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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 18, 2018
MAHS Docket No.: 17-015477
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on January 3, 2018, from Detroit, Michigan. Petitioner was present and testified. The Department of Health and Human Services (Department) was represented by Zelia Cobb, Medical Contact Worker.

ISSUE

Did 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] 2017, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On November 9, 2017, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 4-10).
3. On November 13, 2017, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability.
4. On [REDACTED], 2017, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 2).

5. Petitioner alleged disabling impairment due to carpal tunnel syndrome (CTS), neuropathy in hands and feet, diabetes, and pain from the neck to the toes on the left side.
6. On the date of the hearing, Petitioner was 48 years old with a [REDACTED] 1969 birth date; she is 5'4" in height and weighs about 162 pounds.
7. Petitioner went to the 12th grade but did not graduate. She can read and write and do basic math.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as a fast food service employee, packaging worker, and health care aide assisting the elderly.
10. Petitioner has a pending disability claim with the Social Security Administration.

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, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work

experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, 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).

In general, the individual has the responsibility 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, she is not ineligible under Step 1, and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple

instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The medical evidence presented at the hearing was reviewed and is briefly summarized below.

On [REDACTED] 2017, Petitioner was examined by a doctor at the Department's request based on allegations of disability due to diabetes and CTS. Petitioner informed the doctor that she was keeping her diabetes under control and had lower back pain and neck pain, radiating to the left upper limb. She had a history of mild chronic obstructive pulmonary disease (COPD) but no history of pneumonia or bronchitis, denied any severe shortness of breath, and was able to climb one flight without chest pain or shortness of breath. She had pain in the neck with left sided radiation to the left hand. She had no lower back pain radiation. Although she had a slight tingly feeling in the bottom of the feet, she had no paresthesias in the lower extremities. In the physical examination, the doctor noted negative Babinski, 5/5 muscle power, and symmetrical reflexes 2+, full range of motion of all joints, 5/5 bilateral grip, negative Tinel's signs bilaterally, and no pedal edema. The doctor noted that Petitioner was able to get on and off the exam table and dress, and although she brought a cane, she did not use it and it was not necessary. The doctor concluded that Petitioner had a history of type II diabetes, controlled; history of COPD, well-controlled; and history of left-sided cervical pain with radiation to the left hand but she seemed to have no symptoms or difficulty using both hands. Although Petitioner had tingly feet, the doctor noted no significant history of frequent falls due to peripheral neuropathy from diabetes. The doctor concluded that, based on her examination, Petitioner could sit, stand, walk, bend, and lift at least 20 pounds without difficulty for 8 hours daily but should avoid machinery operation and climbing heights due to her diabetes. (Exhibit A, pp. 173-179).

On [REDACTED] 2017, Petitioner was seen by the emergency department. She was diagnosed with acute common cold, treated, and discharged in stable condition (Exhibit A, pp. 169-170, 207-209, 228-230).

Petitioner submitted an undated letter from her wound doctor's office signed by "Office Management" stating that Petitioner had been a patient since January 7, 2016, was a diabetic with "symptomatic neuropathy and nocturnal awakening and debilitating occasionally." The letter noted that Petitioner complained of bilateral calf muscle and feet spastic episodes with intermittent agonizing left and right ankle joint pain.

Notes from Petitioner's primary doctor visits from [REDACTED], 2015 to [REDACTED], 2017 showed that Petitioner was diagnosed with diabetes, type 2, non-insulin dependent; hyperlipidemia; vitamin D deficiency; and chronic lumbar strain. The notes

indicated that Petitioner was taking medication as prescribed, had not had any episodes of hypoglycemia and she denied any chest pain, palpitations, dizziness or shortness of breath but stated she had fallen twice at her new job. She complained of left shoulder and neck pain radiating into her upper back and arm. At the [REDACTED], 2016 physical, the doctor did not note any unusual findings. At the [REDACTED] 2017 visit, Petitioner complained of right knee pain (but did not have requested x-ray taken) and issues dealing with left carpal tunnel. At the August 28, 2017 visit, the doctor noted limited left arm range of motion and the diagnoses included cervical spondylosis with radiculopathy based on an x-ray of the cervical spine showing degenerative change with flattening of lordotic curve and spondylosis of C5-C7. (Exhibit A, pp. 110-115, 200-206, 211, 221-227.)

