

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



IN THE MATTER OF:



Reg. No.: 2014-19317
Issue No.: 4009
Case No.:
Hearing Date: April 2, 2014
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

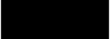

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on April 2, 2014, from Detroit, Michigan. Participants included the above-named Claimant, , Claimant's fiancé, testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included , Medical Contact Worker.

ISSUE

The issue is whether DHS properly denied Claimant's application for State Disability Assistance (SDA) benefits for the reason 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 , Claimant applied for SDA benefits.
2. Claimant did not apply for Medical Assistance (MA) benefits.
3. Claimant's only basis for SDA benefits was as a disabled individual.
4. On , the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).

5. On [REDACTED], DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
6. On [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits and a denial of Medical Assistance (MA) benefits.
7. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.18.
8. On [REDACTED], an administrative hearing was held.
9. Claimant presented new medical documents (Exhibits A1-A7) at the hearing.
10. During the hearing, Claimant waived the right to receive a timely hearing decision.
11. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional medical documents considered and forwarded by SHRT.
12. On [REDACTED], an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by State Hearing Review Team was subsequently issued which extended the record 90 days from the date of hearing.
13. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by reliance on a Disability Determination (Exhibits 2-1 – 2-12) and an unfavorable SSA decision (2-13 – 2-39).
14. On [REDACTED], the Michigan Administrative Hearings System received the updated hearing packet and SHRT decision.
15. As of the date of the administrative hearing, Claimant was a 28-year-old female with a height of 5'4" and weight of 200 pounds.
16. Claimant has no known relevant history of alcohol or illegal substance abuse.
17. Claimant's highest education year completed was the 12th grade via general equivalency degree.
18. As of the date of the administrative hearing, Claimant was an ongoing Adult Medical Program recipient, since 2010.
19. Claimant alleged disability based on impairments and issues including back pain, asthma, knee pain and post-traumatic stress disorder (PTSD).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Claimant requested a hearing, in part, to dispute a denial of MA benefits. It was not disputed that Claimant applied for cash benefits, not MA benefits.

The Michigan Administrative Hearing System may grant a hearing about any of the following:

- denial of an application and/or supplemental payments;
- reduction in the amount of program benefits or service;
- suspension or termination of program benefits or service
- restrictions under which benefits or services are provided;
- delay of any action beyond standards of promptness; or
- the current level of benefits or denial of expedited service (for Food Assistance Program benefits only).

BAM 600 (7/2013), p. 3.

DHS properly did not determine Claimant's MA eligibility based on a claimed disability because Claimant did not apply for MA eligibility, at least not within a few months of applying for SDA benefits. Claimant cannot provide a DHS action to dispute due to her own failure to apply. Claimant's hearing request concerning MA eligibility is appropriately dismissed.

Claimant should be made aware that MA benefits were recently expanded. As of 4/1/14, Claimant does not have to establish a disability to be eligible for Medicaid-type benefits.

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 (1/2013), p. 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 (1/2012), p. 1.

A person is disabled for SDA purposes if he/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; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id.

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for SDA eligibility without undergoing a medical review process (see BAM 815) which determines whether Claimant is a disabled individual. *Id.*, p. 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. As noted above, SDA eligibility is based on a 90 days period of disability.

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. "Current" work activity is interpreted to include all time since the date of application. The 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Claimant credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. 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 a summary of the relevant submitted medical documentation.

Claimant testified that she was in a motor vehicle accident in 10/2012, which severely injured her back. Claimant testified that she underwent lumbar fusion surgery but that she remains in pain.

A Disability Certificate (Exhibit 33) dated [REDACTED] from Claimant's physician was presented. It was noted that Claimant required attendant care and housework assistance and was disabled. The stated period of disability was [REDACTED]

A progress report (Exhibit 17) dated [REDACTED] was presented. The report was completed by a treating physician. It was noted that Claimant reported ongoing pain in her legs (5/10) but that her foot and ankle pain resolved. It was noted that x-rays of Claimant's knees were taken; no abnormalities were noted. It was noted that Claimant had a full range of knee motion.

An Operative Report (Exhibits 15-16) dated [REDACTED] was presented. It was noted that Claimant underwent lumbar L5-S1 fusion surgery. No complications were noted. Various discharge documents (Exhibits 24-32) related to the surgery were presented and noted follow-up in 2 weeks.

A physician letter (Exhibit 23) dated [REDACTED] was presented. It was noted that Claimant required attendant care for the following periods: [REDACTED] for 18 hours per day, [REDACTED] for 15 hours per day, [REDACTED] for 10 hours per day, [REDACTED] for 6 hours per day, [REDACTED] for 4 hours per day and [REDACTED] for 2 hours per day.

A Disability Certificate (Exhibit 34) dated [REDACTED] from Claimant's physician was presented. It was noted that Claimant required attendant care and housework assistance and was disabled. The stated period of disability was [REDACTED] 3.

