



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: August 15, 2018

MAHS Docket No.: 18-006604

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 August 14, 2018, from Lansing, Michigan. Petitioner was represented by herself. The Department of Health and Human Services (Department or Respondent) was represented by Brad Reno, Eligibility Specialist/Hearings Facilitator.

Respondent's Exhibit A pages 1-228 were admitted as evidence.

**ISSUE**

Whether the Department properly determined that Petitioner was not disabled for purposes of 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], 2018, Petitioner filed an application for State Disability Assistance (SDA) benefits alleging disability.
- (2) Petitioner receives Medical Assistance (MA) and Food Assistance Program (FAP) benefits.
- (3) On June 21, 2018, the Medical Review Team denied Petitioner's application stating that Petitioner's condition lacks 90-day duration.

- (4) On June 21, 2018, the Department caseworker sent Petitioner notice that her application was denied.
- (5) On July 5, 2018, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On August 14, 2018, the hearing was held.
- (7) Petitioner is a [REDACTED]-year-old woman (date of birth [REDACTED] 1983). She is [REDACTED]' [REDACTED]" tall and weighs [REDACTED] lbs. She is a high school graduate.
- (8) Petitioner worked as a server/bartender for ten years. She has also worked as a Sales Associate at [REDACTED].
- (9) Petitioner alleges as disabling impairments: Hodgkin's Lymphoma – stage III.

### **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 lives alone in an apartment. She has no income. She receives FAP benefits and MA benefits. Petitioner does have a driver's license and drives two appointments into the grocery store. Petitioner cooks 2 to 3 times per week depending upon how she is feeling. Petitioner can stand for 10 minutes at a time and sit with no limits. However, she is nauseous often in mostly lays down. She can walk  $\frac{1}{4}$  of a mile on a good day. She has about one good day per week. Petitioner is able to shower and dress herself. The heaviest weight she can carry is 5 pounds, and she has numbness and tingling in her arms and legs because of the chemotherapy treatment. Petitioner has chemotherapy treatment every other week.

This Administrative Law Judge did consider the entire record in making this decision. Specific sampling of the medical documentation indicates a severe condition:

A Disability Determination Explanation dated J [REDACTED], 2018 indicates: although your condition is currently severe, it is expected to improve. We have determined you're your condition is not expected to remain severe enough for 12 months in a row to keep you from working. In deciding this, we considered the medical evidence, your statements and higher condition affecting the ability to work. We do not have sufficient vocational information to determine whether you can be expected to perform any of your past relevant work. However, based on the evidence in the file, we have determined that you are expected to be able to adjust to other work. (Pages 11-19) A pet scan May 18, 2018, of the head and neck indicates complete metabolic response with no evidence of metabolically active lymph nodes. Abdomen and pelvis showed complete metabolic response with no evidence of metabolically active lymph nodes. The impression is complete response with no residual amount of the active disease. (Page 25)

A [REDACTED], 2018, physical examination was unremarkable. There was no evidence of any lymphadenopathy or organomegaly. If a CDC with differential revealed WEC of 14.7, hemoglobin 12.0 and platelets of 383,000. Her next dose of chemotherapy is due May 29, 2018. She will complete six cycles before her next scan. Petitioner retains the ability to perform the sustained activities of an 8-hour workday without limitations. (Pages 25, 112)

An [REDACTED], 2018, Petitioner had a venous chest porch insertion. (Pages to 160-161)

A [REDACTED], 2018, PET scan indicates metabolically evidence of active neo plasm involving lymph nodes of the thorax and abdomen. (Page 146)

If the [REDACTED], 2018, report indicates classic Hodgkin's lymphoma, nodular sclerosis subtype. Normal resting left ventricular ejection fraction of 70%. (Pages 196-197)

A [REDACTED], 2018, letter indicates a large anterior mediastinal if mass with enlarged right supra clavicular lymph nodes.

On [REDACTED], 2018, Petitioner had a CT of the chest which showed a mass, sub clavicular prominence with enlarged and aortocaval lymph nodes. (Page 202)

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 sufficient objective clinical medical evidence in the record that Petitioner suffers a severely restrictive physical or mental impairment.

The analysis would proceed to Step 3, where the medical evidence of Petitioner's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations. This Administrative Law Judge finds that Petitioner's medical record does not support a finding that Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 13.00-13.15 were considered.

### ***13.05 Lymphoma***

B. Hodgkin lymphoma with failure to achieve clinically complete remission, or recurrent lymphoma within 12 months of completing initial anticancer therapy.

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. A conclusory statement by a physician, or mental health professional, that an individual is disabled, or blind, is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.927.

Step 4 of the analysis to be considered is whether Petitioner has the ability to perform work previously performed by Petitioner within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent Petitioner from doing past relevant work. In the present case, Petitioner's past employment was as in food service and customer service at Walmart, which Petitioner cannot currently perform as she suffers from nausea, vomiting, and chronic diarrhea. Her prior jobs require extensive standing and food service.

Petitioner's impairments would prevent her from doing past relevant work. This Administrative Law Judge will continue through Step 5.

In the final step of the analysis, the trier of fact must determine if Petitioner's impairment(s) prevent Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon Petitioner's:

1. residual functional capacity defined simply as "what can you still do despite your limitations? 20 CFR 416.945;

2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite her limitations. 20 CFR 416.966.

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).

**Medium work:** Medium work involves lifting no more than 50 pounds at a time with frequent lifting, or carrying, of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

**Heavy work:** Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Petitioner makes it to the final step of the analysis, the Petitioner has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6<sup>th</sup> Cir, 1984).

The Department determined that Petitioner could perform other work.



Moving forward, the burden of proof rests with the Department to prove by substantial evidence that Petitioner has the residual function capacity for substantial gainful activity. After careful review of Petitioner's extensive medical record, and the Administrative Law Judge's personal interaction with Petitioner at the hearing, this Administrative Law Judge finds that Petitioner's exertional and non-exertional impairments render Petitioner unable to engage in a full range of, even sedentary, work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The Department has failed to provide sufficient vocational evidence which establishes that Petitioner has the residual functional capacity for substantial gainful activity and, that given Petitioner's age, education, and work experience, there are significant numbers of jobs in the national economy which Petitioner could perform despite Petitioner's limitations.

Accordingly, this Administrative Law Judge concludes that Petitioner is disabled for purposes of the SDA program as of [REDACTED], 2018. Though there is evidence of remission or resolution, Petitioner is still in active treatment for Hodgkin's Lymphoma. Petitioner's testimony regarding her limitations and ability to sit, stand, walk, lift, and carry is credible and supported by substantial medical evidence. Petitioner's condition meets duration and severity for SDA eligibility for a closed period of time.

Therefore, Petitioner is found to be currently disabled.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is medically disabled as of the March 22, 2018, application for State Disability Assistance.

Accordingly, the Department's decision is hereby **REVERSED**, and the Department is ORDERED to:

1. Initiate a review of the [REDACTED], 2018, application for SDA, if not done previously, to determine Petitioner's non-medical eligibility.
2. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for February of 2019.
3. The Department shall pay to Petitioner any SDA benefits to which Petitioner is entitled, if Petitioner is otherwise eligible from the [REDACTED], 2018, application date forward.

LL/bb



**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

**DHHS**

Lindsay Miller  
125 E. Union St 7th Floor  
Flint, MI 48502

Genesee County (Union Street), DHHS

BSC2 via electronic mail

L. Karadsheh via electronic mail

**Petitioner**

[REDACTED]  
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