



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

██████████
██████████████████
██████████████████

Date Mailed: April 7, 2017
MAHS Docket No.: 17-001595
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

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

ISSUE

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

FINDINGS OF FACT

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

1. On ██████████, Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On ██████████, the Disability Determination Service determined that Petitioner was not a disabled individual.
4. On ██████████, MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action informing Petitioner of the denial.

5. On [REDACTED], Petitioner requested a hearing disputing the denial of SDA benefits.
6. As of the date of the administrative hearing, Petitioner was a [REDACTED] year-old female.
7. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
8. Petitioner's highest education year completed was the [REDACTED] grade.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner has cardiac problems that would not prevent the performance of sedentary employment.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute the denial of a SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 1-4) 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 (July 2015), p. 4. 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 (January 2012), p. 1. A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
 - resides in a qualified Special Living Arrangement facility, or
 - is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
 - is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*

Generally, state agencies such as MDHHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally

defined as the inability to do any substantial gainful activity (SGA) 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 eligibility]. 20 CFR 416.905.

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.*

The person claiming a physical or mental disability has the burden to establish a disability 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2016 monthly income limit considered SGA for non-blind individuals is \$1,130.00.

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.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

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 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 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).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Petitioner's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented medical documentation.

Physician office visit notes (Exhibit 1, pp. 71-73) dated [REDACTED], were presented. It was noted that Petitioner complained of bilateral hand rash, ongoing for [REDACTED] months. Benadryl was prescribed. Treatment for menstrual cramping was also noted.

Hospital emergency room documents (Exhibit 1, pp. 79-81) dated [REDACTED], were presented. It was noted that Petitioner presented with complaints of ankle pain from a bee sting. Benadryl and naprosyn were prescribed.

Hospitalization documents (Exhibit 1, pp. 82-96, 112-125) dated [REDACTED], were presented. It was noted that Petitioner presented with complaints of moderate non-radiating chest pain, ongoing for one week. Pain was reportedly worse with exertion, better with rest. Petitioner was noted to be a tobacco user. Blood pressure was noted to be in 200s/100s. An EKG was significant for abnormalities. It was noted Petitioner received various medications during admission. A catheterization showed clean coronary arteries. It was noted a psychiatric evaluation was performed; Trazadone was prescribed for insomnia. During admission, chronic lumbar pain was reported. A

discharge date of [REDACTED], was noted. Discharge instructions including taking Plavix and Lipitor. An echocardiogram and outpatient treatment were planned.

Cardiologist office visit notes (Exhibit 1, pp. 66-70) dated [REDACTED], were presented. It was noted that Petitioner presented for follow-up from a recent hospital visit for chest pain. An assessment of non-ST elevated myocardial infarction was noted. Follow-up was planned in a month.

Doppler exam results (Exhibit 1, pp. 40-43, 74-76) dated [REDACTED], were presented. Notable findings included 65% ejection fraction and normal chamber size. Mild mitral valve prolapse and trace regurgitation in the mitral and tricuspid valves.

Cardiologist office visit notes (Exhibit 1, pp. 61-65) dated [REDACTED], were presented. It was noted that Petitioner presented for ongoing cardiac treatment. A diagnosis of CAD without angina was noted. It was noted Petitioner's condition was stable and follow-up in 3 months was planned.

Hospital documents (Exhibit 1, pp. 96-111, 126-137) dated [REDACTED], were presented. It was noted Petitioner complained of chest pain. It was noted an EKG showed ST elevation. Petitioner was admitted for cardiac treatment. An ECG was noted to be consistent with ischemia. It was noted Petitioner was treated with various medications including heparin, morphine, Plavix, and nitro. It was noted Petitioner's EF was mildly reduced (45-50%). An impression of Grade I diastolic dysfunction was noted. Discharge diagnoses included heart attack, elevated blood pressure, and acute systolic heart failure. A discharge date of [REDACTED], was noted.

Cardiologist office visit notes (Exhibit 1, pp. 56-60) dated [REDACTED], were presented. It was noted that Petitioner presented for follow-up to recent hospitalization. Nitroglycerin was prescribed.

Cardiologist office visit notes (Exhibit 1, pp. 51-55) dated [REDACTED], were presented. It was noted that Petitioner presented for CAD and HTN follow-up. An impression that Petitioner was "doing well" was noted.

Petitioner testified she experienced [REDACTED] heart attacks over [REDACTED] and [REDACTED]. Petitioner testified each episode happened when she was walking to work. Petitioner testified the heart attacks occurred on [REDACTED], [REDACTED], and [REDACTED]. Petitioner testified she was treated with medications each time, though she also underwent stent placement as part of treatment for her second heart attack. Petitioner testified she last saw her cardiologist approximately [REDACTED] months ago.

