

GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

**IN THE MATTER OF:**

**MOAHR Docket No.: 22-000168**

**Petitioner**

**Agency Case No.: 90822494**

**v**

**Case Type: State Employees**

**State Employees Retirement System,  
Respondent**

**Issued and entered  
this 11<sup>th</sup> day of October 2022  
by: Steven Kibit  
Administrative Law Judge**

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

Appearances: Petitioner [REDACTED] (Petitioner) appeared on her own behalf. Matthew de Bear, Assistant Attorney General, appeared on behalf of Respondent, State Employees Retirement System (Respondent).

Petitioner is seeking review of a determination by the Office of Retirement Services (ORS) on behalf of Respondent denying Petitioner's application for non-duty disability retirement benefits under Section 67a(5) of the State Employees' Retirement Act (Act), MCL 38.67a.

On August 6, 2020, ORS denied Petitioner's application for non-duty disability retirement benefits.

On October 6, 2020, Petitioner filed a request for hearing with ORS.

On January 26, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received a request for hearing from ORS

On March 9, 2022, MOAHR issued a Notice of Hearing, scheduling a hearing for May 12, 2022.

On May 12, 2022, the hearing was held by telephone and completed as scheduled.

During the hearing, the following witnesses testified:

Petitioner's Witnesses: [REDACTED], Petitioner

Respondent's Witnesses: None

Following the completion of the hearing, the record was left open in order for a new or Supplemental Independent Medical Advisor (IMA) Statement of Disability to be completed in response to new medical evidence provided by Petitioner. Both parties were also given the opportunity to submit writing closing and reply briefs.

On July 18, 2022, Respondent filed a Supplemental IMA Statement of Disability, which the undersigned Administrative Law Judge then admitted into the record as an exhibit.

Including the Supplemental IMA Statement of Disability, the following exhibits were admitted into the record without objection:

Petitioner's Exhibits: Exhibit #1 - Evidence Packet, pages 1-105

Respondent's Exhibits: Exhibit A - Administrative Record, pages 1.1 - 6.6

Exhibit B – Supplemental IMA Statement, pages 1-6

Both parties also subsequently timely filed written closing briefs, and the record closed on September 30, 2022.

## **ISSUE AND APPLICABLE LAW**

Whether Petitioner has met the requirements for non-duty disability retirement benefits under Section 67a of the Act.

Section 67a provides in pertinent part:

- (5) Except as otherwise provided in section 33, a qualified participant who becomes totally incapacitated for duty because of a personal injury or disease that is not the natural and proximate result of the qualified participant's performance of duty may be retired if all of the following apply:
  - (a) Within 1 year after the qualified participant becomes totally incapacitated or at a later date if the later date is approved by the retirement board, the qualified participant, the qualified participant's personal representative or guardian, the qualified participant's department head, or the state personnel director files an application on behalf of the qualified participant with the retirement board.

- (b) A medical advisor conducts a medical examination of the qualified participant and certifies in writing that the qualified participant is mentally or physically totally incapacitated for further performance of duty, that the incapacitation is likely to be permanent, and that the qualified participant should be retired.
- (c) The qualified participant has been a state employee for at least 10 years.

(6) If the retirement board grants the application of the qualified participant under subsection (5), the qualified participant shall be granted a supplemental benefit equivalent to the amount provided for in section 25 as if the qualified participant had retired under section 24. The supplemental benefit shall be offset by the value of the distribution of his or her accumulated balance as determined by the retirement system upon becoming a former qualified participant pursuant to section 67.

(7) If a qualified participant who has been a state employee for the number of years necessary to vest under Tier 1 dies as a result of causes occurring not in the performance of duty to this state, a supplemental benefit shall be granted equivalent to the amount provided for in section 25 had the former qualified participant been considered retired under section 24, which supplemental benefit shall be offset by the value of the distribution of his or her accumulated balance as determined by the retirement system upon becoming a former qualified participant pursuant to section 67.

(8) A qualified participant, former qualified participant, or beneficiary of a deceased participant, which participant is eligible for a disability retirement allowance pursuant to subsection (4) or (5), is eligible for health insurance coverage under section 20d in all respects and under the same terms as would be a retitant and his or her beneficiaries under Tier 1.

