



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 15, 2018
MAHS Docket No.: 18-001020
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 March 8, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [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 October 2, 2017, Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On January 16, 2018, the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 256-262).
4. On an unspecified date, MDHHS denied Petitioner's application for SDA benefits.
5. On January 29, 2018, Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit A, p. 1)

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 male.
8. Petitioner's highest education year completed was the 12th grade.
9. Petitioner's history from the past 15 years includes employment as a telemarketer which amounted to substantial gainful activity.
10. Petitioner's medical problems include depression, congestive heart failure (CHF), and morbid obesity, which do not preclude the performance of past employment as a telemarketer.

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 did not present a notice of denial for Petitioner's SDA application verifying the reason for denial. MDHHS testimony credibly indicated that 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 medical records from 2016 (Exhibit A, pp. 281-311) were presented. Treatment for depression, high blood pressure, and diabetes was noted.

Cardiologist office visit notes (Exhibit A, pp. 131-134) dated [REDACTED], were presented. Dyspnea with minimal activity was noted. A review of systems was negative, including Petitioner's denial of dizziness. An EKG was noted to be abnormal, in part, due to biatrial enlargement and right ventricular hypertrophy.

Nurse practitioner office visit notes (Exhibit A, pp. 7-11, 149-153) dated [REDACTED] were presented. It was noted Petitioner appeared for a medication review. Petitioner reported "doing well overall" and improved depression while on medications. Noted observations included appropriate mood, affect having good range, good insight, and normal gait. Petitioner's BMI was 50.77 and his weight was [REDACTED] pounds. Petitioner's blood pressure was [REDACTED]. Petitioner's medications were updated.

Nurse practitioner office visit notes (Exhibit A, pp. 11-15, 153-157) dated [REDACTED] were presented. It was noted Petitioner appeared for a blood sugar and blood pressure check. Petitioner's A1C was noted to be 12. It was noted Petitioner sometimes did not take medications. Diabetes education and diet adjustments were recommended.

Cardiologist office visit notes (Exhibit A, pp. 128-131) [REDACTED], were presented. It was noted that Petitioner reported decreased energy with minimal activity. It was noted that Petitioner wore a life vest (later stopped due to insurance coverage problems). Lisinopril was increased. An echocardiogram was planned.

Nurse practitioner office visit notes (Exhibit A, pp. 15-19, 157-161) dated [REDACTED], were presented. Petitioner's depression was noted as stable. Petitioner's blood sugar was 292. It was noted Petitioner still sometimes failed to take medications. Goals of controlling blood pressure and blood sugar were noted. Various medications were continued.

Office visit notes (see Exhibit A, p. 24) referenced a hospital visit dated [REDACTED]. Complaints of dyspnea and bronchitis were noted. It was noted Petitioner ran out of Lasix before going to the hospital. Goals of controlling blood pressure and blood sugar were noted. Various medications were continued.

Cardiologist office visit notes (Exhibit A, pp. 72-76, 126-128) dated [REDACTED], were presented. Dyspnea with minimal activity was noted. Petitioner was noted to be noncompliant with medication. No ejection fraction (EF) improvement was noted following an echocardiogram. Lisinopril was increased. Diet and medication compliance was recommended. Impressions included nonischemic cardiomyopathy, sleep apnea, morbid obesity, diet noncompliance, and medication noncompliance.

Nurse practitioner office visit notes (Exhibit A, pp. 19-31) dated [REDACTED], were presented. Petitioner's A1C was noted to be 11.4. Petitioner's weight was noted to be 335 pounds (BMI was 52.46). Petitioner's blood sugar was 289. Abdominal distention was noted. A normal gait was noted. Full ranges of motion were noted. "Moderately severe" depression was noted from a PHQ-9. Goals of controlling blood pressure and blood sugar were noted. Various medications were continued.

Cardiologist office visit notes (Exhibit A, pp. 77-80, 124-126) dated [REDACTED], were presented. Dyspnea with activity was noted. Petitioner was noted to be noncompliant with Carvedilol. It was noted Petitioner requested completion of disability documents.

