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GOVERNOR

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

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DIRECTOR

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Date Mailed: September 13, 2018
MAHS Docket No.: 18-006485
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 August 16, 2018, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Heidi Henderson, Eligibility Specialist.

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 October 19, 2017, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On March 26, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program.
3. On March 26, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability.
4. On June 25, 2018, the Department received Petitioner's timely written request for hearing.

5. Petitioner alleged disabling impairment due to left wrist tingling and numbness due to injury and surgery with bone removal with radiating pain into the neck. Osteoporosis in back and hips with treatment with medication. The Petitioner has not alleged any mental impairment.
6. On the date of the hearing, Petitioner was ■ years old with a ■ birth date; she is ■ in height and weighs about ■ pounds.
7. Petitioner is a high school graduate with three years of college and obtained a registered nurse medical assistant certificate.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as Lead Operator with supervisory activities working as an assembly line installer installing auto glass, and last worked in 2011.
10. Petitioner has a pending disability claim with the Social Security Administration.

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 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.

Step 1

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, she/he is not ineligible under Step 1, and the analysis continues to Step 2.

Step 2

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the de minimis standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

A summary of the medical evidence offered at the hearing follows:

Medical records indicate that the Petitioner injured her left wrist in an automobile accident on [REDACTED] 2011, and had two surgeries in 2012. Several of the bones in the wrist were removed. The Petitioner currently alleges numbness and tingling in the left wrist and limited ability to lift more than 10 pounds.

On [REDACTED] 2014, a consultative internal medicine examination was conducted. At the time, the Petitioner alleged disability due to limited use of the left hand and wrist. Notes indicate that in January 2012 Petitioner had arthroscopy of the left wrist to repair ligaments. Surgery was unsuccessful; and in March 2012, Petitioner had a proximal carpectomy procedure performed on left wrist. At the time of the second surgery, the surgeon informed the Petitioner that she would eventually need a wrist fusion. No medical evidence that a left wrist fusion was ever performed. The Petitioner testified that she last received treatment for her left wrist in 2013.

The examiner's findings were as follows: the Petitioner's left wrist had reduced motion as set forth on range of motion forms. The left upper extremity is somewhat weaker than the right, grading it 4/5 as compared to 5/5 on the right. Grip strength measures 30, 32, 28 KG of force on right and 12, 14, 16 KG of force on left. The Impression was status post arthropathy of left shoulder and left wrist. Status post proximal carpectomy of left wrist and bilateral carpal tunnel release surgery status post. History of recurrent atelectasis. The Summary indicated Petitioner's left upper extremity has some limitations secondary to weakness and decreased motion in left wrist that impedes ability to twist off bottle caps, type, use the computer etc. She is under restriction of 20 pounds of lifting with left hand. Petitioner's lower extremities have normal functions strength and range of motion. The patient seems capable of nonstrenuous type tasks without repetitive activity involving left hand. There are no limits on mobility. The Petitioner's ability to perform work-related activities, such as bending, stooping, lifting, walking, crawling, squatting, carrying, and traveling, as well as pushing and pulling heavy objects appears to be at least mildly impaired due to the objective findings described above. The range of motion for the left wrist indicated a limitation of 30° out of 60° for both dorsiflexion and palmar flexion. The Examiner found the Petitioner could lift occasionally 20 pounds and frequently 10 pounds with never more than 21 pounds. Petitioner could carry occasionally 11 to 20 pounds and frequently 10 pounds. The Petitioner could sit for two hours, stand for one hour and walk for one hour at one time without interruption. The Petitioner could sit for four hours, stand for two hours and walk for two hours in an 8-hour workday. No assistive devices were recommended. The use of hands for reaching, reaching overhead, handling, fingering, feeling, and push/pull for the right hand was continuous and unlimited over two thirds of an 8-hour workday. For the left hand those same functional uses of the hand were limited to frequently with push/pull only occasionally. There was no limitation imposed for the operation of foot controls. The doctor imposed a restriction indicating Petitioner should never climb ladders and scaffolds and never be exposed to vibrations. The examiner further indicated that the Petitioner could frequently be exposed to moving mechanical parts, operating a motor vehicle and dust and odors.

Examiner also examined Petitioner's ability to do physical work-related activities and found Petitioner capable of performing as follows: shopping, ambulate without wheelchair or walker, walk a block at a reasonable pace on rough uneven surfaces, use standard public transportation, climb a few steps at reasonable pace with the use of a single handrail, prepare a simple meal and feed herself, care for personal hygiene, sort and handle and use paper files. In support of the restrictions, the examiner noted repetitive activities with left hand increased pain in left wrist. The examiner also found that the limitations would last for at least 12 consecutive months.

