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GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: April 28, 2017  
MAHS Docket No.: 17-003055  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

### **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, telephone hearing was held on April 4, 2017, from Lansing, Michigan. Petitioner represented herself. [REDACTED] [REDACTED] represented the Department of Health and Human Services (Department). The hearing record was closed at the conclusion of the hearing.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine that the Petitioner did not meet the disability standard for State Disability Assistance (SDA)?

### **FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On September 27, 2016, Petitioner submitted an application for State Disability Assistance (SDA) benefits alleging disability. Exhibit A, p 3.
2. On December 13, 2016, the Medical Review Team (MRT) determined that the Petitioner did not meet the disability standard for State Disability Assistance (SDA) because it determined that she is not prevented from performing any work for more than 90 days.
3. On January 3, 2017, the Department sent Petitioner notice that it had denied the application for assistance.

4. On February 21, 2017, the Department received Petitioner's hearing request, protesting the denial of disability benefits.
5. Petitioner applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
6. The Social Security Administration (SSA) denied the Petitioner's federal Supplemental Security Income (SSI) application and Petitioner reported that a SSI appeal is pending.
7. The Petitioner is a [REDACTED]-year-old woman whose birth date is [REDACTED]
8. Petitioner is 5'4" tall and weighs 136 pounds.
9. The Petitioner is a high school graduate.
10. The Petitioner is able to read and write and does have basic math skills.
11. The Petitioner was not engaged in substantial gainful activity at any time relevant to this matter.
12. The Petitioner has past relevant work experience as an assistant manager where she was required to move items weighing 20 to 30 pounds.
13. The Petitioner's disability claim is based on a brain aneurysm, scoliosis, thyroid disease, hand impairments, depression, and bi-polar disorder.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code, R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2013), pp 1-44.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order.

### STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Petitioner is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, she is not disabled regardless of how severe her physical or mental impairments are and regardless of her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Petitioner testified that she has not been employed since 2001. The record evidence supports a finding that Petitioner has engaged in substantial gainful activity since 2001 because she requested work restrictions from her treating physician in 2015. Petitioner's testimony concerning whether she is currently performing significant gainful activity is not credible. While there is evidence of substantial gainful activity since 2001, there is no evidence that Petitioner was working as of September 27, 2016, when she applied for cash assistance. Therefore this Administrative Law Judge finds that the Petitioner is not disqualified from receiving disability at Step 1.

### STEP 2

Does the client have a severe impairment that has lasted or is expected to last more than 90 days? If no, the client is not disabled.

At step two, a determination is made whether the Petitioner has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921). If the Petitioner does not have a severe medically determinable impairment or combination of impairments, she is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Petitioner has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that prevents her from working for more than 90 days.

The Petitioner is a [REDACTED]-year-old woman that is 5' 4" tall and weighs 136 pounds. The Petitioner alleges disability due to a brain aneurysm, scoliosis, thyroid disorder, hand injury, depression, and bi-polar disorder.

The objective medical evidence indicates the following:

Petitioner has a history of thyroidectomy on [REDACTED] for a large thyroid causing respiratory complaints.

Petitioner has a history of pyelonephritis and treating physicians found evidence of a perinephric abscess in July of 2016. Petitioner was hospitalized from [REDACTED], through [REDACTED], with severe left flank pain.

Petitioner was diagnosed with an ophthalmic artery aneurysm in 2011, but she failed to seek recommended follow up treatment with specialists. On August 17, 2016, Petitioner suffered a fall resulting in a worsening of her chronic headaches. Treating physicians observed an aneurysm arising at the left ophthalmic segment of the left internal carotid artery.

On [REDACTED], Petitioner underwent a magnetic resonance imaging (MRI) scan of her abdomen and treating physicians found no acute abnormality other than evidence of previous right pyelonephritis.

On [REDACTED], Petitioner underwent an upper endoscopy examination and treating physicians found evidence of Barrett's esophagus but no carcinoma observed, and helicobacter pylori infection was ruled out.

In [REDACTED], Petitioner suffered from chronic nausea, vomiting, and diarrhea, abdominal pain, and rectal bleeding. Treating physicians diagnosed her with gastritis.

On [REDACTED], Petitioner suffered a fall on stairs and treating physicians diagnosed her with lower right leg sequela and muscle strain.

On [REDACTED] Petitioner was assaulted and an x-ray scan revealed a non-displaced and closed right radial neck fracture.

Petitioner has a history of noncompliance with her recommended treatments including failing to take prescriptions following her thyroidectomy, taking a reduced dosage of antibiotics for a kidney infection, and failing to attend recommended physical therapy. On [REDACTED], treating physicians found Petitioner's thyroid-stimulating hormones (TSH) to be within normal levels while receiving

treatment for her thyroidectomy. Petitioner was found to be getting good results from her prescribed thyroid medications on [REDACTED], when she had access to her medications.

The evidence on the record indicates that the Petitioner's was been diagnosed with a thyroid disorder and a brain aneurysm by treating physicians, which has resulted in significant impairments to her ability to engage in sustained performance of work related activities.

This Administrative Law Judge finds a physical impairment that has more than a de minimus effect on the Petitioner's ability to perform work activities. The Petitioner's impairments have lasted continuously, or are expected to last for more than 90 days. The Petitioner is not disqualified from receiving disability benefits at step 2 and the analysis will continue.

### STEP 3

Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4.

At step three, a determination is made whether the Petitioner's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Petitioner's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Petitioner is disabled. If it does not, the analysis proceeds to the next step.

The Petitioner's impairments failed to meet the listing for a vascular insult to the brain under section 11.04 because the objective medical evidence does not demonstrate that Petitioner suffers from sensory or motor aphasia resulting in ineffective speech of communication. The objective medical evidence also does not support a finding of disorganization of motor function in two extremities resulting in an extreme limitation in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities. The objective medical evidence also does not support a finding of marked limitations in physical functioning and persisting impairments to Petitioner's ability to understand, remember, apply information, interact with others, concentrate, or managing herself.

The Petitioner's impairments failed to meet the listing for endocrine disorders under section 9.00 because the objective medical evidence does not demonstrate severe cardiac dysfunction, uncontrolled thyroid-related weight loss, hypertensive cerebrovascular accidents, or severe cognitive limitations, mood disorders, or anxiety.

The Claimant's impairment failed to meet the listing for depression or bi-polar disorder under section 12.04 Affective disorders because the objective medical evidence does

not demonstrate that the Claimant suffers from marked restrictions of activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of decompensation or is unable to function outside a highly supportive living arrangement.

The Petitioner's impairments failed to meet the listing for chronic kidney disease under section 6.03 because the objective medical evidence does not establish that Petitioner is subjected to chronic hemodialysis or peritoneal dialysis.

The Claimant's impairment failed to meet the listing for scoliosis under section 1.04 Disorders of the spine, because the objective medical evidence does not demonstrate that the Claimant suffers from nerve root compression resulting in loss of motor strength or reflexes, or resulting in a positive straight leg test. The objective medical evidence does not demonstrate that the Claimant has been diagnosed with spinal arachnoiditis. The objective medical evidence does not support a finding that the Claimant's impairment has resulted in an inability to ambulate effectively.

The Claimant's impairment failed to meet the listing for a hand injury under section 1.02 Major dysfunction of a joint because the objective medical evidence does not demonstrate that the Claimant's impairment involves a weight bearing joint resulting in inability to ambulate effectively, or impairment in each upper extremity resulting in inability to perform fine and gross movements effectively. Inability to perform fine and gross movements effectively includes the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

The medical evidence of the Petitioner's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

#### STEP 4

Can the client do the former work that she performed within the last 15 years? If yes, the client is not disabled.

Before considering step four of the sequential evaluation process, a determination is made of the Petitioner's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). An individual's residual functional capacity is her ability to do physical and mental work activities on a sustained basis despite limitations from her impairments. In making this finding, the undersigned must consider all of the Petitioner's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether the Petitioner has the residual functional capacity to perform the requirements of her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Petitioner actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition,

the work must have lasted long enough for the Petitioner to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Petitioner has the residual functional capacity to do her past relevant work, 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 and last step.

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.

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).

To determine the skills required in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. These terms have the same meaning as defined in. 20 CFR 416.968.

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs. 20 CFR 416.968(a).

Petitioner testified that she has a history of performing work as an assistant manager at a store where she was required to unload merchandise from trucks. Petitioner testified that as an assistant manager she was required to lift objects weighing 25 to 30 pounds. Petitioner testified that she has not worked since 2001.

Petitioner's testimony of her past work history is not credible. The record evidence includes Petitioner's request to her treating physician on [REDACTED], for work restrictions from the strenuous work she was performing in a kitchen.

Petitioner testified that she suffers from chronic pain and other physical and mental impairments that limit her ability to perform work related activities and prevents all employment. Despite Petitioner's chronic pain, she is able to lift 20 pounds and can lift 10 pounds frequently. Petitioner is capable of performing work related tasks for a significant period of time.

After careful consideration of the entire record, this Administrative Law Judge finds that the Petitioner has the residual functional capacity to perform light as defined in 20 CFR 404.1567 and 416.967.

There is no evidence upon which this Administrative Law Judge could base a finding that the Petitioner is unable to perform work substantially similar to work performed in the past. The record evidence supports a finding that Petitioner is capable of performing light work and is capable of performing tasks substantially similar to those she performed as an assistant manager.

#### STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Petitioner has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Petitioner is able to do any other work considering her residual functional capacity, age, education, and work experience. If the Petitioner is able to do other work, she is not disabled. If the Petitioner is not able to do other work and meets the duration requirement, she is disabled.

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).

The objective medical evidence indicates that the Petitioner has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically able to do less strenuous tasks if demanded of her. The Petitioner's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

The Petitioner was able to answer all the questions at the hearing and was responsive to the questions. The Petitioner was oriented to time, person and place during the hearing. The record evidence supports a finding that Petitioner's mental impairments do not prevent all work related activities for more than 90 days.

The Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Petitioner's ability to perform work. The objective medical evidence indicates does not establish that Petitioner is unable to perform light work related activities and is not prevented from performing any work more than 90 days.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Petitioner is 40-years-old, a younger person, under age 50, with a limited education, and a history of unskilled work. Based on the objective medical evidence of record Petitioner has the residual functional capacity to perform light work. State Disability Assistance (SDA) is denied using Vocational Rule 202.17 as a guideline.

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, residing in a qualified special living arrangement, caring for a disabled person, or age 65 or older. Department of Human Services Bridges Eligibility Manual (BEM) 261 (July 1, 2015), pp 1-8. Because the Petitioner does not meet the definition of disabled and because the evidence of record does not establish that the Petitioner is unable to work for a period exceeding 90 days, the Petitioner does not meet the disability criteria for State Disability Assistance benefits.

A determination by the Social Security Administration that a client is not disabled and/or blind supersedes the Department's certification. Department of Health and Human Services Bridges Administrative Manual (BAM) 815 (January 1, 2016), p 2. The Department determined that Petitioner is not disabled. The Social Security Administration's regulation for disability benefits include a requirement that applicants need to follow prescribed treatments in order to qualify for disability benefits. A person that fails to follow a prescribed treatment without good reason cannot be found to be disabled by the Social Security Administration. 20 CFR 416.930.


In this case, the record evidence supports a finding that Petitioner has a history of failing to comply with the treatments recommended by her treating physicians. Petitioner has a history of noncompliance with her recommended treatments including failing to take prescriptions following her thyroidectomy, taking a reduced dosage of antibiotics for a kidney infection, and failing to attend recommended physical therapy, and failing to seek treatment from specialists when instructed to do so. The objective medical evidence indicates that Petitioner's condition improved while taking her prescribed medications. The record evidence supports a finding that Petitioner's failure to comply with prescribed treatments contributes to her physical impairments and prohibits a finding of disability.

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 not disabled for purposes of the State Disability Assistance (SDA) benefits.

**DECISION AND ORDER**

Accordingly, the Department's determination is AFFIRMED.

KS/nr

  
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Kevin Scully  
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]

**Petitioner**

[REDACTED]