*MCL 38.67a(5)-(8)*

## **FINDINGS OF FACT**

Based upon the entire record in this matter, including witness testimony, the exhibits, and the pleadings, the following findings of fact are established:

1. Petitioner was born on [REDACTED], making her fifty-seven (57) years-old at the time of the hearing. (Exhibit A, page 1.2).
2. After graduating high school, Petitioner attended Saginaw Valley State University, where she obtained a bachelor's degree in social work. (Testimony of Petitioner).
3. In May of 2002, Petitioner began working as a Social Services Specialist in Children's Protective Services for the Department of Health and Human Services. (Exhibit A, page 1.6).
4. As a Social Services Specialist, Petitioner interviewed individuals; evaluated their strengths and needs; made home calls; developed service plans; provided direct services, such as counseling, as needed; completed reports; made referrals; consulted with court personnel; testified in court hearings; explored resources; performed crisis interventions; arranged services and implemented court requirements; and participated in trainings. (Exhibit A, pages 2.4 - 2.6).
5. Regarding physical efforts used to perform her job, Petitioner's position description with her employer also stated:

There may be occasional risk or psychological stress in providing customer services when interviewing customers who suffer from emotional, mental or behavioral disorders which may limit their ability to reason or control impulsive, hostile reactions, and in dealing with customers in crisis or emergency situations. This may also include dangerous or hostile geographic locations. This requires physical effort to ensure the safety of oneself or others in order to quickly depart dangerous situations, if necessary. Customer interviews can be conducted at local offices, customer residence or other locations as needed and therefore may require travel. Some positions require the ability to lift 25 lbs. in order to complete the duties of the position. This can include children and/or equipment.

*Exhibit A, page 2.5*

6. Petitioner also indicated in her subsequent Application for Disability Retirement that her work required her to walk for 1.0 to 1.5 hours per day; stand for 1.0 to 4.0 hours per day; sit for 1.0 to 4.0 hours per day; write, type, and handle small

objects 1.0 to 4.0 hours per day; and occasionally climb, stoop, kneel or crouch. (Exhibit A, page 1.6).

7. In 2015, Petitioner was diagnosed with asthma after complaining of wheezing and shortness of breath and undergoing pulmonary function testing. (Exhibit A, pages 5.69 - 5.74).
8. In March of 2019, Petitioner applied for intermittent leave under the Family and Medical Leave Act (FMLA). (Exhibit A, pages 3.7 - 3.8).
9. As part of her application, Petitioner included a Certification of Employee's Health Condition completed by Marjorie Frei, a Physician's Assistant – Certified (PA-C) and in which PA-C Frei identified Petitioner's diagnoses as moderate obstructive airway disease – asthmatic type; asthma and allergies. (Exhibit A, pages 3.7-3.8).
10. PA-C Frei also indicated that Petitioner's conditions commenced in April of 2017, and they would probably last Petitioner's lifetime. (Exhibit A, page 3.7).
11. PA-C Frei further certified that Petitioner was unable to perform her job functions because of the following: "Due to respiratory issues needs to be home for nebulizer treatments". (Exhibit A, page 3.7).
12. Similarly, she certified that Petitioner's conditions cause flare-ups that prevent Petitioner from performing her job duties and her absence is medically necessary given that Petitioner becomes fatigued due to coughing and difficulty breathing, and she at times wheezes and has chest pains, with stress making it worse. (Exhibit A, page 3.8).
13. On April 12, 2019, Petitioner's request for intermittent leave was approved in the amount of 1 episode per month, 3 hours per episode. (Exhibit A, pages 3.9 - 3.10).
14. Petitioner continued to work, taking FMLA leave, sick leave, or annual leave when necessary. (Testimony of Petitioner).
15. On June 11, 2019, PA-C Frei assessed Petitioner with hypertension, palpitations, stress, uncomplicated asthma, and a high body mass index; with Petitioner also reporting that increased stress from her job was causing elevated blood pressure. (Exhibit A, pages 5.20-5.22)
16. Petitioner and the PA-C also discussed counseling and medications, with Petitioner indicating that she did not want medications at that time, and the PA-C instructed Petitioner comply with medications, weight management, regular exercise, diet, and regular blood pressure monitoring in the home. (Exhibit A, pages 5.20-5.22)

17. On July 16, 2019, Petitioner followed up with PA-C Frei with respect to her elevated blood pressure, while also reporting intermittent pain in her right flank. (Exhibit A, pages 5.16 - 5.19).
18. It was also determined that Petitioner continued to have heart palpitations, and that she should see a cardiologist. (Exhibit A, pages 5.16 - 5.19).
19. On August 30, 2019, Petitioner underwent a Pulmonary Function Study that showed normal lung volumes and diffusion capacity, but mild obstructive lung disease with borderline response to bronchodilator therapy and asthma. (Exhibit A, pages 5.33 - 5.34, 5.36 - 5.39)
20. On September 10, 2019, Petitioner saw PA-C Frei for an annual wellness exam and completion of FMLA forms. (Exhibit A, pages 5.13 - 5.15).
21. Petitioner also had cold symptoms, but no wheezing or chest pain. (Exhibit A, pages 5.13 - 5.15).
22. PA-C Frei then completed a form with respect to Petitioner needing intermittent time off for respiratory distress, while also noting that Petitioner had mild depression and anxiety. (Exhibit A, pages 5.13 - 5.15).
23. On October 11, 2019, Petitioner was seen at McLaren Bay Heart and Vascular after complaining of heart palpitations and multiple episodes of what appeared to be some form of tachycardia, not premature ventricular contractions (PVCs), without syncopal events. (Exhibit A, pages 5.1 - 5.2).
24. She had worn a heart monitor between June 21, 2019, and July 5, 2019, that showed some tachycardia and bradycardia, but no atrial fibrillation, and was normal upon examination. (Exhibit A, pages 5.1 - 5.2).
25. An echocardiogram was ordered and, upon review of every episode of her palpitations on rhythm strips, a Dr. Lee determined that they were just PVCs, likely adrenaline mediated from Petitioner's job, body habitus, and excessive snoring. (Exhibit A, pages 5.3 - 5.4).
26. On October 25, 2019, Petitioner went to a MidMichigan Health Urgent Care with complaints of having a cough for six weeks, despite using nebulizer breathing treatments at home. (Exhibit A, pages 5.75 - 5.81).
27. Petitioner was then assessed with mild persistent asthma with acute exacerbation and a bacterial upper respiratory infection, and prescribed antibiotics and steroids. (Exhibit A, pages 5.75 - 5.81).
28. On November 5, 2019, Petitioner saw PA-C Frei for a follow up to her urgent care visit, with Petitioner reporting feeling improved, except for some coughing and fatigue, and no chest pain or shortness of breath. (Exhibit A, pages 5.10 - 5.12).

29. Petitioner also wanted medical leave paperwork filled out and the PA-C wrote her a slip off work for 30 days due to feeling fatigue, no energy, and coughing. (Exhibit A, pages 5.10 - 5.12).
30. She also noted that the plan of treatment was a follow up visit in 2 years. (Exhibit A, pages 5.10 - 5.12).
31. Later in November of 2019, Petitioner applied for non-intermittent medical leave, with an estimated return date of January 8, 2020. (Exhibit A, page 3.4).
32. PA-C Frei again certified Petitioner as having a serious medical condition, specifically noting obstructive pulmonary disease, asthma, and environmental allergies. (Exhibit A, pages 3.12 - 3.13).
33. In her own notes, PA-C Frei also wrote that she completed the form for Petitioner being off work until January 8, 2020, due to Petitioner's continued respiratory issues and upcoming appointments with orthopedics and a sleep laboratory. (Exhibit A, pages 5.7 - 5.9).
34. The leave was approved on November 5, 2019, with Petitioner's last day of work being November 4, 2019. (Exhibit A, page 1.1; Testimony of Petitioner).
35. On November 20, 2019, Petitioner underwent a chest x-ray, with no abnormality found. (Exhibit A, page 5.35).
36. In December of 2019, Petitioner applied for an extension of her medical leave, with an estimated return date of February 3, 2020. (Exhibit A, page 3.1).
37. In a supporting form, PA-C Frei identified Petitioner's diagnoses as chronic asthma, fatigue, shortness of breath, depression related to stress, heart palpitations, and chest pain. (Exhibit A, page 3.1).
38. On January 14, 2020, PA-C Frei completed a Medical Release to Return to Work, indicating that Petitioner could return to work with restrictions on January 21, 2020. (Exhibit A, pages 3.15).
39. The restrictions identified were that Petitioner "needs to do nebulizer treatments every 3.5 to 4 hours due to asthma, wheezing [and] SOB". (Exhibit A, page 3.15).
40. On January 21, 2020, Petitioner's medical leave of absence was closed. (Exhibit A, pages 3.16 - 3.17).
41. With respect her intermittent leave that began on March 13, 2019, the email from the Disability Management Office (DMO) indicated that the leave closed on the basis that: **"The employee has exhausted their leave entitlement benefits."** (Exhibit A, page 3.16).

