[redacted]
MI [redacted]

Date Mailed: July 19, 2019
MOAHR Docket No.: 19-005093
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 20, 2019, from Lansing, Michigan. Petitioner personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist Cheryl Latinen. Ms. Latinen testified on behalf of the Department. The Department submitted 1,607 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 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. On [redacted] 2019, Petitioner applied for SDA. [Hearing Summary].

2. On April 16, 2019, the Medical Review Team denied Petitioner's SDA application indicating she was capable of performing other work. The denial was not certified by a medical consultant. [Dept. Exh. 293-299].

3. On May 22, 2019, Petitioner submitted a Request for Hearing contesting the denial of SDA.

4. Petitioner testified she is disabled due to spine lumbar 2009 surgery, cervical deterioration, polycythemia which in turn causes high blood pressure, diabetes and depression.

5. On [redacted] 2018, the MRI of the Cervical Spine showed a previous corpectomy of C6 with a strut graft from C5 to C7. There was disc space narrowing throughout, greatest at C4-C5. The altered signal in the cervical discs indicated desiccation. There was a reversal of the cervical curvature with the apex of the reversal at C4-C5. There was also a scoliosis convex to the left. C1-C2 and C2-C3 had mild degenerative changes. C3-C4 had moderate endplate and joint hypertrophic changes with associated disc bulging and effacement of the thecal sac. There appeared to be minimal flattening of the anterior aspect of the cervical cord. There was minimal prominence of the facets and moderate foraminal narrowing bilaterally. C4-C5 had moderate endplate and joint hypertrophic changes greater on the right. There was associated disc bulging effacing the thecal sac. Also, a flattening of the anterior aspect of the cervical cord. Mild prominence of the facets and marked right foraminal narrowing and moderate left foraminal narrowing. C5-C6 had mild uncovertebral and endplate hypertrophic changes. There was mild effacement of thecal sac greater on the right. Also marked right foraminal narrowing and moderate left foraminal narrowing with mild hypertrophic changes of facets. C6-C7 showed mild to moderate uncovertebral joint hypertrophic changes with mild effacement of the thecal sac. There was moderate foraminal narrowing present greater on the right with mild hypertrophy of facets. There was moderate disc bulging at C7-T1 that effaces the anterior aspect of the thecal sac greater toward the left with mild endplate hypertrophic changes. Also, moderate left foraminal narrowing and mild right foraminal narrowing was present. [Dept. Exh. 8-9].

6. On [redacted] 2018, results of Petitioner's CT Cervical Spine revealed straightening of the normal cervical curve in part related to anterior intravertebral fusion in good alignment extending from C5 to C7 with a fragmented strut extending from C5-C7 with partial C6 corpectomy. The CT also showed mild to moderate cervical spondylosis focally accentuated involving the adjacent C3-C4 and C4-C5 vertebral endplates with moderately severe C3 through C5 disc narrowing without discernible osseous spinal stenosis. EMG/NCS testing was also completed which showed mild bilateral carpal tunnel syndrome. The physician noted that the Petitioner already had bilateral carpal tunnel braces. Petitioner was assessed with chronic bilateral low back pain with right-sided sciatica, facet lumbar arthropathy, lumbar radiculopathy and low back pain. The physician opined that Petitioner had ongoing posterior cervical spine pain with intrascapular pain left greater than right upper extremity radiculopathy. MRI imaging showed a reversal of the cervical lordotic curve with C3-C4 left greater than right foraminal narrowing C4-C5, left greater than right foraminal narrowing C4-C5, right greater than left several foraminal narrowing. Previously, she underwent physical therapy for the cervical spine that did not help. She was worked up for lumbar spine pain and planned for an L3-S1 lumbar laminectomy and fusion, however due to her living situation, she had no one to care for her following surgery. Petitioner had switched

from a quad cane to a wheeled walker due to the continued decreased walking capacity. Petitioner had ongoing right leg radiculopathy and evidenced right L5-S1 inter-foraminal disc herniation. She failed conservative management of physical therapy, lumbar injections, bed rest, traction, Neurontin, muscle relaxants and pain medications. [Dept. Exh. 2-5].

7. On [redacted] 2018, Petitioner followed up with her neurosurgeon for cervical and lumbar radiculopathy. Petitioner was wearing an Aspen Vista cervical collar because she was previously evaluated for cervical spine pain and using a wheeled walker to assist with ambulation. She had previously been evaluated for left arm radiculopathy, subjective weakness of the left hand, with pain between her bilateral posterior skull, neck and scapula. It was discussed with Petitioner to undergo L3-S1 surgery, but she could not due to her living situation. [Dept. Exh. 12-14].

8. Petitioner credibly testified that received Home Help Services for bathing, dressing, meal preparation, shopping, laundry and light housework. [See also Dept. Exh. 208-209].

9. Petitioner is diagnosed with asthma, chronic bilateral low back pain with right-sided sciatica, claudication, coordination problems, lumbar facet arthropathy, generalized weakness, hand weakness, headaches, heart palpitations, hypertension, joint pain, low back pain, lumbar radiculopathy, memory difficulty, muscle cramping, muscle pain, muscle weakness, nausea, chronic neck pain, radiculopathy of the arm, upper extremity weakness, vomiting, history of bulging disc, sciatica, pinched nerve, polycythemia, right leg radiculopathy, cervical radiculopathy, L5-S1 inter-foraminal disc herniation and requires a wheeled walker to assist with ambulation.

10. Petitioner is a [redacted] year-old woman whose date of birth is [redacted], 1972. She is [redacted] and weighs [redacted] pounds. She has a high school education.

11. Petitioner was appealing the denial of Social Security disability at the time of the hearing.

12. 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 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 impariment 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 (7/1/2015).

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 **or 90 days for the SDA program**. 20 CFR 416.905(a). 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 his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to

provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and testified that she has not worked since 2010. Therefore, she is not disqualified from receiving SDA benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services,* 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the

impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services,* 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner is diagnosed with asthma, chronic bilateral low back pain with right-sided sciatica, claudication, coordination problems, lumbar facet arthropathy, generalized weakness, hand weakness, headaches, heart palpitations, hypertension, joint pain, low back pain, lumbar radiculopathy, memory difficulty, muscle cramping, muscle pain, muscle weakness, nausea, chronic neck pain, radiculopathy of the arm, upper extremity weakness, vomiting, history of bulging disc, sciatica, pinched nerve, polycythemia, right leg radiculopathy, cervical radiculopathy, L5-S1 inter-foraminal disc herniation and requires a wheeled walker to assist with ambulation.

Petitioner credibly testified that she has an extremely low tolerance for physical activities and is unable to stand without pain, sit for a minute or walk more than one hundred feet and is in constant pain. She is also using a wheeled walker. Petitioner stated that she received Home Help Services for bathing, dressing, meal preparation, shopping, laundry and light housework.

The MRI of the cervical spine on [redacted], 2018, revealed a previous corpectomy of C6 with a strut graft from C5 to C7. There was disc space narrowing throughout, greatest at C4-C5. The altered signal in the cervical discs indicated desiccation. There was a reversal of the cervical curvature with the apex of the reversal at C4-C5. There was also a scoliosis convex to the left. C1-C2 and C2-C3 had mild degenerative changes. C3-C4 had moderate endplate and joint hypertrophic changes with associated disc bulging and effacement of the thecal sac. There appeared to be minimal flattening of the anterior aspect of the cervical cord. There was minimal prominence of the facets and moderate foraminal narrowing bilaterally. C4-C5 had moderate endplate and joint hypertrophic changes greater on the right. There was associated disc bulging effacing the thecal sac. Also, a flattening of the anterior aspect of the cervical cord. Mild prominence of the facets and marked right foraminal narrowing and moderate left foraminal narrowing. C5-C6 had mild uncovertebral and endplate hypertrophic changes. There was mild effacement of thecal sac greater on the right. Also marked right foraminal narrowing and moderate left foraminal narrowing with mild hypertrophic changes of facets. C6-C7 showed mild to moderate uncovertebral joint hypertrophic changes with mild effacement of the thecal sac. There was moderate foraminal narrowing present greater on the right with mild hypertrophy of facets. There was moderate disc bulging at C7-T1 that effaces the anterior aspect of the thecal sac greater toward the left with mild endplate hypertrophic changes. Also, moderate left foraminal narrowing and mild right foraminal narrowing was present.

The CT of Petitioner's cervical spine on [redacted], 2018, showed straightening of the normal cervical curve in part related to anterior intravertebral fusion in good alignment extending from C5 to C7 with a fragmented strut extending from C5-C7 with partial C6 corpectomy. The CT also showed mild to moderate cervical spondylosis focally accentuated involving the adjacent C3-C4 and C4-C5 vertebral endplates with moderately severe C3 through C5 disc narrowing without discernible osseous spinal

stenosis. Petitioner was assessed with chronic bilateral low back pain with right-sided sciatica, facet lumbar arthropathy, lumbar radiculopathy and low back pain. The physician opined that Petitioner had ongoing posterior cervical spine pain with intrascapular pain left greater than right upper extremity radiculopathy.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that she does have physical limitations on her ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Petitioner has alleged physical disabling impairments due to chronic bilateral low back pain with right-sided sciatica, claudication, coordination problems, lumbar facet arthropathy, generalized weakness, hand weakness, joint pain, lumbar radiculopathy, muscle cramping, muscle pain, muscle weakness, chronic neck pain, radiculopathy of the arm, upper extremity weakness, sciatica, pinched nerve, right leg radiculopathy, cervical radiculopathy, and L5-S1 inter-foraminal disc herniation all of which require her to use a wheeled walker.

Listing 1.00 (musculoskeletal system) was considered in light of the objective evidence. Based on the Listing 1.04, Petitioner's impairments are severe, in combination, if not singly, (20 CFR 404.15.20 (c), 416.920(c)), in that Petitioner is significantly affected in her ability to perform basic work activities (20 CFR 404.1521(b) and 416.921(b)(1)).

Listing 1.04 requires a disorder of the spine such as a herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture, resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With evidence of nerve root compression characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine) and lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

As indicated by Petitioner during her testimony, and supported by the medical evidence in the file, the MRI indicates evidence of nerve root compression resulting in limitation of motion of the spine, motor loss, muscle spasms, radiculopathy and associated muscle weakness displayed by Petitioner's inability to ambulate without the use of her wheeled walker. Accordingly, this Administrative Law Judge finds that Petitioner's impairments

meet Listing 1.04 and concludes Petitioner is disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds Petitioner disabled for purposes of the SDA benefit program.

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 January 2, 2019, 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 2020, 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

Vicki Armstrong
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI 48607

Saginaw County, DHHS

BSC2 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[redacted], MI [redacted]