



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: October 25, 2018  
MAHS Docket No.: 18-008327  
Agency No.: ██████████  
Petitioner: ██████ ██████

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

**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 September 27, 2018, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Terri Stheiner ES. Department Exhibit 1, pp. 1-345 was received and admitted.

**ISSUE**

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner applied for SDA on ██████████, 2018.
2. The Medical Review Team denied the application on August 6, 2018.
3. Petitioner filed a request for hearing on August 17, 2018, regarding the SDA denial.
4. A telephone hearing was held on September 27, 2018.
5. Petitioner is ██████" tall and weighs ██████ pounds.
6. Petitioner is ██████ years of age.

7. Petitioner's impairments have been medically diagnosed as stomach reconstruction, left shoulder pain, foot pain peripheral neuropathy, and headaches.
8. Petitioner has the following symptoms: pain, fatigue, crying spells, panic attacks and social isolation.
9. Petitioner completed high school.
10. Petitioner is able to read, write, and perform basic math skills.
11. Petitioner is not working. Petitioner last worked in January 2015 as a retail clerk.
12. Petitioner lives with her children.
13. Petitioner testified that she cannot perform some household chores.
14. Petitioner takes the following prescribed medications:
  - a. tizanidine
  - b. trazodone
  - c. omeprazole
  - d. gabapentin
  - e. cyclobenzaprine
  - f. methocarbamol
15. Petitioner testified to the following physical limitations:
  - i. Sitting: 60 minutes
  - ii. Standing: 60 minutes
  - iii. Walking: 45 minutes
  - iv. Bend/stoop: difficulty
  - v. Lifting: 10 lbs.
  - vi. Grip/grasp: no limitations
16. The most recent assessment from Petitioner's neurologist reads as follows: "The patient is seen today for neurological follow up visit. She is still having severe pain in the back radiating to the right lower extremity. Medications are not helping her. She looks depressed and has antalgic gait. Full strength in the four extremities. Tenderness with passive movement of the neck and tenderness in the lumbar are to palpitation. She is having symptoms of lumbar radiculopathy. X-rays done last November on the lumbar and cervical spine were unremarkable. I am going to schedule for an EMG of both lower extremities and made her an appointment to see Dr. Kotob for epidural injection in the cervical and lumbar area and check on her MAPS. Will introduce Cymbalta, increasing dose gradually to 60 mg daily and warned her about suicidal thoughts and use Mobic

as an anti-inflammatory medication. I encouraged her to be active and exercise regularly. I will see her for reevaluation in 6 weeks.” (Ex. 1, p. 262)

17. Petitioner testified that she had some relief following her shoulder surgery.
18. Petitioner does not use a cane or any other assistive device.

### **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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA-P 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.

Federal regulations require that the Department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

**“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.**

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity

of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Petitioner is not working, therefore, the Petitioner is not disqualified from this step in the evaluation.

The second step to be determined in considering whether the Petitioner is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical, or mental, ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In the third step of the analysis, the trier of fact must determine if the Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Petitioner's medical record does not support a finding that the 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 1.04, and 1.02 were considered.

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.


The fourth step of the analysis to be considered is whether the Petitioner has the ability to perform work previously performed by the Petitioner within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Petitioner from doing past relevant work. In the present case, the Petitioner's past employment was as a retail worker. Working as a retail worker, as described by Petitioner at hearing, would be considered light exertional work. The Petitioner's impairments would NOT prevent her from doing past relevant work. Petitioner's testimony regarding her physical limitations was not supported by substantial medical evidence. The evaluation from Petitioner's neurologist encouraged her to be active and exercise regularly. (Ex. 1, p.262) Petitioner does not use a cane or any other assistive device for ambulation. Petitioner testified that she experienced some relief following her shoulder surgery.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is NOT medically disabled for the purposes of SDA eligibility.

Accordingly, the Department's decision is hereby **AFFIRMED**.

AM/nr

  
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Aaron McClintic  
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 Union St. County DHHS- via  
electronic mail

BSC2- via electronic mail

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**Petitioner**

[REDACTED]  
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