



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 18, 2017
MAHS Docket No.: 17-007123
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on July 24, 2017, from Detroit, Michigan. Petitioner appeared and was represented by [REDACTED], Petitioner's fiancé, who also testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] [REDACTED], supervisor, and [REDACTED], specialist.

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 November 18, 2016, Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On April 26, 2017, the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 10-16).
4. On May 1, 2017, MDHHS denied Petitioner's application for SDA benefits.
5. On May 30, 2017, Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 1, pp. 3-4)

6. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
7. As of the date of the administrative hearing, Petitioner was a ■-year-old female.
8. Petitioner's highest education year completed was the 12th grade.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner has various medical restrictions which allow 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 an 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. 10-16) dated April 22, 2016, 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 (April 2017), p. 5. 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 (April 2017), p. 1. A person is disabled for SDA purposes if he or she meets any of the following criteria:

- Receives other specified disability-related benefits or services....
 - Resides in a qualified Special Living Arrangement (SLA) facility.
 - Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
 - Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS)...
- Id.*, pp. 1-2.

When the person does not meet one of the [above] criteria, [MDHHS is to] follow the instructions in BAM 815, Medical Determination and Disability Determination Service (DDS), Steps for Medical Determination Applications. *Id.*, p. 4. The DDS will gather and

review the medical evidence and either certify or deny the disability claim based on the medical evidence. *Id.* The review of medical evidence is primarily outlined by federal law.

[State agencies] must use the same definition of disability as used under SSI... 42 C.F.R. § 435.540(a). [Federal] law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 C.F.R. § 416.905(a).

MDHHS adopted a functionally identical definition of disability (see BEM 260 (July 2015), p. 10). The same definition applies to SDA, though SDA eligibility factors only a 90-day period of disability.

In general, you have to prove... that you are blind or disabled. 20 C.F.R. § 416.912(a). You must inform us about or submit all evidence known... that relates to whether or not you are blind or disabled. *Id.* Evidence includes, but is not limited to objective medical evidence (e.g. medical signs and laboratory findings), evidence from other medical sources (e.g. medical history and opinions), and non-medical statements about symptoms (e.g. testimony) (see *Id.*).

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

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

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id.*, p. 9. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute SGA. *Id.*

Petitioner credibly denied performing current employment; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA. Accordingly, the disability analysis may proceed to the second step.

At the second step, we consider the medical severity of your impairment(s). 20 C.F.R. §416.920 (a)(4)(ii). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in §416.909, or a combination

of impairments that is severe and meets the duration requirement, we will find that you are not disabled. *Id.*

Generally, federal courts have imposed a de minimus standard upon petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, SSR 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. 20 C.F.R. § 416.920 (5)(c). We will not consider your age, education, and work experience. *Id.* The second step analysis will begin with a summary of presented medical documentation and Petitioner's testimony.

Hospital emergency room documents (Exhibit 1, pp. 61-72) dated [REDACTED], were presented. A complaint of dizziness and headache was noted. Petitioner reported being assaulted one day earlier. An EKG was normal. Mild scalp swelling was noted. Petitioner reported feeling better after receiving treatment for hypoglycemia.

A lumbar spine MRI report (Exhibit 1, pp. 59-6, 120-121) dated [REDACTED], was presented. Mild degenerative disc disease was noted. Mild-to-moderate spinal canal stenosis and mild foraminal stenosis at L4-L5 was noted.

Physician office visit notes (Exhibit 1, pp. 77-84) dated [REDACTED], were presented. Petitioner complained of lumbar pain, ongoing for several years. Reported pain levels ranged from 5/10 to 10/10. Lumbar tenderness and restricted range of motion was noted. Bilateral hip tenderness was also noted. A normal gait was noted. Wrist braces were provided for CTS. A medial branch block and bilateral hip injections were planned. A left shoulder x-ray was planned in response to complaint of shoulder pain. Anxiety evaluation was planned. Prescribed medications included Tramadol, naproxen, meloxicam, Toradol, and gabapentin.

Physician office visit notes (Exhibit 1, pp. 85-88) dated [REDACTED], were presented. A primary complaint of depression was noted; depression was moderate based on PHQ. Reported symptoms included fatigue, guilt, irritability, anhedonia, poor self-esteem, and sleep disturbance. Psychotherapy was planned.

A left-shoulder x-ray report (Exhibit 1, pp. 131-132) dated [REDACTED], was presented. An impression of minor hypertrophic changes was noted.

Physician office visit notes (Exhibit 1, pp. 89-100) dated [REDACTED], were presented. A primary complaint of depression was noted; depression was moderate based on PHQ. Reported symptoms included uncontrollable crying. Various body pain complaints were reported. Multiple pain injections were ordered. A left shoulder injection was performed. Various meds were continued.

Physician office visit notes (Exhibit 1, pp. 101-104) dated [REDACTED], were presented. Right hip pain of 10/10 was reported. A right hip injection was performed.

Physician office visit notes (Exhibit 1, pp. 105-107) dated [REDACTED], were presented. An EMG (see Exhibit 1, pp. 122-128) was noted to be indicative of moderate bilateral tibial nerve mononeuropathy.

An x-ray report for Petitioner's right hand (Exhibit 1, pp. 129-130) dated [REDACTED] was presented. An impression of osteoarthritic changes and a deformity, possibly due to a poorly-healed fracture, was noted on Petitioner's right thumb.

Physician office visit notes (Exhibit 1, pp. 108-111) dated [REDACTED], were presented. Ongoing lumbar and bilateral shoulder pain was reported. Lumbar tenderness and decreased ranges of motion were noted. Petitioner declined PT but accepted pain injections for left shoulder. An x-ray noted minor hypertrophic changes in Petitioner's left shoulder. Petitioner reported hip injections helped, but only for a week.

Physician office visit notes (Exhibit 1, pp. 116-119) dated [REDACTED], were presented. Right hip pain of ranging from 3/10 to 10/10 was reported. A right hip injection was performed.

Petitioner testified she has recurrent psychological symptoms which include crying spells, insomnia (3-4 daily hours of sleep), erratic moods, and dwelling on the loss of custody of her children. Petitioner testified she slit her wrists approximately 3 years ago in a suicide attempt. Petitioner testified she jumped out of a window 4 years ago in another suicide attempt. Petitioner testified she performs housework to ease her nerves.

Petitioner testified she experiences chronic back pain. Petitioner testified she treats her pain with massages and having people literally walk on her back. Petitioner testified previously performed injections only relieved her pain for approximately 3 days. Petitioner testified she tried physical therapy, but it was interrupted because of hernia complications.

Petitioner testified she underwent a hernia surgery 2 weeks before the hearing. Petitioner testified she wears a back brace as part of her healing process.

Petitioner testified she has hip pain. Petitioner testified 4-5 past injections did little to relieve her pain. Petitioner also implied problems with her right leg by stating it contained plates.

Presented medical records generally verified a medical treatment history consistent with exertional restrictions due to hip, shoulder, and lumbar dysfunction. Presented records also generally verified degrees of concentration and social interaction restrictions due to psychological disorders. 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.

At the third step, we also consider the medical severity of your impairment(s). 20 C.F.R. § 416.920 (4)(iii). If you have an impairment(s) that meets or equal one of our listings in appendix 1 to subpart P of part 404 of this chapter and meets the duration requirement, we will find that you are disabled. *Id.* If you have an impairment(s) which meets the duration requirement and is listed in appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. *Id.* 20 C.F.R. § 416.920 (d).

A listing for joint dysfunction (Listing 1.02) was considered based on Petitioner's complaints of hip and shoulder pain. The listing was rejected due to failures to establish that Petitioner is unable to ambulate effectively or perform fine and gross movements with multiple extremities.

A listing for spinal disorders (Listing 1.04) was considered based on Petitioner's lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

It is found Petitioner does not meet any SSA listings. Thus, the analysis may proceed to the final steps of the analysis which require an RFC assessment.

If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record.... 20 C.F.R. § 416.920 (e). We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work... and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can adjust to other work... *Id.*

Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. 20 C.F.R. § 416.945 (a)(1). Your residual functional capacity is the most you can still do despite your limitations. *Id.* We will assess your residual functional capacity based on all the relevant evidence in your case record. *Id.* We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments

that are not “severe,”... when we assess your residual functional capacity. 20 C.F.R. § 416.945 (a)(2). We will assess your residual functional capacity based on all of the relevant medical and other evidence. 20 C.F.R. § 416.945(a)(3). We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. 20 C.F.R. § 416.945(a)(5).

At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. 20 C.F.R. § 416.920(a)(4)(iv). If you can still do your past relevant work, we will find that you are not disabled. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 C.F.R. § 416.960(b)(1). We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy. 20 C.F.R. § 416.960(b)(3).

Petitioner testimony indicated her only past employment since 2001 was as a caregiver. Petitioner testified her duties included feeding, bathing, and lifting patients. Petitioner testified she was also responsible for cleaning.

Petitioner testimony implied she is unable to perform the standing and lifting required of her former employment. For purposes of this decision, Petitioner’s testimony will be accepted. It is found that Petitioner is unable to perform past employment.

