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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: February 26, 2018
MAHS Docket No.: 17-016870
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 February 1, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist, and Farrah Erickson, manager.

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 January 11, 2017, Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On October 31, 2017, the Disability Determination Service determined that Petitioner was not a disabled individual.
4. On November 1, 2017, MDHHS denied Petitioner's application for SDA benefits.
5. On December 28, 2017, Petitioner requested a hearing disputing the denial of SDA benefits.

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. As of Petitioner's SDA application date, Petitioner had multiple malignant lung nodules which metastasized to Petitioner's hilar nodes.

CONCLUSIONS OF LAW

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

Petitioner requested a hearing to dispute the denial of a SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Notice of Case Action (Exhibit C, pp. 6-9) dated November 1, 2017, 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.

Petitioner alleged being unable to work for at least 90 days. Petitioner alleged no other basis for SDA eligibility.

Generally, state agencies must use the same definition of disability as used for Supplemental Security Income (SSI) (see 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. The remainder of the analysis considers the specific disability evaluation set forth by federal SSI regulations.

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 2017 monthly income limit considered SGA for non-blind individuals is \$1,170.00.

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.

Various urologist treatment records (Exhibit A, pp. 83-98) dated from [REDACTED], through [REDACTED], were presented. Complaints of nocturia during sleep were regularly noted.

Physician office visit notes (Exhibit A, pp. 121-123) dated [REDACTED], were presented. Ongoing treatment for polycythemia, chronic pain, myelodysplastic disorder, depression, anxiety, and hypotension was noted. All conditions were noted to be stable.

Gynecological office visit notes (Exhibit A, pp. 124-138) dated [REDACTED], were presented. A recommendation of quitting smoking was noted.

Physician office visit notes (Exhibit A, pp. 142-148) dated [REDACTED] were presented. An assessment of 2nd polycythemia was noted; it was also noted to be likely secondary to COPD and smoking. Chest radiology noted bilateral lung nodules.

Pulmonary physician office visit records (Exhibit A, pp. 110-112) dated [REDACTED] [REDACTED] were presented. It was noted Petitioner developed a new long nodule since 2014 scans. It was noted that "this was a difficult situation because bilateral abnormalities "could be malignant". Further radiology was ordered.

Physician office visit notes (Exhibit A, pp. 149-151) dated [REDACTED], were presented. Ongoing treatment for polycythemia was noted. Recent lung radiology was noted to be suspicious for lung cancer.

A CT report of Petitioner's chest (Exhibit A, p. 55 and 76) dated [REDACTED], was presented. It was noted that a left upper lobe lesion was unchanged. A right upper lobe nodule was noted to be difficult to reach. A PET scan was recommended.

A PET/CT report from skull to mid-thigh (Exhibit A, pp. 51-54, 72-75) dated [REDACTED] was presented. A 9 mm right upper lobe nodule suspicious of malignancy was noted.

Pulmonary physician office visit records (Exhibit A, pp. 106-109) dated [REDACTED], were presented. It was noted Petitioner was a long-time cigarette smoker with a smoker cough. It was noted Petitioner walked with a cane and a limp. It was noted that surgery was planned to remove a lung nodule but it was uncertain which nodule should be removed. A CT scan was planned for September or October to help determine a course of action.

A Pulmonary Function Report (Exhibit A, p. 111) dated [REDACTED], was presented. Petitioner's FVC was noted to be 2.08 which was 60% of normal. Petitioner's FEV1 was 1.47 which was noted to be 53% of normal.

A medical examination report (Exhibit A, pp. 58-66) dated [REDACTED], was presented. The report was noted as completed by a consultative physician. Petitioner reported a medical history of polycythemia, depression, anxiety, degenerative bone disease, insomnia, and cataracts. Back pain radiating to legs and sitting restrictions were reported. Notable physical examination findings included the following: use of cane, inability to squat, decreased right side hearing, 20/20 vision, and normal gait with mild unsteadiness with cane use. All lumbar and bilateral hip range of motion was reduced. It was noted that Petitioner was able to perform 19 of 23 listed work-related activities with restrictions; unrestricted activities included: sitting bending, carrying, pushing, writing, and buttoning clothes. Standing was noted as possible with use of cane. Petitioner was assessed as incapable of squatting or climbing stairs. It was noted that clinical evidence supported use of a cane.

A mental status examination report (Exhibit A, pp. 38-40, 198-200, 274-276) dated [REDACTED], was presented. The report was noted as completed by a consultative licensed psychologist and a limited licensed psychologist. It was noted Petitioner reported being diagnosed with depression in 1996. The following mental health symptoms were reported by Petitioner: panic attacks, apathy, "so-so" energy, crying spells, past suicidal ideation, anhedonia, hypervigilance, distrust of others, overreaction to situations, and social isolation. Panic attacks were reported to last 10-15 minutes and to occur "several times per year". It was noted Petitioner avoids leaving her home. Noted observations of Petitioner made by the consultative examiner include the following: anxious affect, slow ambulation with cane, frail/weak appearing legs, normal attention span, and orientation x4. Poor short-term memory was noted. Diagnoses included depressive disorder, and PTSD/panic disorder. A guarded-to-poor prognosis was noted. Petitioner's medical issues were also noted to be concerning. Understanding and memory were noted to be moderately impaired. Marked social impairment was

noted. Adaptation was noted to be not impaired. It was noted Petitioner was moderately-to-markedly impaired in using public transportation.

Petitioner presented a signed authorization for treatment (Exhibit 2, pp. 1-2) from [REDACTED] [REDACTED]. The documents indicated Petitioner would receive physical and occupational therapy.

Petitioner testimony alleged impairments, in part, due to polycythemia. Petitioner testified the condition causes body weakness and poor oxygen intake to her brain. Petitioner testified she takes no medication for the condition, though her red blood cell count is monitored.

Petitioner alleged impairments, in part, due to degenerative bone disease. Petitioner testified the disease affects her hips, legs, knees, elbows, and spine. Petitioner testified she takes medication to reduce pain. Petitioner testified she tried injections and physical therapy, though neither helped.

Petitioner testified she was diagnosed with lung cancer in 2017. Petitioner testified she was told that the cancer was in stage 3 or 4. Petitioner testified she will be starting radiation treatment next week.

Petitioner testified she has dealt with depression and anxiety since 1996. Petitioner testified she does not see a counselor due to a lack of transportation. Petitioner testified she last attended therapy in 2014. Petitioner testified symptoms include racing thoughts, poor concentration, social isolation, and only 4-6 hours/night of sleep. Petitioner testified she is treated with anti-depressants and anti-anxiety medication.

Petitioner testified she uses a cane or walker for ambulation. Petitioner testified she is limited to climbing only one flight of stairs due to dyspnea and hip pain. Petitioner testified she can only walk 100 feet due to hip pain. Petitioner testified she can sit up to an hour, but it is painful. Petitioner testified she is restricted to lifting/carrying of 5-10 pounds.

Petitioner testified she relies a chair when showering. Petitioner testified she needs help putting on pants. Petitioner testified she is unable to vacuum or change her bed sheets. Petitioner testified she can do laundry, but cannot carry it. Petitioner testified she typically has her food delivered. Petitioner testified she uses public transportation, but has difficulty getting on and off the bus.

Petitioner testified she has a history of part-time employment. Petitioner testified she has not made \$[REDACTED]/month from employment in the last 15 years.

Presented medical records generally verified a medical treatment history consistent with exertional restrictions due to polycythemia, COPD, and lung cancer. Presented records also generally verified degrees of concentration and social interaction restrictions due to depression and anxiety. 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).

Petitioner alleged disability, in part, based on a recent lung cancer diagnosis. The relevant SSA listing is as follows:

13.14 Lungs.

A. Non-small-cell carcinoma--inoperable, unresectable, recurrent, or metastatic disease to or beyond the hilar nodes.

OR

B. Small-cell (oat cell) carcinoma.

OR

C. Carcinoma of the superior sulcus (including Pancoast tumors) with multimodal antineoplastic therapy. Consider under a disability until at least 18 months from the date of diagnosis. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

Petitioner presented a lung radiology report (Exhibit 1, pp. 2-3) dated December 8, 2017. An impression of a 23 cm right upper lobe nodule consistent with malignancy was noted. A small lymph node in the right mediastinum was noted to be consistent with metastasis.

Hilar nodes are understood to include the mediastinum lymph nodes. A lymph node in the right mediastinum consistent with metastasis, along with a malignant nodule, are consistent with meeting lung cancer listing requirements.

Petitioner's radiology report only verified a lung cancer diagnosis as of [REDACTED]. Petitioner applied for SDA in January 2017. Though lung cancer was only recently diagnosed, suspicions for lung cancer went back from before Petitioner's SDA application date. The evidence was sufficient enough to establish that Petitioner met listing requirements from the date of SDA application.

It is found Petitioner meets the listing for 13.14. Thus, Petitioner is disabled and it is found that MDHHS improperly denied Petitioner's application for SDA benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly denied Petitioner's application for SDA benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's SDA benefit application dated January 11, 2017;
- (2) evaluate Petitioner's eligibility subject to the finding that Petitioner is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Petitioner is found eligible for future benefits.

The actions taken by MDHHS are **REVERSED**.

CG/



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]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]