



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED], MI 49002

Date Mailed: July 12, 2018  
MAHS Docket No.: 18-004604  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Vicki Armstrong

**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 June 19, 2018, from Lansing, Michigan. Petitioner personally appeared with her mother, [REDACTED]. Petitioner and [REDACTED] testified during the hearing. Petitioner submitted four exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Adam Slate, Hearing Facilitator. Mr. Slate testified on behalf of the Department. The Department submitted 422 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

**ISSUE**

Whether the Department properly determined that Petitioner was not disabled for purposes of the 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 September 18, 2017, Petitioner applied for SDA. [Dept. Exh. 3].
2. On April 6, 2018, the Medical Review Team denied Petitioner's SDA application. [Dept. Exh. 7-13].

3. On April 18, 2018, the Department mailed Petitioner a Notice of Case Action informing Petitioner that her application for SDA had been denied. [Dept. Exh. 418-422].
4. On April 27, 2018, Petitioner submitted a Request for Hearing.
5. Petitioner is diagnosed with paresthesias left hand, paresthesias right hand, peripheral sensory neuropathy, ataxia, severe active chronic axonopathy, polyneuropathy, osteoarthritis, chronic pain, benign hypertension, impaired vision, lymphedema, anxiety, situational depression, adjustment disorder, obsessive-compulsive disorder, bipolar disorder and cervical spondylosis.
6. On October 17, 2017, Petitioner's peripheral nerve biopsy showed severe active chronic axonopathy. The left vastus lateralis skeletal muscle biopsy revealed mild chronic neurogenic changes with type 2 atrophy. [Petitioner's Exh. B].
7. On September 16, 2017, Petitioner presented to her primary care physician complaining of urinary frequency, dysuria, stasis, venous, and leg weakness. The primary care physician noted that Petitioner's neurologic and muscular condition seemed to be worsening. With the new found worsening symptoms, Petitioner has been unable to walk for the past three weeks. She was wheelchair-bound in the office. As a result of being wheelchair bound, her left foot had swollen on and off the past few weeks and turned purple in color. She was concerned she had cellulitis. [Dept. Exh. 165-169].
8. On October 25, 2017, Petitioner saw her primary care physician for swollen and painful legs. The primary care physician noted her bilateral lower leg swelling has worsened over the past month. She has had enough as her skin now split on the lower leg because of the swelling. She has significant pitting in the lower legs and because of her inability to move much or walk from her neurologic pain issues, she has not been able to walk off some of the swelling. She has become suicidal at times because of her pain and is very distraught from the pain. She is tired of not knowing what is wrong with her and with dealing with the pain. She was wheelchair bound and had 2+ pitting edema on both legs from the knee down. [Dept. Exh. 170-174].
9. On December 27, 2017, Petitioner underwent a psychological evaluation by the Michigan Disability Determination Service. Petitioner was diagnosed with adjustment disorder with mixed emotional features, chronic pain and hypertension. The psychologist opined that Petitioner's ability to carry out detailed instructions is markedly limited; to maintain attention and concentration for extended periods of time is moderately markedly limited; to perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances is markedly limited; to sustain an ordinary routine without special supervision is markedly limited; to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonably number of rest periods is markedly limited; and to

respond appropriately to changes in the workplace, be aware of normal hazards, and take appropriate precautions is markedly limited. The psychologist noted that Petitioner's ability to travel in unfamiliar places and/or use public transportation would seem to be limited by her medical issues. [Dept. Exh. 111-115].

10. On January 9, 2018, Petitioner followed up with her physician for continued evaluation of her neuropathy. The Nerve Conduction Study showed a sensory neuronopathy. An electromyogram was also performed, and although it was unable to be completed, it revealed active and chronic denervation in the muscles tested. A nerve biopsy in December 2017, confirmed the severity of her neuropathy, but did not provide an underlying etiology. She is now followed by a pain clinic, has a fentanyl patch and is taking Lyrica. She is having some obsessive-compulsive disorder like side effects. She takes Tramadol for breakthrough pain and is switching to Morphine from Fentanyl for the pain. She also has sensory ataxia on exam. [Dept. Exh. 116-118].
11. On January 19, 2018, Petitioner underwent a medical evaluation on behalf of the Department. Petitioner reported a history of peripheral neuropathy. A review of Petitioner's medical records suggest that the peripheral neuropathy is primarily sensory in nature; however, there is known to be evidence of some degree of motor weakness, absent ankle reflexes and decreased vibratory sense. Some degree of interosseous atrophy is noted in the hands as well as atrophy noted in the distal lower extremities. She is left handed with a small stepped wide based gait with a mild to moderate limp bilaterally. She has difficulty with orthopedic maneuvers. A walker was brought to the exam which would likely be of benefit for distances past 25-50 feet or on uneven surfaces. [Dept. Exh. 93-96].
12. On April 3, 2018, Petitioner was evaluated and found to be eligible for an adult services worker for over 44 hours of care a month, through the State of Michigan. [Dept. Exh. D].
13. On June 11, 2018, Petitioner's primary care physician offered a Treating Physician Opinion. Petitioner is diagnosed with Sensory Neuropathy and multifocal acquired motor axonopathy. The physician opined that Petitioner would be able to stand and/or walk less than 2-hours a day and sit for less than 6-hours a day. Petitioner is unable to climb, stoop, kneel, crouch or crawl. She requires a hand held assistive device for ambulation. She would require a sit-stand-walk option and would experience side effects or symptoms resulting from her medication and treatment. Petitioner would have serious limitations maintaining focus and/or concentration, she would need unscheduled breaks as her symptoms dictate, would be off task 25% of the day and would likely miss at least 3-days of work per month. [Petitioner Exh. A].
14. On June 11, 2018, Petitioner's chiropractor noted that Petitioner is under care for lumbar pain, hip pain, foot pain and numbness in the face and foot areas. The chiropractor indicated that Petitioner's condition had progressed, as she had difficulty walking and lifting her legs and feet. [Petitioner's Exh. C].

