[redacted]

Date Mailed: August 23, 2017
MAHS Docket No.: [redacted] 17-008986
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], from Detroit, Michigan. Petitioner appeared and was represented by her attorney, [redacted] of [redacted]. The Michigan Department of Health and Human Services (MDHHS) was represented by [redacted], manager.

ISSUE

The issue is whether MDHHS properly denied Petitioner's Medical Assistance (MA) 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 MA benefits, including retroactive MA benefits from [redacted]

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

3. On [redacted], the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 22-28).

4. On [redacted], MDHHS denied Petitioner's application for MA benefits.
5. On [redacted], Petitioner requested a hearing disputing the denial of MA benefits (see Exhibit 1, p. 485)

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 53-year-old female.

8. Petitioner's highest education year completed was the 12th grade.

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

10. Petitioner has medical restrictions which prevent Petitioner's performance of light employment.

CONCLUSIONS OF LAW

Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute the denial of MA benefits. 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. 486-490) dated February 10, 2017, verifying Petitioner's application was denied based on a determination that Petitioner was not disabled.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).
  BEM 260 (July 2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Petitioner. Accordingly, Petitioner may not be considered for Medicaid eligibility without undergoing

a medical review process which determines whether Petitioner is a disabled individual. *Id*., p. 2.

[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).

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 [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 (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 of the analysis will begin with a summary of presented medical documentation and Petitioner's testimony.

Various medical treatment documents (Exhibit 1, pp. 251-278) from 2010 were presented. Routine gynecological treatment was indicated. A complaint of vertigo, ongoing for 4 days, was documented; antivert was prescribed.

Physician encounter notes (Exhibit 1, p. 442) dated [redacted], were presented. Treatment for acute bronchitis was noted. Radiology was negative (see Exhibit 1, p. 445) for problems.

Physician encounter notes (Exhibit 1, p. 443) dated [redacted], were presented. Treatment for acute bronchitis was noted. Petitioner was noted to be 1- ½ pack per day smoker.

Physician encounter notes (Exhibit 1, p. 443) dated [redacted], were presented. Petitioner complained of left-leg swelling and pain. Pitting edema of 1+ was noted. Deep vein thrombosis (DVT) was noted to be absent from Petitioner's medical history. Leg strength was 5/5. Petitioner's physician recommended hospital treatment.

Hospital treatment documents (Exhibit 1, pp. 334-422, 450-478) from an admission dated [redacted] were presented. Petitioner complained of left leg swelling, worsening since March; dyspnea was also reported. An ultrasound was positive for DVT and pulmonary embolism (PE). Administered treatments included breathing treatments and blood thinners. A 3-month course of blood thinners was planned. Discharge diagnoses of DVT, multiple lung nodules, uncontrolled hypertension, emphysema, and a PE were noted. Petitioner was discharged on [redacted]. Albuterol was prescribed for dyspnea.

Various medical encounters from (Exhibit 1, pp. 305-333, 437-440) from [redacted] through [redacted] were presented. Ongoing treatment for DVT and a lung

nodule was indicated. Long-term use of anticoagulants was noted. On [redacted], Petitioner's reported symptoms included cough, leg pain, and leg swelling. A diagnosis for COPD was also noted.

Petitioner testimony alleged disability, in part, due to vertigo symptoms. Petitioner testified she called-in 1-2 time per week over her last 2 months of employment in [redacted]. Petitioner testified she would have gotten more treatment for vertigo but feared that she would be diagnosed with multiple sclerosis. Petitioner testified she still does not drive because of vertigo symptoms.

Petitioner verified one medical treatment for vertigo; the treatment was from [redacted]. Presented evidence was not sufficient to infer ongoing impairments related to vertigo.

Petitioner testified that she underwent two surgeries in [redacted] on her left leg to try and clear a blockage. Petitioner testified she is having difficulty recovering from the surgery because she still has an open leg wound which prevents her from wearing a compression stocking. Petitioner testified the leg blockages remain despite the surgeries.

Presented medical records generally verified a medical treatment history consistent with physical restrictions due to circulatory problems in Petitioner's legs. Petitioner's treatment history was established to have lasted at least 90 days and at least since Petitioner's date of 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).

> ***4.11 Chronic venous insufficiency*** of a lower extremity with incompetency or obstruction of the deep venous system and one of the following:
>
> **A.** Extensive brawny edema (see 4.00G3) involving at least two-thirds of the leg between the ankle and knee or the distal one-third of the lower extremity between the ankle and hip.
>
> OR
>
> **B.** Superficial varicosities, stasis dermatitis, and either recurrent ulceration or persistent ulceration that has not healed following at least 3 months of prescribed treatment.

Presented records failed to verify ongoing brawny edema or recurrent problems such as ulceration. The absence of complications justifies rejecting a finding that Petitioner meets the listing for chronic venous insufficiency. 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).

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 she worked as a cashier/night stocker for a store. Petitioner testified her duties were evenly split between cashier and stockperson. Petitioner testified the job required her to lift/carry 20-25 pounds. Petitioner testified the job required more standing and stooping than she is capable of performing.

Given Petitioner's problems with blood clots in her leg, it is reasonable to infer that Petitioner could not perform employment requiring extensive periods of standing. Thus, it is found that Petitioner cannot perform past employment of cashier/stockperson.

Petitioner also has past and relevant employment as an information phone operator. Petitioner testified her job was mostly sitting, though she had a sit/stand option. Petitioner testified she might be able to perform the employment but would need to be able to walk around throughout her workday. Petitioner's testimony as consistent with treatment for DVT and PW which would reasonably require Petitioner to be able to walk for purposes of circulation.

It is possible that Petitioner could sustain phone operator employment with an accommodation. The analysis at this step can only consider whether Petitioner could perform the employment as it was initially performed. Petitioner testimony implied her initial employment was performed without any accommodation to walk around throughout the day. Petitioner's current need to be accommodating without past accommodation justifies finding that Petitioner cannot perform her past employment as a phone operator.

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*.

Given Petitioner's age, education and employment history a determination of disability is dependent on Petitioner's ability to perform light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

Petitioner testified that her legs have continued to hurt and swell since her hospitalization in [redacted]. Petitioner testified she still has 4-5 bad days per week.

Petitioner testified dressing or folding laundry makes her tired. Petitioner testified she is unable to vacuum because of breathing problems.

Petitioner testified she can walk only 10-15 steps before needing to stop. Petitioner testified she is limited to standing of 10-15 minutes due to leg pain. Petitioner estimated she could sit for an hour, but only if her legs were elevated.

Petitioner's testimony was consistent with an ability to perform sedentary employment, but not light employment. Generally, Petitioner's testimony was credible with presented records.

Petitioner's hospitalization from [redacted] verified leg problems and edema due to DVT. Subsequent records verified a need for long-term treatment with blood thinning medications. Though subsequent records did not verify surgery or ongoing complications, Petitioner's testimony of surgery was credible. Surgery would not have been performed unless venous insufficiency was an ongoing problem. Given presented treatment records, it is probable that Petitioner could not perform the walking or standing of any employment greater than sedentary employment. It is found that Petitioner is restricted to performance of sedentary employment

Based on Petitioner's exertional work level (sedentary), age (closely approaching advanced age), education (high school with no direct entry into skilled employment), employment history (unskilled), Medical-Vocational Rule 201.12 is found to apply. This rule dictates a finding that Petitioner is disabled. Accordingly, it is found that MDHHS improperly found Petitioner to be not disabled for purposes of MA benefits.

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 MA 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 MA benefit application dated [redacted] including retroactive MA benefits from [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

Counsel for Petitioner

[redacted]
[redacted]
[redacted]
[redacted])

DHHS

[redacted]
[redacted]
[redacted]
[redacted])

Petitioner

[redacted]
[redacted]
[redacted]