

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-31888
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: May 8, 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 May 8, 2014, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

ISSUE

The issue is whether DHS properly denied Claimant's application for State Disability Assistance (SDA) 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 [REDACTED], Claimant applied for SDA benefits.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On [REDACTED], DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.21.
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A23) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
11. 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.
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by reliance on an administrative law judge decision dated 6/23/14 (see Exhibits 65-82).
13. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
14. As of the date of the administrative hearing, Claimant was a 47 year old female with a height of 5'2" and weight of 160 pounds.
15. Claimant has no known relevant history of substance abuse.
16. Claimant's highest education year completed was the 12th grade.
17. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient.
18. Claimant alleged disability based on impairments and issues including back arthritis and a right-side rotator cuff injury.

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 (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.

A Discharge Summary (Exhibit A21) dated [REDACTED] was presented. Final diagnoses of frozen shoulder and a rotator cuff tear were noted.

An MRI report (Exhibits A1-A2) dated [REDACTED] of Claimant's lumbar was presented. An impression of L4-L5 paracentral disc extrusion not causing significant canal narrowing was noted. Mild facet arthropathy was noted at L4-L5 and L5-S1. A left paracentral disc protrusion which minimally displaced the left S1 nerve root was noted; it was noted that this protrusion did not cause nerve root compression.

Discharge instructions (Exhibits A22-A23) dated [REDACTED] were presented. Final diagnoses of right shoulder rotator cuff tear and lumbar pain were noted.

A letter (Exhibit A2) dated [REDACTED] from Claimant pain management physician was presented. It was noted that Claimant was undergoing lumbar injections which lessened Claimant's pain.

An Operative Report (Exhibits 17-19) dated [REDACTED] was presented. It was noted that Claimant complained of chronic lower back pain. It was noted that Claimant underwent a facet median branch block.

An Operative Report (Exhibits 20-22) dated [REDACTED] was presented. It was noted that Claimant underwent a facet median branch block.

A MRI report (Exhibits 12-13; 23-24) dated [REDACTED] of Claimant's right shoulder was presented. An impression of an undersurface spur and joint degenerative spurring, likely resulting in impingement, were noted. It was also noted that an approximate 1 cm tear was present.

Hospital documents (Exhibits 52-59) from an encounter dated [REDACTED] were presented. It was noted that Claimant complained of right-side facial numbness, ongoing for 2 days. Diagnoses of acute Bell palsy and acute dental pain were noted. It was noted that Claimant received various medications and was discharged.

An Operative Report (Exhibits 26-28) dated [REDACTED] was presented. It was noted that Claimant underwent a right suprascapular nerve block.

An Operative Report (Exhibits 26-28) dated [REDACTED] was presented. It was noted that Claimant underwent a right suprascapular nerve block.

A letter (Exhibit A3) dated [REDACTED] from Claimant pain management physician was presented. It was noted that Claimant was undergoing lumbar injections which lessened Claimant's pain. It was noted that Claimant would begin shoulder injections. It was opined that Claimant is unable to work due to the severity of her conditions.

An Operative Report (Exhibits 31-33) dated [REDACTED] was presented. It was noted that Claimant underwent a right suprascapular nerve block.

An Operative Report (Exhibits 34-36) dated [REDACTED] was presented. Moderate tenderness and movement restrictions in Claimant's right shoulder were noted. It was noted that Claimant underwent a right suprascapular nerve block.

An Operative Report (Exhibits 37-39) dated [REDACTED] was presented. It was noted that Claimant had almost complete pain relief from previous facet median branch block. It was noted that Claimant underwent radiofrequency ablation of several right lumbar facet median branch.

An Operative Report (Exhibits 40-42) dated [REDACTED] was presented. It was noted that Claimant had almost complete pain relief from previous facet median branch block. It was noted that Claimant underwent radiofrequency ablation of several right lumbar facet median branches.

A prescription dated [REDACTED] was presented. It was noted that Claimant was prescribed a walking cane for chronic back pain.

An Operative Report (Exhibits 43-45) dated [REDACTED] was presented. Moderate tenderness and movement restrictions in Claimant's right shoulder were noted. It was noted that Claimant underwent a right suprascapular nerve block.