15. Petitioner is a 47-year-old woman born on [REDACTED], 1971. She is 5'7" and weighs 205 pounds. She is a high school graduate and last worked in September 2016 managing property.
16. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
17. 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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

A person is disabled for SDA purposes if he or she:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- 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), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2014).

"Disability" is:

. . . 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. [SDA = 90-day duration].

[As Judge] We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. 20 CFR 416.927(e).

Petitioner has a history of paresthesias left hand, paresthesias right hand, peripheral sensory neuropathy, ataxia, severe active chronic axonopathy, polyneuropathy, osteoarthritis, chronic pain, benign hypertension, impaired vision, lymphedema, anxiety, situational depression, adjustment disorder, obsessive-compulsive disorder, bipolar disorder and cervical spondylosis.

In this case, Petitioner was diagnosed with adjustment disorder with mixed emotional features, chronic pain and hypertension during an independent psychological examination. The psychologist opined that Petitioner was markedly limited in her ability to carry out detailed instructions; maintain attention and concentration for extended periods of time; perform activities within a schedule, maintain regular attendance and be punctual within customary tolerances; sustain an ordinary routine without special supervision; complete a normal workday and workweek without interruptions from psychologically based symptoms; perform at a consistent pace without an unreasonably number of rest periods; respond appropriately to changes in the workplace, be aware of normal hazards, and take appropriate precautions. The psychologist also noted that Petitioner's ability to travel in unfamiliar places and/or use public transportation would seem to be limited by her medical issues.

The independent medical examiner indicated that Petitioner's medical records suggest that the peripheral neuropathy is primarily sensory in nature; however, there is known to be evidence of some degree of motor weakness, absent ankle reflexes and decreased vibratory sense. Some degree of interosseous atrophy is noted in the hands as well as atrophy noted in the distal lower extremities. She is left handed with a small stepped wide based gait with a mild to moderate limp bilaterally. She has difficulty with orthopedic maneuvers. A walker was brought to the exam which would likely be of benefit for distances past 25-50 feet or on uneven surfaces.

Petitioner's primary care physician diagnosed Petitioner with sensory neuropathy and multifocal acquired motor axonopathy. On examination, the physician opined that Petitioner would be able to stand and/or walk less than 2-hours a day and sit for less than 6-hours a day. Petitioner is unable to climb, stoop, kneel, crouch or crawl. She requires a hand held assistive device for ambulation. She would require a sit-stand-walk option and would experience side effects or symptoms resulting from her medication and treatment. Petitioner would have serious limitations maintaining focus and/or concentration, she would need unscheduled breaks as her symptoms dictate, would be off task 25% of the day and would likely miss at least 3-days of work per month.

Because Petitioner's treating physician and the independent examiner's opinions are well supported by medically acceptable clinical and laboratory diagnostic techniques, they have controlling weight. 20 CFR 404.1527(d)(2).

Petitioner's complaints and allegations concerning her impairments and limitations, when considered in light of all the objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

The credible testimony and medical records submitted at hearing verify Petitioner was legally disabled continuously for a period of 90 days or longer. As such, the Department's denial of SDA pursuant to Petitioner's September 18, 2017 SDA application cannot be upheld.

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 disabled for purposes of the SDA benefit program.

**DECISION AND ORDER**

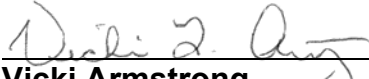
Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. The Department shall process Petitioner's September 18, 2017 application, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in July 2019, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

**It is SO ORDERED.**

VLA/hb

  
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**Vicki Armstrong**  
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

**DHHS**

Renee Olian  
322 Stockbridge  
Kalamazoo, MI 49001

Kalamazoo County, DHHS

BSC3 via electronic mail

L. Karadsheh via electronic mail

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]