

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

IN THE MATTER OF:



Reg. No.: 14-006703
Issue No.: 4009
Case No.:
Hearing Date: October 2, 2014
County: Wayne (57)

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, an in-person hearing was held on October 2, 2014, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included , Specialist.

ISSUE

The issue is whether DHS properly terminated Claimant's State Disability Assistance (SDA) eligibility 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's only basis for SDA benefits was as a disabled individual.
3. On , the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 6-7).
4. On , DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On , Claimant requested a hearing disputing the denial of SDA benefits.
6. As of the date of the administrative hearing, Claimant was a 40 year old female with a height of 5'4" and weight of 319 pounds.

7. Claimant has no known relevant history of alcohol or illegal substance abuse.
8. Claimant's highest education year completed was Associate's Degree in Business.
9. Claimant alleged disability based on restrictions related to cervical cancer, a lung tumor, diabetes mellitus (DM), high blood pressure, and depression.

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.*, p. 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 testified that she had not worked since 2013. A hospital document dated [REDACTED] stated that Claimant worked in an apartment building in the finance department. During the hearing, Claimant denied that she ever worked for an apartment building. Claimant's testimony was not particularly persuasive in light of the statement in the medical record. A hospital document is not a preferred method of employment verification but a medical provider has no incentive to misstate Claimant's employment information. It is possible that the statement was made in error. Even if the statement was accurate, insufficient evidence exists to presume that the employment exceeded SGA limits. 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.

Hospital physician office visit documents (Exhibits 64-65) dated [REDACTED] were presented. It was noted that Claimant underwent a hysterectomy in 6/2011 following discovery of tumors. It was noted that Claimant was negative for pelvic pain but that an ultrasound would be ordered.

Hospital physician office visit documents (Exhibits 66-67) dated [REDACTED] were presented. It was noted that Claimant's pelvic exam was normal. HTN and DM were noted.

Spirometry testing (Exhibits 33-34) dated [REDACTED] was presented. It was noted that Claimant's FEV1 and FVC were normal. A summary noted that Claimant's testing was normal. A poor expiratory effort was noted which was noted as possibly consistent with airways disease.

A chest x-ray report (Exhibit 36) dated [REDACTED] was presented. An impression of a left-side mass consistent with sarcoidosis was noted.

Hospital documents (Exhibits 98-102; A195-A228) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of dyspnea, ongoing for 3 hours. Physical examination findings noted no cardiovascular or pulmonary abnormalities (see Exhibit 210). It was noted that Claimant was treated with Albuterol and discharged on [REDACTED]. Discharge diagnoses of resolved and unexplained dyspnea and morbid obesity were noted.

Hospital documents (Exhibits 103-166; A141-A193) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of dyspnea. It was noted that Claimant reported that breathing treatment provided no relief. Claimant's asthma was noted as stable. Physical examination findings noted no pulmonary or cardiac abnormalities. It was noted that Claimant's blood pressure medications were recently changed by her physician. It was noted that a chest CT (see Exhibit 177) and echocardiogram were negative. Noted discharge diagnoses included accelerated uncontrolled HTN with dyspnea, uncontrolled DM, and morbid obesity. A discharge date of [REDACTED] was noted.

A CT report of Claimant's chest (Exhibits 87-88) dated [REDACTED] was presented. An impression of no intra-thoracic disease was noted.

A 2D Echo report (Exhibits 91-94) dated [REDACTED] was presented. The following impressions were noted: normal left ventricle chamber size, 55% ejection fraction, mild hypertrophy, and no distinct wall abnormalities. Traces of aortic and mitral regurgitation were noted.

Cardiovascular physician treatment documents (Exhibits 21-23; 78-81) dated [REDACTED] were presented. Ongoing unresolved diagnoses of sarcoidosis, palpitations, syncope, dyspnea, lung mass, asthma, cough, and obesity were noted. It was noted that Claimant had not had syncope last "a few years ago" (see Exhibit 78). A plan for cardiac MRI to evaluate for sarcoidosis was noted.

Claimant presented a letter from a nurse practitioner (Exhibit 19) dated [REDACTED]. The letter stated that Claimant was treated for respiratory complications due to chronic lung disease and history of cancer. The letter stated that Claimant would be unable to be in environments of smoke or extreme temperatures.

Physician progress notes (Exhibits 40-53) were presented. The notes ranged in date from 9/2013-5/2014. Current conditions of chest pain, HTN, DM, morbid obesity, and hyperlipoproteinemia were consistently noted. On [REDACTED], it was noted that Claimant has been increasingly hopeless and frustrated due to multiple health problems; a recommendation of psychotherapy was noted.

Physician office visit documents (Exhibits 68-75; 170-172) dated [REDACTED] were presented. It was noted that Claimant presented for endometrial adenocarcinoma screening. It was noted that a CT of Claimant's pelvis dated [REDACTED] demonstrated a

nonspecific mass and mildly enlarged lymph nodes. It was noted that a chest x-ray from 1/2014 demonstrated soft tissue densities of uncertain etiology. An assessment of “no evidence of disease” was noted. A 6 month follow-up was noted as planned.

Hospital documents (Exhibits A1-A140) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of chest pain, ongoing 3-5 hours. Physical examination findings were all negative (see Exhibit 32). Claimant’s blood glucose level was noted to be 291. A medical history of sarcoidosis, cervical cancer, and hysterectomy was noted. It was noted that Claimant was negative for palpitations and leg swelling. Claimant’s HTN was noted as uncontrolled. It was noted that a stress test was negative. It was noted that Claimant refused to take Levemir, an insulin type medication. It was noted that a chest x-ray showed no acute cardiopulmonary process (see Exhibit 37). A CT of Claimant’s chest from 2 months ago was also noted as negative. Discharge instructions noted that Claimant should check blood pressure daily. Noted discharge diagnoses included chest pain, morbid obesity, DM (Type II), and HTN. A discharge date of [REDACTED] was noted.

Claimant alleged disability, in part, based on her history of endometrial cancer. Presented medical records verified that Claimant requires ongoing health insurance for check-ups; Claimant has such health insurance from the State of Michigan. The evidence also demonstrated that any carcinoma was removed by a hysterectomy. There was some evidence of a mass at Claimant’s check-up in 5/2014, though there was no indication of concern for a malignancy; for example, a biopsy was not ordered. Claimant failed to establish any impairment related to cervical cancer.

At the end of the 80 minute hearing, Claimant provided unflattering commentary about the undersigned, demanded the return of her previously admitted exhibits, and then abruptly left the hearing room. Claimant’s hearing behavior was consistent with someone who may have one or more psychological disorders. When considering Claimant’s extensive medical history, depression is a reasonable possibility. Treatment for depression was not verified. An inference of depression cannot be made solely on a physician recommendation for treatment and erratic hearing behavior. Claimant failed to establish a severe psychological impairment.

Claimant’s most compelling impairment was dyspnea related to some combination of sarcoidosis, HTN, and DM. It is reasonable to presume a degree of lifting/carrying and/or ambulation restrictions due to dyspnea.

It is found that Claimant established severe impairments related to dyspnea. Accordingly, 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 chronic pulmonary insufficiency (Listing 3.02) was considered based on Claimant's complaints of dyspnea. The listing was rejected due to respiratory testing not meeting SSA listing requirements.

A listing for cancers of the female genital tract (Listing 13.23) was considered. The listing was rejected due to a failure to establish that Claimant had any lingering cancer.

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 her previous employment involved doing taxes. Claimant testified that she has been increasingly forgetful. Claimant testified that she believes her forgetfulness is cause or related to insulin use.

Presented documents failed to verify any memory restrictions. Though breathing restrictions related to sarcoidosis are apparent, Claimant's breathing should be more than adequate to perform the relatively sedentary employment of tax work.

Claimant wrote a letter (Exhibit 14) dated [REDACTED] that stated that she is unable to work because she takes a muscle relaxer which causes her to sleep, requires use of a nebulizer every 4 hours, requires insulin which must be kept in a cool place, and a need for transportation.

Claimant presented a letter from the Detroit Department of Transportation (Exhibit 17) dated [REDACTED]. The letter stated that Claimant was eligible for Metrolift service. The approval for Metrolift appears to allow Claimant to rely on public transportation for travel. Access to refrigeration and use of a nebulizer are not significant barriers and should be easily resolvable.

Medical records established that Claimant was prescribed ipratropium (an airway muscle relaxer) (see Exhibit 71). Neither use of ipratropium nor Claimant's other medications would preclude the performance of accounting work.

Claimant presented a letter from a former tax service employer (Exhibit 20) dated [REDACTED]. The letter stated that Claimant was physically unable to perform employment. A hearsay statement from a former employer is not compelling evidence of disability. The letter was given little weight.

Based on the presented evidence, it is found that Claimant can perform past relevant employment. Accordingly, it is found that Claimant is not disabled and that DHS properly denied Claimant's SDA benefit application.

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 [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: **10/28/2014**

Date Mailed: **10/28/2014**

CG / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

