



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 19, 2018
MAHS Docket No.: 17-014230
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 December 11, 2017, from Lansing, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor.

The following Exhibits were entered into the record during the hearing:

Department Exhibit A:

- Department's Hearing Summary (Exhibit A, unnumbered)
- [REDACTED], Request For Hearing (Exhibit A, pp. 1-2)
- Disability Determination Service (DDS) Medical Records Coversheet (Exhibit A, p. 3)
- [REDACTED], medical records from [REDACTED] (Exhibit A, pp. 4-78)
- DDS Decisions/Payment Documents Coversheet (Exhibit A, p. 79)
- [REDACTED], Medical-Social Eligibility Certification (Exhibit A, pp. 80-86)
- [REDACTED], Disability Determination Explanation (Exhibit A, pp. 87-99)
- DDS Disability Development and Documentation Coversheet (Exhibit A, p. 100)
- Authorization to Release Protected Health Information (Exhibit A, pp. 101-102)
- [REDACTED], Medical-Social Questionnaire (Exhibit A, pp. 103-106)
- DDS Medical Records Coversheet (Exhibit A, p. 107)
- Social Security Administration (SSA) Document Index and correspondence issued to Petitioner (Exhibit A, pp. 108-120)
- [REDACTED], SSA Function Report-Adult (Exhibit A, pp. 121-131)

- [REDACTED], SSA Function Report-Adult-Third Party (Exhibit A, pp. 132-143)
- Undated, SSA Work History Report (Exhibit A, pp. 144-154)
- SSA correspondence issued to Petitioner (Exhibit A, pp. 155-194)
- [REDACTED], SSA Disability Report-Field Office (Exhibit A, pp. 195-197)
- Undated, SSA Disability Report-Adult (Exhibit A, pp. 198-207)
- Blank Authorization to Disclose Information to the SSA (Exhibit A, p. 208)
- Case Development Sheet (Exhibit A, pp. 209-215)
- [REDACTED], consultative Psychiatric/Psychological Medical Report (Exhibit A, pp. 216-226)
- [REDACTED] medical records from [REDACTED] (Exhibit A, pp. 227-242)
- [REDACTED] medical records from [REDACTED] (Exhibit A, pp. 243-301)
- [REDACTED], response from [REDACTED] that he had no information on Petitioner. (Exhibit A, pp. 303-304)
- [REDACTED], Verification of Application or Appeal for SSI/RSDI (Exhibit A, pp. 305-306)
- [REDACTED], medical records from [REDACTED] (Exhibit A, pp. 307-342)
- [REDACTED], Medical-Social Questionnaire (Exhibit A, pp. 343-346)
- Authorization to Release Protected Health Information (Exhibit A, pp. 347-348)
- [REDACTED], medical records from [REDACTED] (Exhibit A, pp. 349-351)

Department Exhibit B:

- [REDACTED], State Online Query (SOLQ) report (Exhibit B, pp. 1-3)

During the hearing proceeding, jurisdiction to proceed based on whether SSA had made a final disability determination was discussed. Petitioner testified that she had applied for SSA disability, was denied and had not appealed the determination. However, Petitioner could not recall when the denial determination was issued. A SOLQ report was requested as it may have clarified when SSA issued a denial determination to Petitioner, in order to determine whether the timeframe for Petitioner to file an appeal of the SSA disability determination had lapsed. The Department has submitted an SOLQ report, but it does not appear that this report specifies when SSA issued notice of their determination to Petitioner. (Exhibit B, pp. 1-3) Accordingly, the Department's disability determination will be reviewed because it is unclear whether the timeframe for Petitioner to file an appeal of the SSA disability determination has lapsed.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. On [REDACTED], Petitioner applied for SDA. (Exhibit A, Department's Hearing Summary, unnumbered)
2. On [REDACTED], the Medical Review Team/Disability Determination Services (MRT/DDS) found Petitioner not disabled. (Exhibit A, pp. 80-86)
3. On [REDACTED], the Department notified Petitioner of the MRT/DDS determination. (Exhibit A, Department's Hearing Summary, unnumbered)
4. On [REDACTED], the Department received Petitioner's timely written request for hearing. (Exhibit A, pp. 1-2)
5. Petitioner alleged disabling impairments including: Muscular Dystrophy, depression, migraines, glaucoma, ulcerative colitis, vertigo, and history of stroke. (Exhibit A, pp. 103; Petitioner Testimony)
6. At the time of hearing, Petitioner was 55 years old with a [REDACTED], birth date; was 5'6¼" in height; and weighed 140 pounds. (Petitioner Testimony)
7. Petitioner completed two years of college and has a work history including: deli clerk, purchasing clerk/assistant purchaser, stocker, and laborer then office work at a printing company. (Exhibit A, pp. 105 and 147-154; Petitioner Testimony)
8. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 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, is insufficient to establish disability. 20 CFR 416.927.

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

to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

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

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

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity. Therefore, Petitioner is not ineligible for disability benefits under Step 1.

The severity of Petitioner's alleged impairment(s) is considered under Step 2. Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

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

Id.

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

In the present case, Petitioner alleged disabling impairments including: Muscular Dystrophy, depression, migraines, glaucoma, ulcerative colitis, vertigo, and history of stroke. (Exhibit A, pp. 103; Petitioner Testimony) While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

A [REDACTED], medical record from [REDACTED] documents assessment for skin lesion of chest wall, vertigo, head trauma, hereditary motor and sensory neuropathy-Charcot Marie Tooth disease, and alcohol abuse. The doctor noted concern that a lot of the vertigo symptoms are resultant from alcohol or alcohol withdrawal. Petitioner was referred to a dermatologist and physical therapy was recommended for vestibular rehabilitation. (Exhibit A, pp. 7-8 and 41)

A [REDACTED], consultative Psychiatric/Psychological Medical Report documents diagnoses of recurrent, moderate major depressive disorder and panic disorder. Based on the evaluation, Petitioner likely would relate well with coworkers and supervisors; may be hypersensitive to constructive criticism; and tasks should be simplified to start, gradually increasing in complexity. (Exhibit A, pp. 216-226)

Hospital records indicate outpatient lab work on [REDACTED]. (Exhibit A, pp. 299-302)

Petitioner was hospitalized [REDACTED], for symptoms suggestive of stroke. (Exhibit A, pp. 247-298) An [REDACTED], MRI of the brain, documented impression of "mild atrophy and white matter disease without an acute abnormality." (Exhibit A, p. 295) An [REDACTED], neurology consult, in part, states:

The patient reports very nonspecific complaint that there was some issue with the movement of the lips but without any lateralized features or deficits. This patient has underlying disorder of neuropathy probably type II CMT based on clinical examination. However, she claims she is also diagnosed with muscular dystrophy and HNPP and both of these diagnoses are unlikely based on clinical presentation. From neurologic standpoint at this point she does not need any further workup. Usual issues of risk reduction for atherosclerotic disease, use of antiplatelet, maintain good control of hypertension not discussed with her. From neurologic standpoint she is stable and can be discharged.

(Exhibit A, pp. 252 and 256-257)

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that she does have some limitations on the ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted, or can be expected to last, continuously for 90 days; therefore, Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms recent diagnosis and/or treatment of multiple severe impairments including: hereditary motor and sensory neuropathy-Charcot Marie Tooth disease, alcohol abuse, moderate major depressive disorder, and panic disorder.

Based on the objective medical evidence, considered listings included: 11.00 Neurological, and 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. The medical reports did not show sufficient abnormalities regarding the physical impairments. Further, the consultative mental health report did not document a severity of mental functioning limitations nor frequency and duration of treatment and minimal capacity for adjustment to meet the B or C criteria for listings 12.04 or 12.06. Accordingly, Petitioner cannot be found disabled, or not disabled, at Step 3; therefore, Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are 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 (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function 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. 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.*

The evidence confirms recent diagnosis and/or treatment of multiple severe impairments including: hereditary motor and sensory neuropathy-Charcot Marie Tooth disease, alcohol abuse, moderate major depressive disorder, and panic disorder. Petitioner's testimony indicated she can walk 5 minutes, stand 5-10 minutes, and lift/carry 10 pounds but not for any length of time. Petitioner testified that within the first 30 minutes of the hearing, she had to get up from a sitting position twice. Petitioner's testimony regarding her current diagnoses and resulting limitations is not fully supported by the medical evidence and is found only partially credible. For example, Petitioner's testimony indicated the majority of her limiting symptoms were due to having Muscular Dystrophy. This diagnosis and the intensity of symptoms described by Petitioner are not well supported by the most recent medical records as summarized above.

After review of the entire record it is found, at this point, that Petitioner maintains the residual functional capacity to perform light work as defined by 20 CFR 416.967(b) on a sustained basis.

The fourth step in analyzing a disability claim requires an assessment of Petitioner's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is considered. 20 CFR 416.960(b)(3).

Petitioner has a work history including deli clerk, purchasing clerk/assistant purchaser, stocker, and laborer then office work at a printing company. (Exhibit A, pp. 105 and 147-154; Petitioner Testimony). Petitioner testified that only the paper inventory work at the printing company was full time work. (Petitioner Testimony) However, on the DHS-49F Medical-Social Questionnaire and SSA Work History Report, Petitioner reported that the purchasing clerk/assistant purchaser work was also full time and occurred between December 2013 and October 2014. (Exhibit A, pp. 103-106 147-154) The purchasing clerk/assistant purchaser work was described as involving lifting less than 10 pounds, little walking, some standing, and mostly sitting and writing/typing/handling small objects. (Exhibit A, p. 149) The office work at the printing company, from 1995-2006, was described as involving lifting less than 10 pounds, some walking and standing, mostly sitting and writing/typing/handling small objects. (Exhibit A, p. 151)


In light of the entire record and Petitioner's RFC (see above), it is found that Petitioner is able to perform her past relevant work as purchasing clerk/assistant purchaser and office worker. Accordingly, Petitioner is found not disabled, at Step 4.

In this case, Petitioner is found not disabled for purposes SDA benefits as the objective medical evidence does not establish a physical or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Petitioner's impairments did not preclude work at the above stated level for at least 90 days.

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 for the October 28, 2016, SDA application.

DECISION AND ORDER

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



CL/db

Colleen Lack
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



Petitioner