The Petitioner completed an activities of Daily Living Form on [REDACTED] 2017, indicating that she did not need special help with personal needs grooming bathing dressing etc., was capable of fixing her meals and could cook, although appears to have help at times peeling.

The Petitioner indicated that she could only lift 10 pounds with her left hand/wrist and occasionally 20 pounds.

The file assembled by DDS also references that Petitioner has asthma. The notes however indicate that she had no hospitalizations with in the last year. (Exhibit A, p. 111.) The Petitioner saw her doctor on [REDACTED] 2017, for asthma-related symptoms and a follow-up for bronchitis. The assessment was Uncomplicated Asthma and that she was to follow up in one year. At the time of the exam, the lungs were clear to auscultation.

The Petitioner had a double mastectomy on [REDACTED] 2015, and was taking tamoxifen. She has had no recurring issues with cancer.

The Petitioner completed an Activities of Daily Living Form for the Department on [REDACTED] 2017. Petitioner completed the form and indicated that her hand goes numb while sleeping and is weak when carrying heavier items stating that at those times her hand will go out or become numb. The Petitioner does do laundry, vacuuming, washing dishes approximately two times a week and occasionally has help because her hand will cramp up, begin to hurt and become numb. Petitioner is able to go shopping for groceries and drives approximately 20 miles to get to the store. She indicates others shop with her because her hand will give out causing her to drop stuff. The changes which she references doing housework, fixing meals and shopping indicate that it takes her longer to do these items because she has to stop and let her hand rest or wait for feeling in her hand to come back. Although not stated, presumably the Petitioner is referencing her left hand when she speaks of the hand in this report as that is the hand she testified was weak and often experiences numbness.

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a

continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step 3

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 1.02 Major Dysfunction of a Joint (due to any cause) and Listing 3.03 Asthma were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 20 CFR 416.967(a). 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 the light 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). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

In this case, Petitioner alleges exertional limitations due to her medical condition regarding her left hand and wrist weakness and the hand becoming numb. Petitioner testified that she could cook, vacuum, do laundry and dishes and can mop. She did testify that she cannot lift heavy things and cannot do repetitive motion with her left wrist. The Petitioner does have some pain with her left hand but with nonprescription medication her pain was described as a 1 out of a scale of 10. The Petitioner further testified that the heaviest weight she could lift was 10 pounds. The Petitioner can sit 8 hours, walk a mile, perform a squat, and shower and dress herself and has no problem standing. The Petitioner's right hand does not appear to have loss of grip strength or numbness or pain. Petitioner is ambidextrous. In addition, the undersigned also considered the fact that the Petitioner has had no treatment for her wrist since 2013.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(b).

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step 4

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of working in a factory as an assembly line operator installing rear view mirrors for cars and trucks and as a security guard. At the hearing, the Petitioner did not mention her work as a security guard when examined about her past relevant work, however, the evidentiary packet contained a form sent to the Petitioner by the Disability Determination Service on January 24, 2018, which requested Petitioner to complete the form as to all prior work. The Petitioner completed the form that described her past work and listed that she was employed as a security guard at a sugar factory from December 2001 through December 2009. (Exhibit A, pp. 86a-88a.) The information was used to assess Petitioner's capability to perform her past relevant work as a security guard based upon the information Petitioner provided in January 2018.

Petitioner's work as an assembly-line operator, required standing 8 hours, and she was on her feet all day and lifting up to 50 pounds regularly as well as required her to supervise other workers, required heavy physical exertion. In addition, the Petitioner testified that she was told that in order for her to return to the job after her wrist injury, she would be required to perform lifting of 35 pounds or more. Given the last evaluation of Petitioner in 2014 based upon the medical evidence Petitioner would be unable to perform this past relevant work due to being evaluated as capable of performing light work, lifting 10 pounds frequently and 20 pounds only occasionally.

The Petitioner's work as a security guard required her to weigh in and out sugar trucks and walk rounds of the property and buildings. In this particular security guard job, if the truck load was overweight, the Petitioner was to climb into the truck trailers and count pallets of sugar. Petitioner's work as a security guard required her to walk 8 hours,

stand 4 hours, sit 4 hours and climb 2 hours and handle, grab or grasp big objects approximately 1 hour. The Petitioner was required to lift 10 pounds frequently.

Based on the RFC analysis above, Petitioner's exertional RFC limits her to no more than light work activities. As such, Petitioner is capable of performing past relevant work as a security guard. Accordingly, Petitioner is able to perform past relevant work, and therefore, is not disabled at Step 4; and the assessment ends and no further analysis is required.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

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

LMF/



Lynn M. Ferris

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

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