A physician progress note (Exhibit 13) dated [REDACTED] was presented. It was noted that two weeks had passed since lumbar fusion surgery and that Claimant "has been fairly comfortable". Claimant complaints of hip and back soreness were noted. It was noted that Claimant ambulated with a walker. It was noted that Claimant took Percocet for pain relief.

A Medical Examination Report (Exhibits 8-10) dated [REDACTED] from Claimant's physician was presented. Claimant's physician noted an approximate 11-month history of treating Claimant. Low back pain and lumbar radiculopathy were noted diagnoses. An impression was given that Claimant's condition was stable. It was noted that Claimant requires attendant care and household services due to her impairments. Claimant's

physician noted that Claimant could occasionally lift under 10 pounds but never more. Claimant's physician restricted to performing less than 6 hours of sitting and less than 2 hours of standing, per 8 hour workday, Claimant was noted as incapable of performing repetitive reaching and pushing/pulling.

A physician progress note (Exhibits 11-12) dated [REDACTED] was presented. It was noted that Claimant presented for back pain treatment. It was noted that x-rays showed that Claimant's hardware was in place. It was noted that Claimant was positive for each of the following: standing flexion, palpitation and facet load at L4-L5 and L5-S1. L4-L5 tenderness, sacroiliac tenderness, and piriformis tenderness were noted. Tenderness and palpitation was also noted in Claimant's cervical spine.

Claimant alleged disability, in part, due to PTSD, presumably related to a car accident. Claimant presented little or no evidence of any psychiatric obstacles. There was no evidence that Claimant receives psychiatric treatment or psychiatric medications. As Claimant has access to insurance, it is uncertain why Claimant could not obtain such services, if needed. Claimant failed to establish any psychological impairment.

Claimant alleged impairment, in part, based on knee pain. Claimant verified that she was treated for pain in 9/2013 but there was little evidence to suggest ongoing problems. Perhaps Claimant's knees were injured in the 2012 car accident that wrecked her back, however, this is pure speculation. Claimant was noted to have a full range of motion of her knees; this is consistent with a lack of impairment. Radiology of Claimant's knees was performed and no abnormalities were noted; this is also suggestive of a lack of impairment. It is found that Claimant failed to establish any impairment related to knee problems.

It was established that Claimant has back problems. Radiology was not presented, however, lumbar surgery and treatment records were consistent with finding restrictions that would last 90 days or longer.

It is found that Claimant has significant impairment to basic work activities for a period longer than 90 days. Accordingly, Claimant has a severe impairment and 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 pain. Spinal disorders are covered by 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.

The listing was summarily rejected due to a failure to establish nerve root compromise. There was also a failure to verify sensory or reflex loss, muscle weakness, arachnoiditis or stenosis causing an inability to ambulate effectively.

Psychological disorders (Listings 12.00) and joint dysfunction (Listing 1.04) were also considered. The listings were summarily rejected due to a general absence of evidence.

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 she performed past employment as a dog breeder, stockperson and material handler. Claimant testified that she is unable to perform the lifting and/or bending required of her past employment. Claimant's testimony seemed credible

enough and was consistent with presented medical evidence. It is found that Claimant cannot perform past relevant employment and the analysis may proceed to step five.

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).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Though Claimant likely has ongoing back pain, evidence of an ongoing pain was not well established. Claimant underwent lumbar surgery in 10/2013. Claimant presented records from the month following surgery but no records subsequent to that. The presented records did not strongly suggest ongoing back pain for Claimant. Claimant's physician noted that Claimant had substantial sitting, lifting and standing restrictions, however those restrictions were noted within 1 month of lumbar fusion surgery. Some degree of restriction is likely to last beyond 90 days, however, the restrictions would be much less than what was noted by Claimant's physician in 10/2013.

Claimant's physician's statements that Claimant required attendant care as late as 3/2014 was not compelling evidence of disability. The form was completed 6 months earlier and not supported by any treatment of Claimant after the 30th day of Claimant's fusion surgery.

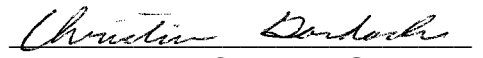
Claimant is likely limited in bending, lifting and ambulation, but not to the extent that Claimant is unable to perform sedentary employment. It is also worth factoring that Claimant has medical insurance so Claimant has access to needed treatment items (e.g. medication, back brace, steroid injections...). It is found that Claimant is capable of performing sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 18-44), education (high school), employment history (unskilled), Medical-Vocational Rule 201.27 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 Claimant is not entitled to administrative review concerning MA eligibility due to Claimant's failure to apply. Claimant's hearing request is **PARTIALLY DISMISSED**.

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 [REDACTED] based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.


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

Date Signed: 4/29/2014

Date Mailed: 4/29/2014

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

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

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

CG/hw

cc:

