



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR



Date Mailed: June 4, 2018  
MAHS Docket No.: 18-003881  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Landis Lain

**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 May 29, 2018, from Lansing, Michigan. Petitioner was represented by Attorney [REDACTED] (P [REDACTED]) Petitioner. Petitioner testified on her own behalf. The Department of Health and Human Services (Department or Respondent) was represented Assistant Attorney General [REDACTED] (P [REDACTED]). [REDACTED] [REDACTED], Assistance Payments Supervisor; and [REDACTED], Assistance Payments Worker, appeared as witnesses on behalf of Respondent.

Respondents Exhibits A-H and Exhibit I pages 1-723 were admitted as evidence. Petitioner's Exhibit 1 pages 1-18 was admitted as evidence.

**ISSUE**

Whether the Department properly determined that Petitioner was not disabled for purposes 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 filed an application for State Disability Assistance (SDA) benefits alleging disability.
- (2) Petitioner receives Medical Assistance (MA).

- (3) On [REDACTED], the Medical Review Team denied Petitioner's application stating that Petitioner could perform prior work.
- (4) On [REDACTED], the department caseworker sent Petitioner notice that her application was denied.
- (5) On [REDACTED], Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On [REDACTED], the hearing was held.
- (7) Petitioner is a [REDACTED]-year-old woman (date of birth [REDACTED]). She is [REDACTED]' [REDACTED]" tall and weighs 198 lbs. She is a high school graduate.
- (8) Petitioner last worked in [REDACTED] as event clean up. She has also worked as a housekeeper and a banquet steward.
- (9) Petitioner alleges as disabling impairments: Schizophrenia, hallucinations, Post Traumatic Stress Disorder because of a rape, HIV+, depression, anxiety, hip and leg pain.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

Department policies are contained in the following Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and 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.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

...Medical reports should include:

- (1) Medical history;
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);

- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913.

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Petitioner is not engaged in substantial gainful activity. Petitioner is not disqualified from receiving disability at Step 1.

Petitioner testified on the record: that she HIV positive. She takes the bus to get groceries or her sister will get them for her. She hears voices. She lives alone and does her own housework. She does dishes and laundry. She gets up in the morning, takes her medication, and watches television. She goes to the food pantry to feed herself. She has never been hospitalized for mental illness. She is not suicidal. Petitioner's application for Social Security Disability has been denied and she is in the appeal process.

This Administrative Law Judge did consider the entire record when making this decision. Specific sampling of the Medical documentation indicates:

An [REDACTED], office visit report indicates that Petitioner was [REDACTED]' [REDACTED]" tall and weighed [REDACTED] pounds. Her blood pressure was [REDACTED] and a temperature was [REDACTED]° F. Her respiration was [REDACTED] respirations per minute, and her pulse was [REDACTED] beats per minute. BMI was [REDACTED]. On physical examination, Petitioner was normal for the eyes, ears, neck, respiratory and abdominal inspection. She compensated on her right side because her right leg was [REDACTED] cm shorter than the left. The assessment was pain of the right hip joint and repetitive strain injury of the right hip, congenital shortening of the right lower limb, pes planus of the left foot, and loss of height. (Petitioner's Exhibit 1 pages 1-4)

An [REDACTED], Disability Determination Services (DDS) Explanation indicated that Petitioner is not disabled. The personalized disability explanation indicates that the Petitioner's condition results in some limitations in her ability to perform work activities. Her condition was not severe enough to keep her from working. DDS indicated that they considered all medical and other information; Petitioner's age and education in determining how her condition affects her ability to work. It was determined that DDS did not have sufficient vocational information to determine whether Petitioner can perform any of her past relevant work. However, based on the evidence in the files, it was determined that Petitioner can adjust to other work. (Respondent's Exhibit I pages 33-77)

The physical residual functional assessment indicates that Petitioner can occasionally carry 20 pounds and frequently carry 10 pounds. She can walk about 6 hours in an 8-hour day. She has unlimited ability to push or pull. (Respondent's Exhibit I page 45) Petitioner has postural limits. She can occasionally climb ramps, balance, stoop, knee, crouch, and crawl. She has no manipulative, visual, communicative or environmental limitations. She should avoid concentrated exposure to extreme cold or heat. (Respondent's Exhibit I page 46)

The mental residual functional capacity assessment indicates that Petitioner is moderately limited in the ability to understand and remember detailed instructions. Petitioner needs tasks to be simple/routine. She does have sustained concentration and persistence limitations. (Respondent's Exhibit I page 51) Petitioner is moderately limited

in the ability to carry out detailed instructions; maintain attention and concentration for extended periods; interact appropriately with the general public; ask simple questions or requests assistance; accept instructions and respond appropriately to criticism from supervisors and needs an environment with minimal contact with others. Petitioner is not significantly limited in any other area. (Respondent's Exhibit I pages 51-52)

On [REDACTED], documented medical opinion indicates that her ability to understand, remember and apply simple work instructions is not impaired by mental illness. Her ability to carry out simple instructions, make simple work-related decisions, attend work on a consistent base and completed a full workday without rest is markedly impaired by a mental illness. Her ability to interact with coworkers, supervisors and the public in a socially appropriate manner, ask for help when needed, respond appropriately to criticism and receive direction from authority is markedly impaired by mental illness. Her ability to adapt to a managed herself and changes in work routine, travel to unfamiliar places, use a public transportation and several as the goals is markedly impaired by a mental illness. (Respondent's Exhibit I page 58)

A [REDACTED], psychological progress report indicates that Petitioner presented in a euthymic mood, funny, and boisterous. She acknowledged having a lot of anxiety lately did due to having no income for housing. She is waiting for a response from SSI and from Respondent regarding cash assistance. Her appearance, posture, and activity were within normal limits. Her eye contact with was average. Her attitude was cooperative. (Petitioner's Exhibit 1 page 7)

Her mental status evaluation indicated that Petitioner was anxious, speech was pressured. Petitioner's thought process was logical. She indicated that she had auditory hallucinations. Thought content, cognition, insight and judgment were within normal limits. She reported no delusions. She was assessed with chronic anxiety disorder. Her GAF: 55. She denied suicidal and homicidal ideation, plan, intent and/or attempt. (Petitioner's Exhibit 1 page 8)

A [REDACTED], psychiatric medical report indicates that Petitioner has no symptoms of psychosis and she appeared to be in good contact with reality. Self-esteem is regarded as poor. She presented in a kind, friendly, and likable manner. Social skills were limited, due to severe anxiety. She did not seem to be exaggerating symptoms and had adequate insight into her condition. (Respondent's Exhibit I page 279)

She is relatively independent in her daily functioning with the exception of needing her sister to go with her to the store. Gross receptive and expressive speech functions were generally intact. Thoughts were presented at an even pace in with reasonable clarity. She has a history of auditory hallucinations for [REDACTED] through [REDACTED]. Thoughts during this interview were logical and coherent. Petitioner was fully oriented. She could remember five numbers repeated forward and four numbers repeated backwards. Petitioner correctly recall her date of birth and when asked to name three recent presidents she stated Bush, Reagan, and Obama. She named Grand Rapids, Chicago, West Virginia, and Massachusetts when asked to name five large cities. She named

three famous people as Oprah, Beyoncé, and Jay-Z. Petitioner completed simple addition, subtraction and multiplication problems. Petitioner was diagnosed with post-traumatic stress disorder, unspecified depressive disorder, and unspecified schizophrenia spectrum psychotic disorder. (Respondent's Exhibit I pages 280-281)

A [REDACTED], indicated that Petitioner was oriented x 3. Concentration was intact. Speech was normal rate, tone and volume. Her mood was tired. Her affect was broad. Her thought process was linear, and goal directed. She denied hallucinations and delusions. Her judgment and insight were good. She was assessed with schizoaffective disorder, chronic post-traumatic stress disorder, nicotine use disorder. (Petitioner's Exhibit 1 pages 14-15)

The Social Security Administration (Administrative Law Judge (ALJ) Lori Imsland), on [REDACTED], determined that Petitioner's application for a period of disability, disability insurance benefits and supplemental security income, all on [REDACTED], are denied. The ALJ determined that Petitioner had not been disabled under section 216(i), 223(d) or 1614(a)(3)(A) of the Social Security Act. (Respondent's Exhibit I page 89)

The Social Security Administration ALJ found that the totality of the medical evidence does not support a finding of disability. Mental status evaluation as performed by treating sources, primarily psychiatrists, during the [REDACTED] to [REDACTED], period indicated that this Petitioner's symptoms include auditory hallucinations, paranoia, an abnormal mood and affect, and on one occasion ideas of reference, but otherwise shows she had normal results, including intact attention and concentration, intact memory, logical thought processes, orientation in all spheres, normal speeds and cooperative attitude. Good insight and good judgment were also shown. (Respondent's Exhibit I page 86)

Medical documents which were considered by the Social Security Administrative Law Judge have already been considered in the [REDACTED] decision and that opinion is controlling for purposes of Petitioner's disability determination up to [REDACTED].

At Step 2, Petitioner has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Petitioner suffers a severely restrictive physical or mental impairment.

This Administrative Law Judge finds that Petitioner has reports of pain in multiple areas of her body; however, there are insufficient corresponding clinical findings that support the reports of symptoms and limitations made by Petitioner. The clinical impression is that Petitioner is stable. There is no medical finding that Petitioner has any muscle atrophy or trauma, abnormality, or injury that is consistent with a deteriorating condition. In short, Petitioner has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Petitioner has



met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that Petitioner has a severely restrictive physical impairment.

Petitioner alleges as disabling mental impairments: Schizophrenia, hallucinations, Post Traumatic Stress Disorder, panic attacks, anxiety, and paranoia.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating Petitioner suffers severe mental limitations. There is a mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was oriented to time, person, and place during the hearing. Petitioner was able to answer all the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that Petitioner suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Petitioner has failed to meet her burden of proof at Step 2. Petitioner must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If Petitioner had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Petitioner's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

If Petitioner had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that Petitioner is unable to perform work in which she has engaged in, in the past. Therefore, if Petitioner had not already been denied at Step 2, she would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Petitioner has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that Petitioner does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in

the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967.

**Sedentary work.** 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. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

**Light work.** 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 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. 20 CFR 416.967(b).

Petitioner has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Petitioner's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. Petitioner has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. Petitioner's testimony as to her limitations indicates that she should be able to perform light or sedentary work. Thus, she retains the capacity to perform prior work and she is found not disabled at Step 4.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was able to answer all the questions at the hearing and was responsive to the questions. Petitioner was oriented to time, person and place during the hearing. Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to Petitioner's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that Petitioner has no residual functional capacity. Petitioner is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform light or sedentary work even with her impairments.

**Under the Medical-Vocational guidelines, an individual (age 51), with a high school education and an unskilled work history who is limited to light work is not considered disabled.**

Careful consideration has been given to Petitioner's allegations and symptoms. Petitioner has established that her mental condition could cause problems with daily and work functioning. However, the totality of the evidence does not support total disability. Petitioner's medically determinable impairments could reasonably be expected to produce alleged symptoms, but Petitioner's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible when compared to the limitations suggested by the objective medical evidence contained in the file.

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because Petitioner does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Petitioner is unable to work for a period exceeding 90 days, the Petitioner does not meet the disability criteria for State Disability Assistance benefits.

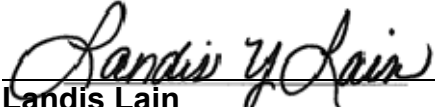
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was not eligible to receive State Disability Assistance based upon disability.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it was acting in compliance with department policy when it denied Petitioner's application for State Disability Assistance benefits. Petitioner should be able to perform a wide range of light or sedentary work even with her impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is **AFFIRMED** based upon the substantive information contained in the file.

LL/bb

  
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**Landis Lain**  
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) 763-0155; 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

**Counsel for Respondent**

[REDACTED]

**DHHS**

[REDACTED]

**Counsel for Petitioner**

[REDACTED]

**Petitioner**

[REDACTED]