42. With respect to the leave of absence that began on November 5, 2019, the email from the DMO stated that the leave closed on the basis that: "**The employee has returned to work.**" (Exhibit A, page 3.17).
43. On January 21, 2020, Petitioner returned to work. (Testimony of Petitioner).
44. That same day, she filed an application for non-duty disability retirement benefits. (Exhibit A, pages 1.1 - 1.13).
45. In her application, Petitioner indicated that her ability to work was limited by asthma, high blood pressure, and PVCs. (Exhibit A, page 1.5).
46. She also wrote that her work was being impacted by asthma attacks, coughing while speaking with people, shortness of breath, and chest pain. (Exhibit A, page 1.5).
47. In March of 2020, Petitioner filed another request for FMLA leave. (Exhibit A, page 3.18 - 3.19; Testimony of Petitioner).
48. Around that same time, she was also placed on administrative leave. (Testimony of Petitioner).
49. On March 17, 2020, Petitioner presented to Ascension Medical Group Pulmonary & Critical Care for follow up regarding her asthma and treatment of an exacerbation of that condition in December of 2019.
50. At that time, it was noted that Petitioner has completed two rounds of antibiotics and steroids; her symptoms returned after the first round; and she had been feeling better for about a month following the second round. (5.40 - 5.45).
51. It was also noted that Petitioner's moderate persistent asthma continues to be in good control. (Exhibit A, page 5.44).
52. On May 9, 2020, Petitioner terminated her employment. (Testimony of Petitioner).
53. As part of the review of Petitioner's request for non-duty disability benefits, Independent Medical Advisor (IMA) Reuben Henderson, DO, reviewed Petitioner's submitted medical records. (Exhibit A, pages 4.1 - 4.5).
54. On August 4, 2020, Dr. Henderson issued an IMA Statement of Disability. (Exhibit A, pages 4.1 - 4.5).
55. In conclusion, Dr. Henderson found:

The medical evidence showed that [Petitioner] has a diagnosis of asthma, COPD, premature ventricular contractions. She continues to receive treatment and

continues to take medications. Although she continues to have symptoms of cough, shortness of breath and fatigue the totality of the medical evidence demonstrates that she is able to lift/carry twenty pounds and stand/walk two hours in an eight hour work day. She is also able to bend occasionally. Therefore, she is able to perform the duties of her past job as social services specialist. Therefore, she does not have a total and permanent medical condition and thus, she is not eligible for non-duty disability retirement benefits.

*Exhibit A, page 4.5*

56. On August 6, 2020, ORS sent Petitioner written notice that her application for non-duty disability benefits had been denied. (Exhibit A, pages 6.3-6.4).
57. In part, that notice stated that:

Your medical condition and documentation were evaluated by an independent medical examiner. The Independent Medical Examiner's Statement of Disability did not recommend a disability retirement.

*Exhibit A, page 6.3*

58. On September 22, 2020, Petitioner was seen at the Ascension Medical Group Pulmonary & Critical Care as follow up treatment for her asthma and her reports of dyspnea on exertion, productive cough, and clear sputum production. (Exhibit A, pages 5.46 - 5.51).
59. During that examination, it was noted that Petitioner's symptoms appear frequently, mild to moderate in severity and remain at baseline; she does not feel breathing symptoms have improved very much, but she has been improving her physical capacity and strength; and she has quit her job as she could not handle the stress, which would trigger her wheezing. (Exhibit A, pages 5.46 - 5.51).
60. It was also noted that the current control of Petitioner's asthma was fair, but the asthma has progressively worsened over the past two years. (Exhibit A, pages 5.46 - 5.51).
61. The plan of treatment was to add Spiriva to Petitioner's inhaler regime, with other possible treatments in future discussed. (Exhibit A, pages 5.46 - 5.51).
62. On October 6, 2020, ORS received Petitioner's request for an administrative hearing regarding the denial of her application for non-duty disability requirements. (Exhibit A, page 6.1).

63. On January 26, 2022, MOAHR received a request for hearing from ORS.
64. On March 9, 2022, MOAHR issued a Notice of Hearing, scheduling a hearing for May 12, 2022.
65. On May 12, 2022, an administrative hearing was held as scheduled.
66. During the hearing, Petitioner presented new evidence regarding the continuing treatment of Petitioner's asthma and Petitioner also being diagnosed with kidney disease. (Exhibit #1, pages 1 - 105).
67. In part, records indicated that Petitioner, who was experiencing pain at the time, had undergone multiple tests in 2014 and 2015 that had revealed renal cysts. (Exhibit #1, pages 33 - 45).
68. The records also provided Petitioner presented to the Ogemaw Clinic on February 16, 2022, with complaints of urine frequency x1 week and flank discomfort, with Petitioner normal upon examination and an urinalysis being ordered. (Exhibit A, pages 55 - 61).
69. Petitioner further presented at the Sterling Area Health Center on February 25, 2022, complaining of continued UTI and right sided flank pain; an ultrasound was ordered and revealed moderate leukocyte; and an antibiotic was prescribed. (Exhibit #1, pages 30, 48 - 54).
70. The new records also provided that Petitioner was seen at Total Kidney Care on March 3, 2022, for treatment related to renal cysts, recurrent pain since January of 2022, and her UTI. (Exhibit #1, pages 26 - 28).
71. Upon examination, Petitioner was appeared normal, with lungs clear to auscultation bilaterally with equal air entry; normal respiratory effort; heart regular; abdomen soft and nontender, with no organomegaly or masses; and no edema in lower limbs. (Exhibit #1, pages 26 - 28).
72. A kidney ultrasound did show multiple cysts on the right, with larger cysts, and Petitioner was diagnosed with multicystic kidney disease, with the doctor noting that it may be polycystic kidney disease given more than 4 cysts on right kidney. (Exhibit #1, pages 26-28).
73. The plan of treatment was to monitor for flank pain, educate for association of chronic kidney disease and nonsteroidal anti-inflammatory drugs (NSAIDS), and follow up in 3 months. (Exhibit #1, page 28).
74. Petitioner also testified that she was seeking treatment for her kidney disease at the Mayo Clinic and had been approved for an appointment, but that one had not yet been scheduled. (Testimony of Petitioner).

75. Given the new evidence provided by Petitioner regarding kidney disease, the record was left open following the completion of the hearing in this matter so that a new or supplemental IMA Statement of Disability.
76. On July 5, 2022, Dr. Henderson issued a Supplemental IMA Statement of Disability, (Exhibit B, pages 1-6).
77. In that supplemental statement, after reviewing Petitioner's updated records regarding her asthma treatment and the new records regarding her kidney disease, Dr. Henderson concluded:

The new additional medical evidence shows that [Petitioner] has a diagnosis of multicystic kidney disease, which may be polycystic kidney disease given more than 4 cysts on right kidney, and hypertension. She continues treatment with several medications and specialists. Although she now has kidney disease and symptoms including asthma exacerbations, abdominal pain the totality of medical evidence demonstrates that she is able to perform the duties of her sedentary job as there has been no significant change in function. Therefore, she does not have a total and permanent medical condition and thus, she is not eligible for non-duty disability retirement benefits.

*Exhibit B, page 6*

## **CONCLUSIONS OF LAW**

Petitioner has the burden to prove, by a preponderance of the evidence, that she is entitled to non-duty disability retirement benefits under Section 67 of the Act.<sup>1</sup> Proof by a preponderance of the evidence requires the trier of fact to determine that the evidence supporting the existence of a contested fact outweighs the evidence supporting its nonexistence.<sup>2</sup> To meet this burden, Petitioner must demonstrate that she is mentally or physically totally incapacitated for further performance of duty and that the incapacitation is likely to be permanent.<sup>3</sup> In *Nason v State Employees' Retirement System*,<sup>4</sup> the Court determined that a member is "totally incapacitated for further performance of duty" when he or she is unable to perform the state job from which he or she seeks retirement.<sup>5</sup> Furthermore, in the context of disability retirement benefits, permanency is not established where alternative, unexplored treatments exist.<sup>6</sup>

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<sup>1</sup> *Blue Cross Blue Shield v Milliken*, 422 Mich 1, 89; 367 NW2d 1 (1985); *Stoneberg v State Employees' Retirement Board*, 139 Mich App 794, 800; 362 NW2d 878 (1984).

<sup>2</sup> *Martucci v Detroit Police Commissioners*, 322 Mich 270; 33 NW2d 789 (1948).

<sup>3</sup> *Knauss v State Employees' Retirement System*, 143 Mich App 644, 649-650; 372 NW 2d 643 (1985).

<sup>4</sup> *Nason v State Employees' Retirement System*, 290 Mich App 416 (2010).

<sup>5</sup> *Nason*, 2010 Mich App at \*25.