Various post-procedure instructions (Exhibits A5-A14) from Claimant's nerve block appointments were presented. Specific activity restrictions were not noted though Claimant was to perform activity "as tolerated".

An Operative Report (Exhibits 46-48) dated [REDACTED] was presented. It was noted that Claimant had pain relief after a previous shoulder treatment but that Claimant reported severe pain on the date of procedure. It was noted that Claimant underwent radiofrequency ablation of several right lumbar facet median branch.

A Medical Examination Report (Exhibits 8-10) dated [REDACTED] was presented. The form was completed by primary care physician who noted an approximate 2 year history of

treating Claimant. The physician provided diagnoses of hypertension (HTN), chronic back pain, right shoulder pain, and bilateral wrist pain. An impression was given that Claimant's condition was deteriorating. Decreased range of motion was noted in Claimant's right arm and hands. Claimant's muscle strength was also noted as reduced. It was noted that Claimant was positive for ataxia. It was noted that Claimant was restricted to occasional lifting of 10 pounds. It was noted that Claimant was restricted to less than 2 hours of standing/walking in an 8 hour workday. It was noted that Claimant was restricted to less than 6 hours of sitting in an 8 hour workday. It was noted that Claimant requires use of a cane. A history of depression treatment was noted.

Claimant testified that she has walking and lifting restrictions due to back pain. Claimant also testified that she has restrictions with her right shoulder and arm due to a rotator cuff tear. Claimant's testimony was consistent with the presented evidence. The medical evidence also established that Claimant's restrictions have lasted since 1/2014, the first month that Claimant seeks SDA benefits. It is found that Claimant has a severe impairment and the analysis may proceed 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.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of shoulder pain. The listing was rejected due to Claimant's failure to establish an inability to perform fine and gross movements with two extremities.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. The listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

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 all of her past relevant employment was as a cook. Claimant testified that all of her jobs required long periods of standing and lifting, both of which she can no longer perform. Claimant's testimony 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.*

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.

It was verified that Claimant requires use of a cane. Use of a cane is consistent with standing and walking restrictions that could prevent the performance of sedentary employment.

Claimant's physician noted that Claimant could not stand and sit for a combined eight hours in an eight-hour workday. Generally, an inability to sit and stand/walk for 8 hours is consistent with an inability to perform any employment.

Presented pain management documents suggested that Claimant's pain level diminished greatly following nerve block injections. This is consistent with finding that Claimant could perform sedentary employment. The self-praise was likely exaggerated as Claimant was prescribed use of a cane a few months after Claimant's pain management physician noted that Claimant's back pain was greatly diminished.

The most compelling evidence of Claimant's problems came from radiology. Mild facet arthropathy was noted; *mild* is not indicative of an inability to sit or stand for lengthy periods. Though Claimant had a disc protrusion, it was specifically noted that stenosis was not present. While slight nerve root displacement was noted, the overall findings were not strongly indicative of an inability to sit throughout a workday despite the opinions of Claimant's physician. Overall, Claimant's back problems were somewhat supportive of an inability to perform sedentary employment, but not by a preponderance.

It was verified that Claimant has restrictions in her shoulder due to a rotator cuff tear. The impairment likely affects Claimant's use of her right arm, particularly overhead reaching and fine and gross movements. Claimant happens to be right-handed, so Claimant's use of her right arm would be crucial for writing and/or typing. Claimant's natural hand impairment would greatly diminish her opportunity to perform sedentary employment.

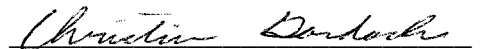
Based on the combination of Claimant's back and shoulder problems, it is improbable that Claimant could be expected to maintain sedentary employment. It is found that Claimant is disabled and that DHS improperly denied Claimant's SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's SDA benefit application dated [REDACTED];
- (2) evaluate Claimant's eligibility for SDA benefits subject to the finding that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future benefits.

The actions taken by DHS are **REVERSED**.


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

Date Signed: 7/10/2014

Date Mailed: 7/10/2014

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:

