

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No. 201255192
Issue No. 4031
Case No. [REDACTED]
Hearing Date: August 13, 2012
Wayne County DHS (76)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, an in-person hearing was held on August 13, 2012 from Detroit, Michigan. The claimant appeared and testified; [REDACTED], [REDACTED] and [REDACTED] testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUES

The first issue is whether DHS properly failed to evaluate Claimant for Family Independence Program (FIP) benefits.

The second issue is whether DHS properly denied Claimant's application for State Disability Assistance (SDA) benefits on the basis that Claimant is not a disabled individual.

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 4/24/12, Claimant applied for cash assistance benefits.
2. At the time of application, Claimant was a caretaker to minor child/children.
3. DHS did not evaluate Claimant for eligibility under the Family Independence Program (FIP).

4. Claimant's only basis for SDA benefits was as a disabled individual.
5. On 5/11/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 3-4).
6. On 5/15/12, DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
7. On 5/24/12, Claimant requested a hearing disputing the denial of SDA benefits (see Exhibits 1-2).
8. On 7/3/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 37-38), in part, by application of Medical-Vocation Rule 201.19
9. As of the date of the administrative hearing, Claimant was a 47 year old male with a height of 5'9" and weight of 173 pounds.
10. Claimant has no known relevant history of tobacco, alcohol or illegal drug abuse.
11. Claimant's highest education year completed was the 11th grade.
12. As of the date of the administrative hearing, Claimant was an ongoing Medicaid recipient.
13. Claimant alleged that he is a disabled individual based on impairments including: carpal-tunnel syndrome (CTS), tendonitis of the hips, bursitis of the shoulders, degenerative disc disease of the lumbar spine, foot calluses, eye problems, nerve damage, arthritis of the knees and a neck spur.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A second type of cash assistance is Family Independence Program (FIP) benefits which is available to caretakers of minor children. DHS conceded that Claimant was potentially eligible for FIP benefits because he was and is a caretaker to at least one minor child. DHS could not explain whether Claimant was evaluated for FIP benefits. Based on the lack of evidence, it is presumed that Claimant was not evaluated for FIP benefits. It is found that DHS erred by failing to evaluate Claimant for FIP benefit eligibility.

Despite the above finding, Claimant may also be eligible for cash assistance through SDA if he is found to be disabled. A person is disabled for SDA purposes if he or she (see BEM 261 at 1):

- receives other specified disability-related benefits or services;
- resides in a qualified Special Living Arrangement facility;
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS), see Medical Certification of Disability

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for SDA benefit eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 3.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

In the present case, Claimant denied having any employment since the date of the submitted application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257,

1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the submitted medical documentation. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibits numbers.

A Social Summary (Exhibits 5-6) dated [REDACTED] was presented. Claimant's form was completed by a DHS specialist. It was noted that Claimant reported impairments of CTS and a lumbar problem. It was noted that Claimant could not sit for a long period of time.

A Medical Social Questionnaire (Exhibits 7-9) dated [REDACTED] was presented. The Claimant completed form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. Claimant noted impairments of upper and lower back pain from DDD, CTS and an illegible third problem. Claimant noted that he is unable to: bend, lift anything, stand for too long or write. Claimant noted two emergency room visits in 10/2011 concerning back pain. Claimant noted taking the following medications: Vicodin, Lyrica, Lisinopril, Robaxin, Norvasc, Trazodone, Lodine and Fioricet.

A Radiology Report (Exhibit 10; duplicated as Exhibit 23) dated [REDACTED] was presented. An impression of neural foraminal narrowing at L4-L5 and L5-S1 was given.

Documentation (Exhibits 15-19) from a pain clinic was presented. It was noted that Claimant reported pain after falling down stairs four months earlier. It was noted that the pain was on the right side with radiation to the lower left extremity. Claimant also reported pain in the neck with radiation to the left arm. Claimant rated the pain as 10/10. It was noted that Claimant stated the pain intensified when bending, standing and walking. It was noted that Claimant had decreased vision. It was noted that Claimant completed six weeks of physical therapy which caused moderate improvement. It was noted that Claimant also attempted psychotherapy, bed rest and acupuncture, but to no

avail. It was noted that Claimant had leg and feet swelling. It was noted that Claimant had a positive straight leg raising test. It was noted that Claimant had 5/5 motor power in his upper extremities.

Two medical reports (Exhibits 11-14) concerning lumbar epidural steroid injections from a pain clinic were provided. The documents verified that Claimant had steroid injections on [REDACTED] and [REDACTED]. Claimant testified that he received a third injection in 5/2012. An appointment card for the pain clinic (Exhibit 26) noted a [REDACTED] appointment. It was noted that the treatments were to treat radiculating lumbar pain at L5-S1 after conservative treatments were not helpful.