<sup>6</sup> *Jackson-Rabon v State Employees' Retirement System*, 266 Mich App 188, 121; 698 NW2d 157 (2005)

Based on the above findings of fact in this case, Petitioner has failed to meet her burden to show that she is totally and permanently disabled, and the Board should deny Petitioner's application for non-duty disability retirement benefits under Section 67a of the Act.

MCL 38.67a(5)(b) provides, as a threshold requirement, that a qualified participant must be certified as totally and permanently disabled from performing his or her State job by a medical advisor in order to qualify for non-duty disability retirement. In *Polania v State Employees Retirement Board*,<sup>7</sup> the Court determined that, under a similar statute, MCL 38.24, the Retirement Board had no authority to award a non-duty disability retirement without a medical advisor certification of total and permanent incapacitation. Furthermore, Administrative Rule 38.21(j) provides, 'Medical advisor' as used in MCL 38.21 and 38.24 of the act means a physician designated by the retirement board.<sup>8</sup> Given that the language regarding medical certification in the two statutes is identical, it reasons that the finding from *Polania* would be applicable to those seeking non-duty disability retirement benefits under MCL 38.67a(5).

Here, the medical advisor designated by the retirement board, Dr. Reuben Henderson, D.O., expressly concluded that Petitioner was not totally and permanently disabled. Moreover, contrary to Petitioner's arguments, the decision of that reviewing physician is supported by competent and material evidence in the record. For example, Dr. Henderson found that, while Petitioner continues to have symptoms of coughing, shortness of breath and fatigue, the record also reflects that she is able to perform the duties of her past job, including lifting or carrying twenty pounds, standing or walking for two hours in an eight-hour workday, and bending occasionally. Furthermore, with respect to the new diagnosis of kidney disease, Dr. Henderson noted that, while the records demonstrate that Petitioner has the new diagnosis, there is no evidence of any significant changes in her functioning.

In response, Petitioner argues that she is unable to perform the duties of a Social Services Specialist and that she has not been physically examined by any IMA. She also argues that she has been physically examined by her primary care physicians, including PA-C Frei, and multiple specialists; and that, while the specialists will not write a letter of disability due to liability, the records demonstrate her limitations and continuing treatment.

However, while Petitioner correctly notes that she was not physically examined by the IMA, that is not required under the applicable laws or regulations, with the State Employees' Retirement Board Rules (Board Rules) specifically defining "medical examination" to include an examination of the applicant's medical records.<sup>9</sup>

Moreover, the Board Rules also make clear that the opinion of an applicant's treating physician may not be given more weight than that of the IMA simply because the IMA

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<sup>7</sup> 299 Mich App 322, 355; 830 NW2d 773 (2013)

<sup>8</sup> Mich Admin Code, R 38.21(j)

<sup>9</sup> Mich Admin Code, R 38.35.

conducted a review based upon the applicant's medical records<sup>10</sup>, though the undersigned Administrative Law Judge would further note that no physician, treating or otherwise, has opined that Petitioner is totally and permanently disabled in this case.

Here, the IMA fully and in detail reviewed medical records from Petitioner's treating physicians, including both Petitioner's initial submission of medical records and her new evidence submitted at the hearing, and credibly concluded that Petitioner is not totally and permanently disabled.

The undersigned Administrative Law Judge does not disagree with the conclusions of the IMA as they are supported by competent, material, and substantial evidence on the whole record; and Petitioner has failed to meet the statutory requirements of Section 67a of the Act, which specifically includes a requirement that a medical advisor appointed by the retirement board certify that she is totally and permanently disabled and that she should be retired.

### **PROPOSED DECISION**

Accordingly, it is proposed that the State Employees' Retirement Board adopt the above findings of fact and conclusions of law. Further, it is proposed that the Board deny Petitioner's application for non-duty disability retirement benefits under Section 67a of the Act.

### **EXCEPTIONS**

Any exceptions to this Proposal for Decision must be filed with the Michigan Office of Administrative Hearings and Rules, 611 West Ottawa Street, P.O. Box 30695, Lansing, Michigan 48909-8195, within 21 days after it is issued. The opposing party may file a reply within 14 days after receiving the exceptions.



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**Steven Kibit**  
Administrative Law Judge

<sup>10</sup> Mich Admin Code, R 38.32.

**PROOF OF SERVICE**

I certify that I served a copy of the foregoing document upon all parties, to their last-known addresses in the manner specified below, this 11<sup>th</sup> day of October 2022.

*S. Reynolds*

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S. Reynolds  
**Michigan Office of Administrative  
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