

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-006879
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: October 16, 2014
County: Wayne (18)

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 October 16, 2014 from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied 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 [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. As of the date of the administrative hearing, Claimant was a 47 year old female with a height of 5'3" and weight of 144 pounds.
7. Claimant's highest education year completed was the 12th grade, via general equivalency degree.
8. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient.
9. Claimant alleged disability based on impairments and issues including lower back pain, upper back pain, panic attacks, post-traumatic stress disorder (PTSD), joint pain, left eye vision loss, and twitchy hands.

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. The 12 month period is applicable for a disability determination for Medicaid; as noted above, SDA eligibility is based on a 90 day 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 2014 monthly income limit considered SGA for non-blind individuals is \$1,060.

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 12 month durational period is applicable to SSA and MA benefits; as noted above, SDA eligibility requires only a 90 day duration of disability.

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.

Vaginal ultrasound reports (Exhibits 27-30; 98-99) from 2011 were presented. A mildly enlarged uterus was noted.

An MRI lumbar spinal report (Exhibit 31; 97) dated [REDACTED] was presented. A disc bulge and mild canal stenosis was noted at L3-L4. At L4-L5, a small-to-moderate disc bulge causing moderate central spinal canal stenosis was noted; moderate right-sided and mild left-sided neuroforaminal narrowing was also noted. It was also noted that there were Modic degenerative changes. It was noted that a small disc bulge abutted the bilateral descending S1 nerve roots. It was noted that moderate-to-severe narrowing of right neural foramen at L5-S1. Subsequent documents noted moderate right and moderate-to-severe left sided foraminal stenosis at L5-S1 (see Exhibit 32).

Various physician office visit documents (Exhibits 111-118) from 2011 and 2012 were presented. A diagnosis of COPD was noted.

A CT report (Exhibit 24) dated [REDACTED] was presented. It was noted that small osteophytes were seen protruding into neural foramen at C4-C5 and C5-C6. A conclusion of cervical spondylosis was noted.

Hospital documents (Exhibits 83-93) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of pain in right arm, right elbow, right forearm, right wrist, and right hand. It was noted that Claimant reported tripping and falling onto her right side, approximately one month prior. Physical examination findings noted right shoulder weakness, decreased right shoulder motion, and decreased right-sided sensation. Tenderness along the shoulder was noted. It was noted that Claimant recently received prednisone, muscle relaxants, and Norco for her pain.

A Patient Assessment (Exhibits 11-17) dated [REDACTED] was presented. The assessment was completed by a newly treating psychiatrist. It was noted that Claimant reported the following symptoms: panic attacks, depressed mood, racing heart, troubled sleep, and fluctuating weight. It was noted that Claimant was grieving the deaths of her spouse and nephew. Observations of Claimant included the following: orientation x3, anxious and depressed mood, blunted affect, fluent speech, tearful behavior, coherent thought content, impaired attention, and normal memory. An Axis I diagnosis of major depression was noted. Claimant's GAF was 50. Treatment recommendations included psychotherapy and scripts for Wellbutrin and Xanax.

Psychiatric progress notes (Exhibits 8-10) were presented. The notes documented psychiatric appointments from 8/2013, 9/2013 and 10/2013. Fair attention, intact memory, and normal speech were consistently noted. Scripts for Wellbertin and Xannax were consistently noted.

A neurology treatment document (Exhibit 34) dated [REDACTED] was presented. Right-side shoulder, neck, arm, and hand pain were reported by Claimant. Medications of Soma, Flexeril, and Motrin were prescribed.

Hospital documents (Exhibits 32-33) dated [REDACTED] were presented. It was noted that Claimant reported arm pain. It was noted that a neurological examination revealed right-sided movement variations. It was noted that Claimant had full muscle strength in all extremities. Right shoulder range of motion was noted as restricted. Recommendations included physical therapy referral and Motrin 800mg to treat pain. A concern about drug seeking behavior was noted.

Physician office visit documents (Exhibits 100-110) were presented. Monthly appointments from 4/2013-2/2014 were documented. It was regularly noted that

Claimant complained of severe chronic pain causing abnormal function, depression, anxiety, and insomnia. Narcotics were regularly noted as prescribed.

Hospital documents (Exhibits 18-23; 75-82) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of neck, and right-sided shoulder and arm pain. The pain was described as 7/10, with no relief from Norco. Ranges of motion were noted as normal. Neck tenderness was noted. No neurological deficits were noted. A diagnosis of cervical nerve root disorder was noted. Prescribed medications included Cyclobenzaprine, Prednisone, and Tramadol.

Hospital documents (Exhibits 36-74) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of dyspnea and chest pain. All joint ranges of motion were noted as normal. It was noted that Claimant took Norco for joint pain. An impression of right-sided basilar atelectasis was noted following a chest x-ray. Lexiscan heart testing was noted to be negative. It was noted that Claimant was a pack per day smoker. Treatment details were not apparent. A discharge date of [REDACTED] was noted.

Presented documents sufficiently verified upper right abnormalities and pain. Medical documents also verified multi-level stenosis affecting the nerve root of Claimant's cervical spine. It was further verified that Claimant has depression, which is affecting her ability to concentrate.

Presented documents sufficiently verified that Claimant's impairments began no later than 2/2014 and are expected to last at least 3 months. It is found that Claimant established 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 knee pain. The listing was rejected due to a failure to establish that Claimant is unable to ambulate effectively.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in loss of strength or an inability to ambulate effectively.

A listing for affective disorder (Listing 12.04) was considered based on diagnoses of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement, suffered

repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

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 previously performed babysitting. Claimant's unrefuted testimony was suggestive that her wage income did not amount to SGA.

Claimant testified that she previously performed full-time work as a certified nursing assistant. Claimant stated that her duties included the following: bathing patients, changing patients' clothes, and changing colostomy bags. Claimant testified that she is unable to perform the lifting required of her past employment. Claimant's testimony was credible and consistent with presented evidence. It is found that Claimant is unable to perform past 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.

Radiology verified that Claimant's lumbar underwent Modic changes. Modic changes are understood to cause constant pain with little-to-no relief. This consideration is consistent with a finding of severe back pain. This finding is consistent with reported ongoing pain despite taking Norco, a known strong opioid.

Radiology also verified that Claimant has bilateral foraminal stenosis at L5-S1. The stenosis was described as moderate-to-severe. Such a description is consistent with significant back pain which greatly restricts employment opportunities.

Cervical spine abnormalities were also verified. Though Claimant's abnormalities paled in comparison to her lumbar problems, a diagnosis of cervical spondylosis is consistent with radiating pain that would affect Claimant's arms.

On top of Claimant's physical problems, regular treatment for depression was verified. Claimant's GAF of 50 was consistent with marked restrictions that would further hinder Claimant's employment opportunities.

Claimant's lumbar and cervical problems would restrict Claimant's ambulation, lifting/carrying, and sitting abilities. The restrictions would leave Claimant very few employment opportunities. Presumably, Claimant would require severe pain medication to perform a simple and sedentary type of employment which allowed sitting/standing options. When factoring Claimant's psychological restrictions, there is simply no employment that Claimant could be expected to reasonably perform and sustain.

It is found that Claimant's combined physical and psychological restrictions render her to be disabled. Accordingly, Claimant is a disabled individual and it is found 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 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: **11/7/2014**

Date Mailed: **11/7/2014**

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:

