

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

IN THE MATTER OF:

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Reg. No.: 14-005874
Issue No.: 4009
Case No.: ██████████
Hearing Date: October 13, 2014
County: Wayne-District 18

ADMINISTRATIVE LAW JUDGE: ██████████

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; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on October 13, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, Medical Contact Worker.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. After the Department testified that it was unable to obtain any medical records from the doctor Claimant identified as his primary care physician, the record was extended to give Claimant the opportunity to obtain medical records from his treating physician. Claimant timely provided the requested documents. The record closed on November 12, 2014, and the matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

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 February 27, 2014, Claimant submitted an application for public assistance seeking SDA benefits.
2. On June 5, 2014, the Medical Review Team (MRT) found Claimant not disabled.

3. On June 14, 2014, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.
4. On June 24, 2014, the Department received Claimant's timely written request for hearing.
5. Claimant alleged physical disabling impairment due to back pain, right side numbness and high blood pressure.
6. On the date of the hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; he is [REDACTED] in height and weighs [REDACTED].
7. Claimant graduated from high school and had some college education.
8. Claimant has an employment history of work as a computer technician.
9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

A disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

To determine whether an individual is disabled for SSI purposes, the trier of fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in substantial gainful activity (SGA);
- (2) whether the individual's impairment is severe;

- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985).

In the present case, Claimant alleges physical disability due to back pain, right side numbness and high blood pressure. The medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below.

On December 11, 2013, Claimant was evaluated by a consulting physician at the request of the Social Security Administration (SSA). In his internal medical examination report, the doctor noted that Claimant informed him that he had had chronic lower back pain that radiated to the right foot since suffering a work-related injury in 1974. He rated his pain as 3 out of 10, but told the doctor that the pain had gotten worse and that he had fallen four times in the past year due to his right leg. The doctor noted that Claimant ambulated with a normal gait, which was not unsteady, lurching or unpredictable. He also noted that x-rays of Claimant's right hip and his lumbosacral spine taken in February 2013 were normal. Claimant did not use a handheld assistive device and appeared stable in the standing, sitting and supine positions. The doctor graded Claimant's grip strength at 5/5 bilaterally and noted he could write with his dominant hand and pick up coins with either hand without difficulty. The doctor noted that Claimant had a positive straight leg raise at 60 degrees in the sitting and supine positions in the right leg. He could not walk on his toes or heels, squat or bend but could perform tandem gait. In the range of motion assessment, the doctor noted that Claimant was limited to standing 20 minutes and could not bend or squat. The doctor concluded that Claimant's upper extremities had normal function, strength and range of motion and his hypertension was under good control but his lower extremities were somewhat limited by his low back pain and right hip pain, resulting in some limitations in his ability to walk, stand change positions and perform heavy lifting.

On May 10, 2014, that State sent Claimant for a consultative physical examination. The consulting doctor noted that Claimant was using a cane for balance and had mild kyphosis of the spine. The doctor noted that Claimant had decreased right grip strength but concluded that Claimant had no limitations to his use of his hands or arm or his feet or legs. The doctor found that Claimant could lift up to 20 pounds occasionally (1/3 of an 8 hour day) and had some limitations on his ability to stand. The doctor found no mental limitations.

On October 14, 2014, Claimant's treating physician completed a DHS-49, medical examination report, noting that Claimant was currently diagnosed with hypertension and lumbar spondylosis. The doctor noted that Claimant's right straight leg raise was 60 degrees and his left straight leg raise was 75 degrees. The doctor found that Claimant's condition was stable and limited him to frequently lifting 20 pounds (2/3 of an 8 hour day) and never more and to standing and/or walking less than 2 hours in an 8-hour work day. No limitations were noted with respect to his mental condition or his ability to use his hands or arms and his feet or legs for repetitive motions.

In consideration of the de minimus standard necessary to establish a severe impairment under Step 2, the foregoing evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual'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 an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

The evidence shows diagnosis of, and treatment for, back pain, right side numbness and weakness, and hypertension. Based on the objective medical evidence of back pain, Listing 1.00 (musculoskeletal system), particularly 1.04 (disorders of the spine), was reviewed. A listing under 1.04 requires evidence of compromise of the nerve root or spinal cord. Claimant's medical record does not support such a finding. To the contrary, the consulting physician who examined Claimant on December 11, 2013 noted that x-rays of Claimant right hip and lumbosacral spine taken in February 2013 were both normal. Therefore, Claimant's impairments concerning his back are not sufficient to support a finding that his condition meets, or is medically equivalent to, a listing under 1.04.

Because the source of Claimant's right side pain and numbness was not established by the medical record, both listings 1.02 (major dysfunction of a joint (due to any cause))

and 11.00 (neurological) were reviewed. However, the medical record does not support a finding that Claimant's right side pain and numbness met, or medically-equaled, either listing.

With respect to Claimant's diagnosis of, and treatment for, hypertension, Listing 4.00 (cardiovascular system) was considered, but the evidence showed that Claimant's hypertension was in good medical control. Therefore, the evidence was insufficient to establish the severity necessary to support a listing under 4.00.

Accordingly, the evidence does **not** show that Claimant's impairments due to his back pain, right-side pain and numbness, and hypertension meet, or are equal to, the required level of severity of a listing to be considered as disabling without further consideration.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The RFC takes into consideration the total limiting effects of all impairments, including those that are not severe. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, non-exertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

In this case, Claimant alleges only exertional limitations resulting from his impairments. To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

Sedentary work.

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

Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. 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. If someone can do light work, . . . he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, . . . he or she can also do sedentary and light work.

Heavy work.

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, . . . he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, . . . he or she can also do heavy, medium, light, and sedentary work. 20 CFR 416.967.

Claimant testified that he had constant back pain; with pain that radiated down his right leg, resulting in numbness in his right leg. And occasionally, about once a week, he would experience pain in his right arm that lasted about 5 minutes. With respect to his physical limitations, Claimant testified that he could walk only 5 to 10 minutes at a slow pace; he could stand no longer than 10 minutes at a time; he could not squat and had to bend carefully; he could sit for a-half to one hour then needed to move; that he could lift about 5 to 8 pounds or less if he was having a bad day, which was about every other day; and his right hand sometimes went numb. With respect to his activities of daily living, Claimant testified that he lived alone; was able to bathe himself; was able to dress himself, although he modified his dress so that he did not wear attire with buttons; was able to cook, clean and do his own laundry although it often took him a long time to take care of these tasks; could drive; and could shop although he leaned on the cart for assistance. He testified that his pain medication helped reduce his pain.

The examination reports of the two consulting physicians who examined Claimant on December 11, 2013 at the request of SSA and on May 10, 2014 at the request of the Department both support limitations concerning Claimant's ability to stand, bend, and squat. Although the SSA consulting doctor noted that Claimant ambulated with a normal gait, which was not unsteady, lurching or unpredictable, he also concluded that Claimant could not walk on his toes or heels, squat or bend and his standing was limited to 20 minutes. He found that Claimant had a positive straight leg raise at 60 degrees in the supine and seated positions in the right leg. The doctor concluded that Claimant's use of his lower extremities was somewhat limited by his lower back pain and right hip pain, resulting in limitations to his ability to walk, stand, change positions and perform heavy lifting. The doctor in the May 10, 2014 consultative exam also concluded that Claimant had limitations in his ability to stand. Similarly, Claimant's treating physician limited Claimant's ability to stand or walk to less than 2 hours in an 8-hour workday. He also noted that Claimant's straight leg raise was limited to 60 degrees in the right leg and 75 degrees in the left leg.

The consulting doctors found limited restrictions with respect to Claimant's upper body. The SSA consulting physician found that Claimant's grip strength was 5/5 bilaterally and he could write with his dominant hand and pick up coins with either hand without difficulty and concluded that he had normal function, strength and range of motion in his arms. In the May 10, 2014 consultative physical examination requested by the State, the doctor noted that Claimant's right grip strength was decreased but found no limitations on his use of his upper or lower extremities and concluded he could lift up to 20 pounds occasionally (1/3 of an 8-hour day). Claimant's treating physician also concluded that Claimant could lift 20 pounds but frequently (2/3 of an 8-hour day) and never more. He found no restrictions in Claimant's ability to use his hands or arms or his legs or feet.

With respect to Claimant's exertional limitations, a review of the entire record particularly the standing restrictions noted by both consulting and the treating physicians and the weight restriction noted in the exam report requested by the Department and by the treating physicians, which supported Claimant's testimony concerning his limited ability to stand for long periods or walk long distances, it is found that Claimant maintains the physical capacity to perform, at most, light work as defined by 20 CFR 416.967(b).

Claimant's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). 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). An individual who has the RFC to meet the physical and mental demands of work done

in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant is limited to no more than light work activities. Claimant's work history in the 15 years prior to the application consists of work as a data analyst and computer repairman involving trouble shooting at employees' desks, standing and walking four of eight hours each day, and lifting up to 50 pounds on occasion (medium, semi-skilled). In light of the entire record and Claimant's RFC, it is found that Claimant is unable to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Claimant's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy when the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). Because Claimant has alleged only exertional limitations, Appendix 2 may be used to establish whether Claimant is disabled under Step 5.

In this case, at the time of hearing, Claimant was [REDACTED] years old and, thus, considered to be a closing approaching retirement age individual (age 60-64) for MA-P purposes. He is a high school graduate with some college education with a history of skilled work experience. As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform light work activities. The Medical-Vocational Guidelines result in a finding that Claimant is disabled based his physical limitations. Therefore, after review of the entire record, including Claimant's testimony, and his age, education, work experience, Claimant is found disabled at Step 5 for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for purposes of the SDA benefit programs.

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Process Claimant's February 27, 2014, SDA application to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination;
2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified;
3. Review Claimant's continued eligibility in December 2015.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **11/21/2014**

Date Mailed: **11/21/2014**

ACE / tlf

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]