



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED] April 24, 2017
MAHS Docket No.: 17-001122
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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; and 45 CFR 205.10. After due notice, a telephone hearing was held on [REDACTED], from [REDACTED], Michigan. Petitioner was represented by her cousin, [REDACTED]. Petitioner and [REDACTED] personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist, [REDACTED]. [REDACTED] testified on behalf of the Department. The Department submitted 307 exhibits which were admitted into evidence.

On [REDACTED], an Interim Order Extending the Record was issued to allow Petitioner the opportunity to present additional medical records. On [REDACTED], the record closed.

ISSUE

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

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. [Dept. Exh. 5-29].
2. On [REDACTED], Petitioner submitted her Medical – Social Questionnaire. The worker at the counter indicated Petitioner had allergies, problems breathing, wore

glasses, showed signs of pain or distress, had memory problems, and problems sitting, standing, using her right hand, walking, and writing. [Dept. Exh. 30-33].

3. On [REDACTED], the Medical Review Team denied Petitioner's application for SDA. [Dept. Exh. 44-58].
4. On [REDACTED], the Department issued Petitioner a Notice of Case Action informing her that her SDA had been denied effective [REDACTED], ongoing. [Dept. Exh. 3-4].
5. On [REDACTED], Petitioner submitted a Request for Hearing to the Department contesting the negative actions. [Dept. Exh. 2].
6. Petitioner has been diagnosed with acute bronchitis, allergic conjunctivitis, allergic rhinitis, anaphylaxis, arrhythmia, cervical neuritis, esophageal reflux disease, fatigue, hyperlipidemia, hypothyroidism, insomnia, irritable bowel syndrome (IBS), lump in chest, lump on neck, anemia, mitral valve disorder, methicillin resistant Staphylococcus aureus infection, murmur, obesity, restrictive lung disease, shortness of breath, skin lesion, degenerative joint disease, anxiety, asthma, back pain, chronic obstructive pulmonary disease (COPD), lymphadenopathy, hypothyroid, lumbar disc herniation with radiculopathy, herniated lumbar intervertebral disc, spinal stenosis, spondylolisthesis, and chronic back pain.
7. On [REDACTED], Petitioner underwent an initial evaluation for physical therapy. Petitioner was a [REDACTED]-year-old certified nurse's aide, who had pain since she was thrown by a resident while at work. Petitioner had a discectomy in [REDACTED], at L1-L2, and a spinal fusion at L1-L2 in [REDACTED]. She had continuous low back pain that worsened with forward bending and sitting and was somewhat relieved by standing or lying supine. She also reported intermittent numbness that ran down the right leg to her foot, occasionally accompanied by sharp-shooting pain, with activity. Petitioner also complained of right hip and right shoulder pain. She reported having right shoulder surgery. Petitioner had not worked since [REDACTED], and was applying for social security disability. She was attending therapy to improve her mobility before she saw an orthopedic surgeon. It was noted that Petitioner sat with reverse lumbar lordosis while in the chair, with mild forward head. She fidgeted during the interview. She was very tender to palpitation immediately to the left and to the right of the surgical incision. She had numbness down the posterior lateral path of the right lower extremity into the foot, notably the top of the foot. She also had decrease to light touch on the anterior lateral thigh. The Hawkins-Kennedy, Neer, posterior impingement, lumbar compression, back provocation with flexion, centralization with repeated extension with standing, FABER, and scour tests were all positive. [Dept. Exh. 219-222].
8. On [REDACTED], Petitioner was discharged from physical therapy after eight visits and no improvement. Diagnosis was lumbar disc herniation, joint hip pain, and pain in joint of right shoulder. She was referred back to her primary care physician. [Dept. Exh. 223-224].

