



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: November 13, 2017  
MAHS Docket No.: 17-007371  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Carmen G. Fahie

**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; 42 CFR 431.200 to 431.250. After due notice, an in-person hearing was held on August 16, 2017, from [REDACTED], Michigan. The Petitioner was represented by herself and her Attorney [REDACTED] from [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED] Lead Worker and [REDACTED] Family Independence Specialist, and Assistant Attorney Generals [REDACTED] and [REDACTED]. The record was left open for additional medical records that were received on September 15, 2017 and the record was closed.

**ISSUE**

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

**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 December 27, 2016, the Petitioner applied for SDA.
2. On April 26, 2017, the Medical Review Team (MRT) denied the Petitioner's application for SDA is denied per BEM 261 because the nature and severity of the Petitioner's impairment's would not preclude work activity at the above stated level for 90 days and is capable of performing her past relevant work per 20 CFR 416.920(E).

3. On May 3, 2017, the Department Caseworker sent the Petitioner a notice that her application was denied.
4. On May 31, 2017, the Department received a hearing request from the Petitioner, contesting the Department's negative action.
5. The Petitioner is a [REDACTED] year-old woman whose date of birth is [REDACTED]. The Petitioner is 5' 2" tall and weighs 149 pounds. The Petitioner completed High School and has an Associate's Degree from [REDACTED] as a legal assistant. The Petitioner can read and write and do basic math. The Petitioner was last employed as a cashier at the medium/heavy level on November 27, 2016. She was also an owner of a motel.
6. The Petitioner's alleged impairments are chronic pain, right knee needs to be replaced, left knee surgery in January 2017, COPD, depression, carpal tunnel syndrome, hernia mesh in 2013 that ripped and was repaired, and Crohn's disease with surgery in November 2016 where she lost 10 inches of her small intestine.
7. The Petitioner had surgery on her ventral incisional hernia on [REDACTED] at [REDACTED]. She was discharged to the recovery room in stable and satisfactory condition without complications. Department Exhibit 1, pgs. 226-227. The Petitioner was seen for a follow up on [REDACTED]. She was doing well and showing no sign of complications. She is going to slowly increase her activity level. Department Exhibit 1, pg. 224.
8. On [REDACTED] the Petitioner underwent an arthroscopy of the left knee due to a medial meniscus tear at the [REDACTED]. She tolerated the procedure well and was released to PACU in stable condition. Department Exhibit 1, pgs. 62-63. She was seen for a follow up at Orthopaedic Associates. The Petitioner reported that symptoms were improving. Pain was reported last week at 2/10 on average. She is doing reasonably well and pain is controlled. The Petitioner was observed walking with no aids for ambulation today. Her examination showed that the portals were healing well. There was moderate swelling around the knee which is to be expected. Range of motion was progressing nicely. She was referred to physical therapy for evaluation and treatment. Department Exhibit 1, pgs. 211-212.
9. On [REDACTED], the Petitioner was seen for an independent psychiatric evaluation from [REDACTED] an independent medical examiner. She admitted to having some depression. The Petitioner was diagnosed with Persistent Depressive Disorder. Mentally, her prognosis was good. She can manage her benefit funds. There was no evidence of a severe thought disorder or risk factors. Department Exhibit 1, pgs. 147-152.

10. On [REDACTED], the Petitioner's treating physician completed a [REDACTED] Physical Impairment Questionnaire. Her diagnosis was ventral wall hernia. Her prognosis was poor. She had severe abdominal pain with a repair with mesh, but he now believed that the mesh had failed. The Petitioner's symptoms would interfere with her ability to work 20% or more. She was capable of handling moderate stress to normal work. The Petitioner could sit for 20 to 30 minutes, stand for 10 to 20 minutes, and walk for 0 to 5 minutes. She could stand/walk less than 1 hour of an 8 hour workday. The Petitioner could walk a ½ to 1 city block. She uses a cane for ambulation. The Petitioner could occasionally lift 10 pounds, but never 25 pounds. Her ability to push and pull was limited to her extremities. She could occasionally climb stairs and ramps and balancing, but never climb ladders and scaffolds, stooping, kneeling, crouching, crawling, and twisting. She is to avoid concentrated exposure to vibration and hazards, avoid even moderate exposure to machinery extreme cold and heat, wetness, and humidity, and avoid all exposure to fumes, odors, dust, gases, or poor ventilation. Her pain medications affect her ability to identify hazards to be avoided. Petitioner Exhibit 1, pgs. 2-6.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

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

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. Under SSI, disability is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in

the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Petitioner does not have a severe medically determinable impairment or combination of impairments, the Petitioner is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Petitioner's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the trier must consider all of the Petitioner's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of his past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually

performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner has the residual functional capacity to do past relevant work, then the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, the Petitioner has satisfied requirements as set forth in steps one and two of the sequential evaluation. However, the Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for step 3. Therefore, vocational factors will be considered to determine the Petitioner's residual functional capacity to do relevant work and past relevant work.

In the instant case, the Petitioner had surgery on her ventral incisional hernia on [REDACTED] at [REDACTED]. She was discharged to the recovery room in stable and satisfactory condition without complications. Department Exhibit 1, pgs. 226-227. The Petitioner was seen for a follow up on [REDACTED]. She was doing well and showing no sign of complications. She is going to slowly increase her activity level. Department Exhibit 1, pg. 224.

On [REDACTED], the Petitioner underwent an arthroscopy of the left knee due to a medial meniscus tear at the [REDACTED]. She tolerated the procedure well and was released to PACU in stable condition. Department Exhibit 1, pgs. 62-63. She was seen for a follow up at [REDACTED]. The Petitioner reported that symptoms were improving. Pain was reported last week at 2/10 on average. She is doing reasonably well and pain is controlled. The Petitioner was observed walking with no aids for ambulation today. Her examination showed that the portals were healing well. There was moderate swelling around the knee which is to be expected. Range of motion was progressing nicely. She was referred to physical therapy for evaluation and treatment. Department Exhibit 1, pgs. 211-212.

On [REDACTED] the Petitioner was seen for an independent psychiatric evaluation from [REDACTED] an independent medical examiner. She admitted to having some depression. The Petitioner was diagnosed with Persistent Depressive Disorder. Mentally, her prognosis was good. She can manage her benefit funds. There was no evidence of a severe thought disorder or risk factors. Department Exhibit 1, pgs. 147-152.

On [REDACTED], the Petitioner's treating physician completed a [REDACTED] Physical Impairment Questionnaire. Her diagnosis was ventral wall hernia. Her prognosis was poor. She had severe abdominal pain with a repair with mesh, but he now believed that the mesh had failed. The Petitioner's symptoms would

interfere with her ability to work 20% or more. She was capable of handling moderate stress to normal work. The Petitioner could sit for 20 to 30 minutes, stand for 10 to 20 minutes, and walk for 0 to 5 minutes. She could stand/walk less than 1 hour of an 8 hour workday. The Petitioner could walk a ½ to 1 city block. She uses a cane for ambulation. The Petitioner could occasionally lift 10 pounds, but never 25 pounds. Her ability to push and pull was limited to her extremities. She could occasionally climb stairs and ramps and balancing, but never climb ladders and scaffolds, stooping, kneeling, crouching, crawling, and twisting. She is to avoid concentrated exposure to vibration and hazards, avoid even moderate exposure to machinery extreme cold and heat, wetness, and humidity, and avoid all exposure to fumes, odors, dust, gases, or poor ventilation. Her pain medications affect her ability to identify hazards to be avoided. Petitioner Exhibit 1, pgs. 2-6.

This Administrative Law Judge finds that the Petitioner may meet the 90 day standard for SDA. She has had a major surgery in December 2016 and January 2017 where the recovery time would take her past 90 days. The Petitioner does need physical therapy for her knee. She has also continued to have abdominal pain even though she had surgery in December 2016.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the Petitioner testified that she does perform some of her daily living activities. The Petitioner does feel that her condition has worsened because her mesh is weaker and her mesh is popping out. The Petitioner stated that she does have mental impairments where she is taking medication, but not in therapy. The Petitioner stopped smoking cigarettes in 1983 where before she smoked a pack of cigarettes a week. She stopped drinking alcohol in 2014, where before she drunk socially. She stopped using illegal and illicit drugs of pot in the 80's. The Petitioner did feel there was work that she could do of paperwork at home.

At Step 4, this Administrative Law Judge finds that the Petitioner has established that she cannot perform any of her prior work. She was previously employed as a cashier at the medium/heavy level on November 27, 2016. She was also an owner of a motel. The Petitioner is taking medication for her mental impairments. She has had several surgeries, which may limit her ability work. Therefore, the Petitioner is not disqualified from receiving disability at Step 4. The Petitioner is not capable of performing her past work. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the Petitioner has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

The objective medical evidence on the record is sufficient that the Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. The Petitioner's testimony as to her limitation indicates her limitations are non-exertional and exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the Petitioner testified that she has depression. The Petitioner is taking medication for her mental impairments. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. Based on the independent psychiatric evaluation, she should be able to perform work.

In the final step of the analysis, the trier of fact must determine if the Petitioner's impairment(s) prevent the Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

**Sedentary work.** 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. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

**Light work.** Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. 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. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the Petitioner can meet the physical requirements of sedentary work, based upon the Petitioner's physical abilities. Under the Medical-Vocational guidelines, an advanced aged individual with a high school education and more, and a semi-skilled and unskilled work history, who is limited to sedentary work, is considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 201.06. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the Petitioner's mental and physical impairments, the Administrative Law Judge finds that the Petitioner could not perform sedentary work and that the Petitioner does meet the definition of disabled under the SDA program.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program. The Petitioner could not perform sedentary work at this time because of her hernia and physical therapy on her left knee and that the Petitioner does meet the definition of disabled under the SDA program.

Accordingly, the Department's determination is **REVERSED**.

The Department is ordered to begin doing the following, in accordance with department policy and consistent with this hearing decision, within 10 days of the date of mailing of this decision and order of initiating a redetermination of the Petitioner's eligibility for SDA retroactive to her SDA application dated December 27, 2016, with a medical review required June 2018. Based on policy, the Department should provide the Petitioner with written notification of the Department's revised eligibility determination and issue the Petitioner any retroactive benefits he may be eligible to receive, if any.



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Carmen G. Fahie  
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 Respondent**

[REDACTED]

**DHHS**

[REDACTED]

**Counsel for Respondent**

[REDACTED]

**Counsel for Petitioner**

[REDACTED]

**Petitioner**

[REDACTED]