was performed on Petitioner's spine; it was also noted that Petitioner was doing "quite well" on them.

Petitioner presented a lumbar MRI report (Exhibit A, pp. 1-2) dated [REDACTED]. An impression of marked disc height loss and extensive Modic degeneration was indicated at L5-S1. Facet arthropathy was noted at various levels. Significant stenosis was noted to be absent.

Petitioner testified impairments, in part, due to back pain. Petitioner testified she has attempted physical therapy, massage therapy, injections, nerve cauterization, spinal adjustments (which Petitioner stated only help for an hour), TENS unit, and pain medications. Petitioner testified her pain medications increased after a recent knee surgery.

Petitioner alleged disability, in part, due to knee pain. Petitioner testified she underwent right-knee-replacement surgery on [REDACTED]. Petitioner testified she ambulated using crutches until a week before the hearing; Petitioner testified she currently relies on a cane. Petitioner testified she is currently unable to run, kneel, or sit in the same position for an extended period. Petitioner testified her physician advised her that it will be one year before she completely recovers from surgery.

During the hearing, Petitioner was asked if she could perform sit-down type employment. Petitioner testified she was not an "office girl", in part, because of her lack of familiarity with computers.

Petitioner testified she began using a cane within 2 weeks before the hearing. Petitioner testified she can only walk 20 feet before she has to stop due to leg pain. Petitioner testified her standing is limited to 5 minutes due to knee pain. Petitioner testified she can sit for 30-40 minutes before needing 5 minutes to stretch. Petitioner was unable to state how much weight she could lift or carry. Petitioner testified her grip is weakened by arthritis in her hands (and her entire body).

Petitioner testified she can bathe and dress herself without notable problems. Petitioner testified she can perform any housework requiring kneeling; Petitioner testified she can load a dishwasher and dust. Petitioner testified she can do laundry but needs help carrying the basket. Petitioner testified she can shop. Petitioner testified her doctors did

not prohibit her from driving, though Petitioner testified she does not trust her knee enough to drive.

Presented medical records generally verified a medical treatment history consistent with restrictions to ambulation, standing, and lifting/carrying due to knee and lumbar dysfunction. 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).

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

- 1.02 Major dysfunction of a joint(s) (due to any cause):** Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;
  - OR
  - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

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

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

inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail.

Grade 4 cartilage loss of Petitioner's right knee was verified. The grade is known to be the highest severity of cartilage loss. It is consistent with bone-on-bone friction which would reasonably cause significant pain upon ambulation.

It was not verified that Petitioner underwent a right knee arthroplasty, but Petitioner's testimony that she had knee replacement surgery was sufficiently credible and consistent with the verified degree of knee dysfunction. Knee replacement surgery is consistent with an inability effectively ambulate.

Presented right knee radiology, particularly when factored with lumbar dysfunction, and a need for right knee arthroplasty is sufficient to infer an inability to effectively ambulate. Thus, it is found that Petitioner satisfies the listing for 1.02 and that MDHHS improperly denied Petitioner's SDA application.

It should be noted that presented evidence was not indicative of permanent disability. Petitioner testified that she was told by her physician that she will need 12 months for a "full" recovery. It is known that arthroplasty generally requires 3 months for a substantial recovery allowing performance of many daily activities. A conservative allowance would be 6 months. Petitioner will be given no less than 6 months from the month of reported surgery before disability is examined. Based on a reported surgery date from [REDACTED], a redetermination should be scheduled no earlier than [REDACTED].

### **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 no earlier than [REDACTED] from the date of this administrative decision, if Petitioner is found eligible for future benefits.

The actions taken by MDHHS are **REVERSED**.



CG/hw



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**Christian Gardocki**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]