9. On [REDACTED], Petitioner met with her primary care physician to review the results of her testing. Based on the diagnostic imaging, Petitioner was diagnosed with lumbar disc herniation with radiculopathy, a herniated lumbar intervertebral disc, and chronic back pain. [Dept. Exh. 243-244].
10. On [REDACTED], Petitioner followed up with her primary care physician regarding her Pulmonary Function Test results. The results showed moderate to severe COPD. The medical chart reflects Petitioner was off work due to an injury. [Dept. Exh. 198-214].
11. On [REDACTED], Petitioner met with her primary care physician complaining of a right swollen lymph node. On examination, the neck was swollen and tender. She was diagnosed with lymphadenopathy. [Dept. Exh. 139-142].
12. On [REDACTED], Petitioner participated in an overnight polysomnogram and was diagnosed with obstructive sleep apnea of mild degree with an apnea-hypopnea index of 7, associated with significant desaturation with an SpO2 nadir of 85%, and increased snore index of 26%. [Dept. Exh. 230-231].
13. On [REDACTED], Petitioner's results of overnight polysomnography with CPAP titration showed she needed a CPAP at 11 cm of water, EPR 2, to use ResMed Quattro Air SM. [Dept. Exh. 228-229].
14. On [REDACTED], Petitioner followed up with her primary care physician regarding her back pain. Petitioner stated she struggled from daily pain in her lumbar spine, as well as pain in her right buttock, and upper right leg. Petitioner managed her daily pain with morphine. She stated any prolonged sitting caused her feet and right leg to go numb. The physician reviewed the diagnostic imaging which showed lumbar disc herniation with radiculopathy. [Dept. Exh. 241-242].
15. On [REDACTED], Petitioner's lumbar spine MRI revealed postsurgical changes at the L5-S1 disc level without significant disc protrusion or nerve root compressions, spinal canal or neural foraminal stenosis was noted. There were degenerative changes at the T12-L1 disc level, and mild degenerative changes particularly at the L4-L5 disc level, without focal disc protrusion, spinal canal, or neural foraminal stenosis noted. [Dept. Exh. 132-133].
16. On [REDACTED], Petitioner's primary care physician completed a form that indicated Petitioner had a micro discectomy on [REDACTED], and two other surgeries on [REDACTED], and [REDACTED]. The physician opined that Petitioner was to remain off work indefinitely and that she had a scheduled follow-up appointment for [REDACTED]. Petitioner had been under his care since [REDACTED]. [Petitioner's Exh. 1].

CONCLUSIONS OF LAW

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

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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 [90 days for SDA]. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to

establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and credibly testified that she has not worked since [REDACTED]. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education, and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleges disability due to acute bronchitis, allergic conjunctivitis, allergic rhinitis, anaphylaxis, arrhythmia, cervical neuritis, esophageal reflux, fatigue, hyperlipidemia, hypothyroidism, insomnia, IBS, lump in chest, lump on neck, anemia, mitral valve disorder, methicillin resistant *Staphylococcus aureus* infection, heart murmur, obesity, restrictive lung disease, shortness of breath, skin lesion, degenerative joint disease, anxiety, asthma, back pain, COPD, lymphadenopathy, hypothyroid, lumbar disc herniation with radiculopathy, herniated lumbar intervertebral disc, spinal stenosis, spondylolisthesis, and chronic back pain.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above,

Petitioner has presented medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory disorders), Listing 4.00 (cardiovascular system), and 5.00 (digestive system) were considered in light of the objective evidence. Based on the foregoing, it is found that Petitioner's impairments do not meet the intent and severity requirement of a listed impairment; therefore, Petitioner cannot be found disabled at Step 3. Accordingly, Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the individual's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). 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 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 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. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of 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 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary 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 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Petitioner's prior work history consists of a [REDACTED]. In light of Petitioner's testimony, and in consideration of the Occupational Code, Petitioner's prior work is classified as unskilled, medium work.

Petitioner testified that she is able to walk short distances and can lift/carry approximately 5 pounds. The objective medical evidence notes difficulties with prolonged sitting, prolonged standing, bending, and twisting. If the impairment, or combination of impairments, does not limit an individual's physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of Petitioner's testimony, medical records, and current limitations, Petitioner cannot be found able to return to past relevant work. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Petitioner was 52-years-old and was, thus, considered to be approaching advanced age for MA-P purposes. Petitioner has an eleventh grade education. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds Petitioner meets statutory disability using Medical/Vocational Grid Rule 201.09 as a guide.

In reaching this conclusion, evidence in the file indicates that Petitioner's primary care physician since 2010, has indicated that Petitioner is to remain off work indefinitely and she has a follow-up appointment with him on July 5, 2017. Because Petitioner's treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial

eligibility criteria are found in BEM 261. Inasmuch as Petitioner has been found “disabled” for purposes of MA, she must also be found “disabled” for purposes of SDA benefits. Consequently, the Department’s denial of her July 25, 2016, SDA application cannot be upheld.

DECISION AND ORDER

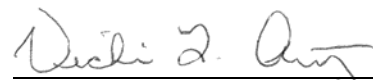
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department erred in determining Petitioner is not currently disabled for SDA eligibility purposes.

Accordingly, the Department’s decision is REVERSED, and it is Ordered that:

1. The Department shall process Petitioner’s July 25, 2016, SDA application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner’s medical condition for improvement in April of 2018, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner’s treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is **SO ORDERED**.

VLA/bb



Vicki Armstrong
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]

Petitioner

[REDACTED]