If we find that your residual functional capacity does not enable you to do any of your past relevant work or if we use the procedures in § 416.920(h), we will use the same residual functional capacity assessment when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and the vocational factors of age, education, and work experience, as appropriate in your case. (See § 416.920(h) for an exception to this rule.) Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. 20 C.F.R. § 416.920(a)(4)(v). If you can make an adjustment to other work, we will find that you are not disabled. *Id.* If you cannot make an adjustment to other work, we will find that you are disabled. *Id.*

Your impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit your ability to meet certain demands of jobs. 20 C.F.R. § 416.969a(a). These limitations may be exertional, nonexertional, or a combination of both. *Id.*

When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), we consider that you

have only exertional limitations. 20 C.F.R. § 416.969a(b). When your impairment(s) and related symptoms only impose exertional limitations and your specific vocational profile is listed in a rule contained in appendix 2, we will directly apply that rule to decide whether you are disabled. *Id.*

When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the demands of jobs other than the strength demands, we consider that you have only nonexertional limitations or restrictions. 20 C.F.R. § 416.969a(c)(1). Some examples of nonexertional limitations or restrictions include the following... nervousness, anxiousness, depression, attention or concentration deficits, difficulty remembering instructions, vision loss, hearing loss, difficulty with environment (e.g. fumes), hand manipulation, bending, crouching, kneeling, or other body maneuvers (see *Id.*).

If your impairment(s) and related symptoms, such as pain, only affect your ability to perform the nonexertional aspects of work-related activities, the rules in appendix 2 do not direct factual conclusions of disabled or not disabled. 20 C.F.R. § 416.969a(c)(2)

Limitations are classified as exertional if they affect your ability to meet the strength demands of jobs. *Id.* To determine the physical exertion requirements of work in the national economy, we classify jobs as *sedentary, light, medium, heavy, and very heavy*. 20 C.F.R. § 416.967.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 C.F.R. § 416.967 (a) Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. *Id.*

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. 20 C.F.R. § 416.967(b). Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. *Id.* If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 C.F.R. § 416.967(c). If someone can do medium work, we determine that he or she can also do sedentary and light work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 C.F.R. § 416.967(d). If someone can

do heavy work, we determine that he or she can also do medium, light, and sedentary work. *Id.*

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 C.F.R. § 416.967(e). If someone can do very heavy work, we determine that he or she can also do heavy, medium, light, and sedentary work. *Id.*

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

Petitioner testified she can walk for 30-minute periods and stand for 20 minute periods. Petitioner testified she relies on a cane for ambulation. Petitioner testified she is unable to use stairs unless someone is behind her. Petitioner testified her lifting/carrying is limited to 5 pounds. Petitioner testified her sitting is unlimited.

Petitioner testified she relies on a handrail for bathing. Petitioner testified she is unable to independently put on her bra, pants, and shoes. Petitioner testified she is unable to make beds, put away groceries, or vacuum. Petitioner testified she utilizes a scooter when shopping.

Petitioner's testimony concerning her difficulty with stairs, need for a cane, and difficulty with ADLs is consistent with difficulties in performing even sedentary employment. The analysis will proceed to consider Petitioner's capabilities based on presented medical records.

A Physical Residual Functional Capacity Assessment (Exhibit 1, pp. 47-54) dated [REDACTED], was presented. The assessment was signed by a consultative physician as part of Petitioner's SSA claim of disability. Stated restrictions included occasional lifting of 20 pounds, frequent ability to lift/carry 10 pounds, standing or sitting about 6 hours in an 8-hour workday, and unlimited pushing/pulling. Petitioner was restricted to only occasional kneeling, crawling, and crouching due to back pain and morbid obesity. Stated support for the assessments included MRI findings, normal gait, normal neurology, and history of morbid obesity. The assessment was consistent with an ability to perform sedentary employment.

Mild-to-moderate spinal canal stenosis was verified in presented lumbar radiology. The level of dysfunction is generally consistent with treatable back pain that should allow for sedentary employment. The finding is also consistent with a degree of pain, but not one causing non-exertional restrictions other than preclusion of very complex employment. Comparable conclusions can be made concerning right hand and shoulder radiological findings.

EMG testing indicated moderate bilateral tibial nerve mononeuropathy. The diagnosis could conceivably cause pain and/or adversely affect ambulation. Notable follow-up to the diagnosis was not apparent. Related symptoms (e.g. foot drop) were not apparent. Presented evidence was not indicative that neuropathy affected Petitioner's ability to perform sedentary employment.

During the hearing, Petitioner was asked if she could perform telephone customer service; Petitioner's responded that she did not care for the customer service industry. Petitioner was also asked if she could perform computer-related employment (such as data entry); Petitioner responded that she was not computer savvy. Petitioner's responses were notable in that neither were relevant to medical restrictions to performing sedentary employment.


Reduced muscle strength and/or permanent need for a walking assistance device tend to be supportive of problems that could preclude performance of sedentary employment. Neither reduced muscle strength nor a need for a cane were verified. Based on presented evidence, it is found Petitioner can perform sedentary employment.

Based on Petitioner's exertional work level (sedentary), age (younger individual aged 45-49), education (high school), employment history (no transferrable skills), Medical-Vocational Rule 201.21 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 November 18, 2016, 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]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]