A complaint of lumbar pain was noted in presented records. Insufficient supporting evidence (e.g. radiology records) was presented to infer any restrictions related to spinal disorders.

Presented medical records generally verified a treatment history indicative of cardiac dysfunction which would reasonably limit Petitioner's lifting/carrying and ambulation.

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.

The third step of the sequential analysis requires determining whether the Petitioner's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a petitioner's impairments are listed and deemed to meet the durational requirement, then the petitioner is deemed disabled. If the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

Cardiac-related listings (Listing 4.00) were considered based on Petitioner's cardiac treatment history. Petitioner failed to meet any cardiac listings.

It is found that Petitioner failed to establish meeting (or equaling) an SSA listing. Accordingly, the analysis moves to the fourth step.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a petitioner can perform past relevant work. *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 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 is 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.

Petitioner testified she had previous full-time employment with fast-food restaurants. Petitioner testified at her previous jobs, she was a sandwich preparer. Petitioner testified she is unable to work at one of her previous jobs due to a lack of transportation. Though Petitioner's former employer is located in her city of residence, Petitioner testified she is concerned about having to take 2-3 buses to get to her job. Petitioner is also worried about the stress of her employment. As an example, her employer wanted her to work the day after one of her heart attacks.

Petitioner testified her job required her to lift 30 pound boxes of food. Petitioner testified she had a helper to lift/carry the box.

For purposes of this decision, it will be found that Petitioner cannot perform past relevant employment. Thus, the analysis may proceed to the final step.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. 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). To determine the physical demands (i.e. 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 additionally 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 are considered non-exertional. 20 CFR 416.969a(a). Examples of

non-exertional limitations 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.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Petitioner's age, education and employment history a determination of disability is dependent on Petitioner's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Petitioner testified she walked 1-2 miles on the day of hearing to catch a bus; Petitioner testified she would unlikely be able to walk any further. Petitioner testified she relies on a cane when she walks long distance due to a fear of falling. Petitioner testified she can stand for unspecified long periods. Petitioner testified she has no sitting restrictions. Petitioner was uncertain what amount of lifting/carrying she could perform. Petitioner's friend testified Petitioner breathes hard when she climbs stairs. Generally, Petitioner's statements concerning exertional abilities were consistent with an ability to perform sedentary employment.

Petitioner testified she has no bathing, dressing, grooming, laundry, housework, or shopping restrictions, Petitioner testified she has never driven, which is why she uses public transportation. Generally, Petitioner's statements concerning ADLs were consistent with an ability to perform sedentary employment.

A Physical Residual Functional Capacity Assessment (Exhibit 1, pp. 27-34) dated [REDACTED], was presented. The assessment was completed by a medical consultant as part of Petitioner's SSA claim of disability. Stated restrictions and/or abilities included occasional lifting/carrying of 20 pounds, frequent ability to lift/carry 10 pounds, standing or sitting about 6 hours in an 8 hour workday, unlimited pushing/pulling, occasional balancing, and no manipulative restrictions. The stated basis for assessments, in part, were longitudinal medical exams citing a normal gait, full strength, and full range of spinal motion. The assessments were not from a physician. Thus, little weight can be given to the statements. The statements were consistent with finding that Petitioner can perform sedentary employment.

It is appreciated that Petitioner is concerned about stress after a history of multiple heart attacks. Though Petitioner's concerns are reasonable, presented evidence was not indicative of significant cardiac restrictions. Petitioner's ejection fractions would not preclude Petitioner's sedentary employment performance. Cardiac testing was not indicative of restrictions to sitting, standing, or ambulation on flat surfaces. Petitioner's cardiologist treatment schedule (current every [REDACTED] months) was not indicative of significant impairments.

Following Petitioner's heart attacks, the most notable diagnosis was Grade I diastolic dysfunction. The diagnosis is indicative of mild cardiac dysfunction which could reasonably allow a patient to be asymptomatic. The diagnosis is highly consistent with an ability to perform sedentary employment. It is found Petitioner is capable of a full range of sedentary employment.

Based on Petitioner's exertional work level (sedentary), age (younger individual aged 45-49), education (limited but literate and able to communicate in English), employment history (unskilled), Medical-Vocational Rule 201.18 is found to apply. This rule dictates a finding that Petitioner is not disabled. Accordingly, it is found that MDHHS properly found Petitioner to be not disabled for purposes of SDA benefits.

DECISION AND ORDER

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

CG/hw



Christian Gardocki

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

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

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

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

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

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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]