A Medical Examination Report (Exhibits 20-21) dated [REDACTED] was completed by Claimant's treating physician. It was noted that the physician first treated Claimant on [REDACTED] and last examined Claimant on [REDACTED]. The physician provided diagnoses of chronic back pain, herniated disc L-L5 and an illegible third problem. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant had fatigue and pain that was 9/10. It was noted that Claimant had an ataxic gait and was depressed. It was noted that Claimant can meet household needs with housework and yard work noted. Claimant testified that he was present when the physician completed the form and that he believed the physician intended to write that he was unable to meet household needs based on what the physician told him. Claimant's brother testified that he felt guilty that Claimant has to cut the grass thereby implying that Claimant performs yard work. Claimant testified that he used to cut the grass but no longer can.

A Department of Neurosurgery (Exhibits 27-28) dated [REDACTED] form was presented. It was noted that Claimant was diagnosed with cervical degenerative disc disease. It was noted that Claimant should undergo physical therapy at a rate of three times per week.

Claimant completed an Activities of Daily Living (Exhibits 29-33) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. It was noted that Claimant had difficulty sleeping due to back pain and leg pain. It was noted that Claimant's children fixed meals for Claimant, though Claimant testified that he can prepare simple meals for himself. It was noted that Claimant's children help him keep the house clean and do laundry; Claimant testified that he tries to wash the dishes. It was noted that Claimant does not shop but Claimant testified that he does. It was noted that Claimant reads the newspaper. Claimant testified that he could bathe and dress himself, though he has to sit down to put on his shoes.

The medical evidence established that Claimant has lower back pain. The MRI confirmed that there is foraminal narrowing at L5-S1. Claimant's pain was so severe that epidural injections, physical therapy and pain medication were prescribed. The positive straight leg raising test is further support for the diagnosis. Claimant stated that

he is significantly limited in walking and lifting because of the pain. Claimant's testimony is supported based on the medical evidence. It is found that Claimant established a significant impairment to performing basic work activities.

Claimant testified that his impairments began in 10/2011, after he fell down stairs. In 5/2012, Claimant's physician noted that Claimant's condition is deteriorating. This is persuasive evidence that Claimant's impairments will last beyond one year.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's most prominent impairment appears to be back problems. Musculoskeletal issues are covered by Listing 1.00. Back problems are covered by SSA Listing 1.04 which reads:

1.04 Disorders of the spine (e.g., 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 equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. 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.

Claimant's back problems were well documented. It was verified that Claimant had a bulging disc and neural foraminal narrowing at L5-S1. Though there was evidence that Claimant meets parts (e.g. a back disorder, radiating pain a positive straight leg raising test) of Listing 1.04A, there was a lack of evidence that Claimant failed to meet other parts of the listing.

It was established that Claimant had 5/5 motor strength (see Exhibit 17); this tends to verify no loss of motor strength. There was a lack of evidence that Claimant had a compromised nerve root. Due to the lack of evidence, it is found that Claimant does not meet the listing for spinal disorders.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of CTS, bursitis, foot calluses, hip problems and knee problems. The medical evidence only established that Claimant's gait was ataxic. Though an ataxic gait may be evidence of an inability to ambulate effectively, it is insufficient evidence, by itself, to meet the listing. This listing was rejected due to a lack of specific medical evidence concerning Claimant's knees, CTS, bursitis and other problems.

A listing for visual acuity (Listing 2.02) was considered based on Claimant's complaints of blurred vision. This listing was rejected due to a lack of specific evidence (i.e. eye tests) concerning Claimant's vision.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant testified that he performed past relevant employment as a custodian, maintenance person, furniture mover and stockperson. Claimant stated that each of the jobs required heavy lifting and/or extended period of standing which he can no longer

perform. Claimant's testimony was supported by the medical evidence. It is found that Claimant is unable to perform past relevant employment.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

For purposes of this decision, the only consideration will be Claimant's potential for sedentary employment. This consideration requires examining Claimant's abilities to: stand, walk, lift, sit and grasp.

Claimant stated that he is capable of standing for 20-30 minute periods and walking two blocks with a proven ataxic gait. Claimant estimated that he could lift a maximum of 20-30 pounds. All of these limits are within the capabilities of sedentary employment.

Claimant stated that he has CTS which could theoretically limit many sedentary employment duties such as typing, filing and talking on the phone. There was virtually no evidence to support that Claimant would be limited by CTS in performing sedentary employment. Thus, it is found that Claimant can perform the grasping necessary for sedentary employment.

Claimant stated that he could sit 25 minutes without squirming. Claimant estimated that he could sit for an hour, at most, without standing up. Though Claimant's lower back pain was well established, the evidence did not note any sitting restrictions. The evidence was also not supportive enough to presume any sitting restrictions. Based on

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the presented evidence, it is found that Claimant is capable of performing sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 45-49), education (less than high school), employment history (unskilled), Medical-Vocational Rule 201.18 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly found Claimant to be not disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's SDA benefit application dated 4/24/12 based on a determination that Claimant was not disabled. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly failed to evaluate Claimant for FIP benefits. It is ordered that DHS:

- reinstate Claimant's application dated 4/24/12; and
- evaluate Claimant's application for FIP benefit eligibility subject to the finding that DHS has yet to do so.

The actions taken by DHS are PARTIALLY REVERSED.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 17, 2012

Date Mailed: August 17, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

