



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: June 12, 2019  
MOAHR Docket No.: 19-003784  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Vicki L. 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 May 16, 2019, from Lansing, Michigan. Petitioner personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Family Independence Manager, Barbara Schram. Ms. Schram testified on behalf of the Department. The Department submitted 366 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. The Petitioner applied for SDA on [REDACTED] [REDACTED] 2018.
2. On February 18, 2019, the Medical Review Team denied the Petitioner's SDA application. [Dept. Exh. pp 2-8].
3. The Petitioner alleged disability for neuropathy, high blood pressure, depression, social phobia, gastroesophageal reflux disease (GERD) and arthritis.
4. On [REDACTED] [REDACTED] 2017, the Petitioner was admitted to the hospital with renal failure and an abdominal mass. She was discharged in stable condition on

- ██████████ 2017 with a diagnosis of toxic megacolon and wound care instructions and a catheter in addition to home help services. [Dept. Exh. 52-57].
5. On ██████████ 2018, the Petitioner was admitted to the hospital in guarded condition for hypotension. She was transferred to ICU and assessed and treated to support vital organ system failure end and to prevent further life-threatening deterioration of her condition. She was discharged on January 5, 2018 with a diagnosis of a post-operative wound infection and prescribed home health care. [Dept. Exh. 59-63; 220-225, 262-270].
  6. On ██████████ 2018, the Petitioner presented to her surgeon for a post-operative visit after a total abdominal colectomy with ileorectal anastomosis, ventral hernia repair. She had a wound vac in place which was being changed three times a week. The negative pressure dressing was continued and changed to a wet-to-dry Dakin solution. She was scheduled to return in six weeks. [Dept. Exh. 305].
  7. On ██████████ 2018, the Petitioner followed up with her surgeon for the post-operative visit after a total abdominal colectomy with ileorectal anastomosis, ventral hernia repair. The wound was still open and packed with a 2x2 and no drainage. The wound measured 3x2 cm of exposed granulation tissue. She was scheduled to return in two months. [Dept. Exh. 305].
  8. On ██████████ 2018, the Petitioner returned to her surgeon for a post-operative visit after a total abdominal colectomy with ileorectal anastomosis, ventral hernia repair. She was very depressed. She had a rash on her abdomen. The abdominal incision had healed completely. [Dept. Exh. 306].
  9. On ██████████ 2018, Petitioner presented to her therapist. She reported that in the past year she had a partial colectomy for megacolon, then got MRSA in the incision and she continues to follow up with her gastroenterologist regularly. [Dept. Exh. 197-198].
  10. On ██████████ 2018 the Petitioner was transported to the emergency department by ambulance. While lifting heavy boxes she noticed she was bleeding from an old abdominal incision. She complained of weakness and dizziness. Her blood pressure was low. The Petitioner stated that a few months ago she had had a hernia repair and the incision had been open since surgery. The Petitioner was admitted. Her chest X-rays were normal. The Petitioner was discharged with a diagnosis of dehydration on September 11, 2018 in improved condition. [Dept. Exh. 281-298].
  11. On ██████████ 2018, the Petitioner underwent a colonoscopy and was diagnosed with diverticulitis status post emergency total colectomy with ileorectal anastomosis. [Dept. Exh. 208-209].
  12. On ██████████ 2018, the Petitioner met with her psychiatrist. She was diagnosed with alcohol dependence uncomplicated, social phobia, generalized anxiety disorder, and major depressive disorder. [Dept. Exh. 190-191].

13. On [REDACTED] 2019, the Petitioner underwent an independent medical evaluation. The Petitioner had tenderness at L5-S1. She had findings of peripheral neuropathy which appeared to be mostly stocking glove rather than dermatomal. She had weakness with dorsiflexion. She had significant difficulty with orthopedic maneuvers mostly related to the neuropathy. She compensated with a guarded gait. She appeared to mostly have chronic lumbar spine strain, but underlying spondylosis could not be ruled out. Following the independent evaluation, X-rays of the Petitioner's lumbar spine were completed which showed mild diffuse anterior end plate spurring, mild to moderate facet arthropathy involving the lumbosacral junction, mild dextroscoliosis most prominent at the thoracolumbar junction, mild L1-L2 disc space narrowing and mild osteopenia. A neurologic and orthopedic evaluation was also completed resulting in a prescribed a walking aid. [Dept. Exh. 176-184].
14. The Petitioner has been diagnosed with mild diffuse anterior end plate spurring, mild to moderate facet arthropathy involving the lumbosacral junction, mild dextroscoliosis most prominent at the thoracolumbar junction, mild L1-L2 disc space narrowing, mild osteopenia, lumbago with sciatica, hypotension, renal failure, abdominal mass, toxic megacolon, a ventral hernia, arthritis, MRSA, essential hypertension, tinnitus, sinusitis, a developmental delay, back pain, and high cholesterol.
15. The Petitioner's surgical history included, ankle repair, cervical cryosurgery, caesarean section, colonoscopy, hernia repair, adenoidectomy, tonsillectomy, hysterectomy and tubal litigation.
16. The Petitioner is a [REDACTED]-year-old woman, born on [REDACTED] [REDACTED] [REDACTED]. She is [REDACTED] and weighs [REDACTED] pounds. She has an eleventh-grade education and last worked 25 years ago.
17. Based on the Petitioner's age, education and employment history, Petitioner meets statutory disability on the basis of Medical/Vocation Grid Rule 201.09 as a guide.
18. The Petitioner was appealing the denial of Social Security disability at the time of the hearing.
19. The 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 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 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 (90 days for SDA). 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 in over 25 years. Therefore, she is not disqualified from receiving disability 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 has been diagnosed with mild diffuse anterior end plate spurring, mild to moderate facet arthropathy involving the lumbosacral junction, mild dextroscoliosis most prominent at the thoracolumbar junction, mild L1-L2 disc space narrowing, mild osteopenia, lumbago with sciatica, hypotension, renal failure, abdominal mass, toxic megacolon, a ventral hernia, arthritis, MRSA, essential hypertension, tinnitus, sinusitis, a developmental delay, back pain, and high cholesterol.

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 some medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities, based on her numerous diagnoses. 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 MA-P 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 neuropathy, high blood pressure, depression, social phobia, gastroesophageal reflux disease (GERD) and arthritis.

Petitioner has the burden of establishing her disability. The record evidence was insufficient to meet a listing. While there was evidence of high blood pressure, depression, social phobia and depress, there was no evidence that the listed diagnoses were severe enough to meet a listing. Therefore, the analysis continues to Step 4.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the petitioner's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the petitioner's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

The Petitioner has not worked in over 25 years. Therefore, the analysis continues to Step 4.

Next, the Administrative Law Judge must determine at step four whether the Petitioner has the residual functional capacity to perform the requirements of her past relevant

work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the petitioner actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the petitioner to learn to do the job and have been substantial gainful activity (SGA). (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Petitioner has the residual functional capacity to do her past relevant work, the Petitioner is not disabled. If the petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

The Petitioner has not worked in over 25 years. Therefore, the analysis continues to Step 5.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the Petitioner is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the Petitioner is able to do other work, he/she is not disabled. If the Petitioner is not able to do other work and meets the duration requirements, he/she is disabled.

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 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 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 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 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).

At Step 5, the burden of proof shifts to the Department to establish that Petitioner does have residual function capacity. 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. See discussion at Step 2 above.



In this case, Petitioner alleged neuropathy, high blood pressure, depression, social phobia, gastroesophageal reflux disease (GERD) and arthritis. No evidence was presented indicating that the Petitioner was unable to work. However, the medical evidence did support the Petitioner's high blood pressure, depression, social phobia and arthritis.

Based upon the Medical-Vocational guidelines, the Petitioner is qualified to receive SDA disability at Step 5. Under the Medical-Vocational guidelines, an individual approaching advanced age 50 – 54 (Petitioner is 53 years of age), with an eleventh-grade education and an unskilled or limited work history who can perform even only sedentary work is considered disabled pursuant to Medical-Vocational Rule 201.09.

### **DECISION AND ORDER**

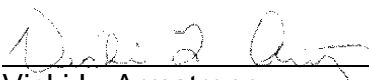
Accordingly, the Department's determination is REVERSED.

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 the Petitioner's [REDACTED] [REDACTED] 2018 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 the Petitioner's medical condition for improvement in June 2020, unless her Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from the Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

**It is SO ORDERED.**

VLA/nr

  
\_\_\_\_\_  
Vicki L. 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**

Barbara Schram - 35  
2145 East Huron Road  
East Tawas, MI  
48730

Iosco County DHHS- via electronic mail

BSC3- via electronic mail

L. Karadsheh- via electronic mail

**Petitioner**

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