Nurse practitioner office visit notes (Exhibit A, pp. 31-40) dated [REDACTED], were presented. It was noted Petitioner expressed interest in diet education. Sleep apnea follow-up was noted. Blood pressure was 140/100. Petitioner's weight was 333.6 pounds. Petitioner's blood sugar was 281 (Petitioner reported recently eating). Petitioner's A1C was noted to be 11.4. Petitioner's weight was noted to be 335 pounds. Goals of controlling blood pressure and blood sugar were noted. Various medications were continued.

Nurse practitioner office visit notes (Exhibit A, pp. 40-53) dated [REDACTED], were presented. Petitioner's A1C was noted to be 11.4. Petitioner's weight was noted to be 331.2 pounds. Blood sugar was 250. A normal gait was noted. A PHQ-9 score indicative of no depression symptoms was noted. Goals of controlling blood pressure and blood

sugar were noted. Various medications were continued. Performed lab work was noted to be normal (see Exhibit A, p. 53).

Cardiologist office visit notes (Exhibit A, pp. 81-84, 120-124) dated [REDACTED], were presented. Dyspnea with activity was noted. A review of systems was negative, including Petitioner's denial of dizziness. Normal sinus rhythm was noted. EF was noted to be 30%-35%.

Dietician notes (Exhibit A, pp. 54-58) dated [REDACTED], were presented. Bariatric surgery was noted as discussed. Petitioner reported not exercising. Petitioner's "excess" body weight was noted to be 176.8 pounds. Various diet recommendations and weight goals were noted.

Dietician notes (Exhibit A, pp. 59-62) dated [REDACTED], were presented. Petitioner's weight was noted to be 322 pounds. Petitioner reported he follows a diet 3 days per week and eats what he wants on other days. It was noted Petitioner reported diet noncompliance due to irritability, dizziness, and headaches with strict diet adherence.

Nurse practitioner office visit notes (Exhibit A, pp. 66-71) dated [REDACTED], were presented. Petitioner's weight was noted to be 314 pounds.

Cardiologist office visit notes (Exhibit A, pp. 85-87, 106-120) dated [REDACTED], were presented. Dyspnea with activity was noted. A review of systems was negative, including denial of dizziness. An echocardiogram was performed (see Exhibit A, pp. 100-102). Impressions included nonischemic cardiomyopathy with left ventricular dysfunction, moderate concentric left ventricular hypertrophy, sinus tachycardia, and medication noncompliance. Plans included continuing medications, daily weight and blood pressure monitoring, and a low-salt diet.

Petitioner testified he last saw a cardiologist in January 2018. Petitioner testified he was stable and that his next appointment will be in May 2018. Petitioner testified his EF was 30% at last check approximately a year earlier.

Petitioner testified he struggles with depression. Petitioner testified he used to see a counselor but stopped in approximately October 2016. Petitioner testified he has taken antidepressants since his counseling sessions stopped.

Petitioner testified he started a "special diet" approximately one week earlier. Petitioner testified his weight fluctuates, but he has remained over 300 pounds since about 2015.

Presented medical records generally verified a medical treatment history consistent with exertional restrictions due to heart disease (complicated by DM and hypertension) and sleep apnea. Presented records also generally verified a degree of concentration restrictions due to depression. 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 sleep apnea (Listing 3.10) was considered. The listing was rejected due to a failure to meet the requirements of Listings 3.09 or 12.02.

A listing for chronic heart failure (Listing 4.02) was considered based on Petitioner's low ejection fraction testing. The listing was rejected because of the absence of evidence of the following: inability to perform an exercise test, three or more episodes of acute congestive heart failure or a conclusion that an exercise test poses a significant risk to Petitioner's health. Also, neither systolic failure (as evidenced by EF) nor diastolic failure was established to meet listing requirements.

A listing for affective disorder (Listing 12.04) was considered based on diagnoses of depression. The listing was rejected due to a failure to establish an extreme restriction or multiple marked restrictions to understanding or applying information, interacting with others, concentration or persistence, and/or adaptation. It was also not established that Petitioner had minimal capacity to adapt to changes in environment or to demands that are not already part of daily life.

It is found Petitioner does not meet any SSA listings. Accordingly, the disability analysis may proceed.

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).

For purposes of this decision, a fully developed RFC assessment will not be undertaken at this point in the analysis. Instead an RFC assessment will be performed, as necessary, in the final steps of analysis.

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 listed his past jobs in documents submitted to MDHHS (see Exhibit A, p. 40). Petitioner's past job titles included assembler, janitor, stockperson, cook, dishwasher, and telemarketer. Of Petitioner's past jobs, telemarketer appears to be the least physical employment.

Petitioner's previous telemarketer employment was performed for 40 hours per week at a wage of \$█/hour. Thus, the job appears to have met SGA income limits. The analysis will proceed to consider whether Petitioner can perform past employment as a telemarketer.

Petitioner testified he does not use a cane or a walker to aid in ambulation. Petitioner estimated he is limited to walking a half block before needing to stop due to tiredness and/or dyspnea. Petitioner testimony estimated he is limited to 20-30 minutes of standing before his legs tire. Petitioner testimony conceded he had no sitting restrictions. Petitioner testified he is limited to 20 pounds of lifting/carrying. Petitioner testified he has no problems with bathing, dressing, housework, or driving. Petitioner testified he has difficulty with laundry because it requires climbing stairs to access his washer/dryer. Petitioner testified he also needs help with carrying groceries. Petitioner's testimony was generally consistent with an ability to perform sedentary employment.

Petitioner testified that his cardiologist restricted him to 20 pounds of lifting/carrying and a total restriction from stair climbing. Petitioner also testified that his cardiologist stated that he would need unlimited breaks (as needed) and five days off per month. Petitioner thought his cardiologist's restrictions were documented in presented records; they were not. Without documentation, the restrictions will not be considered.

No treating physician assessments were provided. Consultative physician assessments were provided.

A Physical Residual Functional Capacity Assessment (Exhibit A, pp. 268-275) dated [REDACTED], was presented. The assessment was signed by a medical consultant 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 use of stairs, kneeling, crawling, and stooping. The assessment was consistent with finding that Petitioner can perform telemarketing employment.

The most recently documented EF was 30%-35%. Petitioner's EF is relatively low and would be consistent with an inability of performing employment requiring moderate degrees of exertion; telemarketing is not deemed to be employment requiring even moderate degrees of exertion.

Petitioner testified his heart problems are aggravated by high blood pressure, DM, and fluid retention. High blood pressure and diabetes treatment was verified. Though Petitioner was treated for both and both appear to be relatively stable. No emergency treatments for hypertension or diabetes were verified. Fluid retention was not verified at all. High blood sugars were verified, however, the measuring appeared to coincide with Petitioner's noncompliance with diet recommendations. This is consistent with Petitioner's lack of weight loss at times when blood sugar level was above normal. The evidence was indicative of controllable diabetes and blood pressure that would not preclude telemarketing employment.

Petitioner testified he has recurrent dizziness and weakness as side effects to taking Carvedilol. Weakness and dizziness are known side effects of the medication. Though dizziness is a side effect, it does not necessarily impact Petitioner's employment potential. A single reference to dizziness was noted in a medical record from September 2017. Multiple records surrounding September 2017 indicated that Petitioner denied dizziness. Petitioner testified that he has fallen 3-4 times in 2018 due to dizziness, though no medical records documented any falls. Weakness was also not an apparent complaint in presented records. Presented evidence was not sufficiently indicative that weakness or dizziness affect Petitioner's ability to perform employment as a telemarketer.

Petitioner established a diagnosis for depression and ongoing treatment via medication. Symptoms suggestive of moderate (or worse) restrictions to concentration or social interaction (e.g. delusions, hallucinations, hospitalizations, suicidal ideation) were not apparent. Petitioner's treatment history was indicative of, at worst, mild concentration restrictions. Mild concentration restrictions would be consistent with an inability to perform complex and highly skilled employment. Telemarketing is employment which appears to be within Petitioner's mental health capabilities.

Based on presented records, it is found that Petitioner is capable of past performance as a telemarketer. Neither Petitioner's alleged need for breaks, recurrent dizziness, or days off were sufficiently verified to justify finding otherwise. As Petitioner is capable of performance of past employment, Petitioner is not disabled; and it is found that MDHHS properly 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 properly denied Petitioner's SDA benefit application dated October 2, 2017, based on a determination that Petitioner is not disabled. The actions taken by MDHHS are **AFFIRMED**.

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]