A [REDACTED] 2015 diabetic eye examination report showed no diabetic retinopathy. Petitioner's visual acuity (best corrected) was 20/20 in both eyes. There was suspected glaucoma in one eye. (Exhibit A, p. 132.) A [REDACTED], 2017 diabetic eye exam showed no diabetic eye disease but suspected glaucoma (Exhibit A, pp. 210, 231).

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual'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 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), and 9.00 (endocrine disorders) were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to

meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 20 CFR 416.967(a). 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 the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work 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). 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). 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 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). 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 (i.e., unable to 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).

In this case, Petitioner alleges exertional and nonexertional limitations due to her medical condition. Petitioner testified that she used a cane as needed but could not walk further than five houses. She testified that she sometimes had difficulty with using her hands to open jars and could not lift more than 3 pounds with her left hand or 7 pounds with her right hand. She could sit but would need to readjust, put her feet up, or stand occasionally. She could not stand too long. She lived with her 16-year-old son and relied on her daughters to assist her if necessary with her bathing, dressing, chores and grocery shopping. She did not drive but used public transit and tried to go to church.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

In this case, an x-ray of Petitioner's cervical spine showed degenerative change with flattening of lordotic curve and spondylosis of C5-C7. Petitioner's doctor noted limited left arm range of motion with radiculopathy. Therefore, there is evidence to support Petitioner's testimony concerning left-sided pain. However, the [REDACTED], 2017 independent medical examination showed no symptoms or difficulty using either hand and normal range of motion of all joints. Although Petitioner's medical records from her primary care doctor show an assessment for CTS, there is no diagnostic testing to support diagnosis and the independent medical examiner noted a negative Tinel's signs bilaterally. The record supports Petitioner's diabetes diagnosis but shows that it is currently controlled. Although Petitioner alleges tingliness in her hands and feet, there is no medical documentation other than the diabetes diagnosis to support that impairment. The independent medical examiner found 5/5 muscle power and 5/5 bilateral grip and noted that Petitioner was able to get on and off the exam table and dress unassisted, did not use or need the cane she had brought, had a normal gait, and should be able to sit, stand, walk, bend and lift at least 20 pounds without difficulty for 8 hours daily. While Petitioner has a medically determinable impairment to support her testimony concerning left-sided pain and tingliness, it is found that the objective medical evidence does not support the intensity, persistence and limiting effects described by Petitioner. With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(b). Petitioner also is found to have nonexertional limitations due to her diabetes that keep her from operating machinery or climbing heights.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. 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).

Petitioner's work history in the 15 years prior to the application consists of work as a fast food service employee; packaging worker; and health care aide assisting the elderly. Petitioner's work in packaging, which required standing most of the day and lifting up to 15 pounds regularly, required light physical exertion and no climbing or operating machinery. Based on the RFC analysis above, Petitioner has the exertional and nonexertional RFC to do this past employment. Because Petitioner is able to perform past relevant work, she is not disabled at Step 4 and the assessment ends.

It is further noted that, even if Petitioner was found incapable of past, relevant work at Step 4 and the assessment proceeded to Step 5, based on Petitioner's exertional RFC, age, education, and unskilled work history, under the Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 202.20, Petitioner would be able to adjust to other work. Her nonexertional RFC would not preclude her from engaging in simple, unskilled work activities on a sustained basis. 20 CFR 416.920(a)(4)(v); 20 CFR 416.920(c); *Heckler v Campbell*, 461 US 458, 467 (1983); 20 CFR 416.969a(d). Therefore, Petitioner would be found not disabled at Step 5.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner **not disabled** for purposes of the SDA benefit program.

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



AE/tm

Alice C. Elkin
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

Denise McCogle
27260 Plymouth Rd
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cc: SDA: L. Karadsheh
AP Specialist-Wayne County