

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

IN THE MATTER OF:



Reg. No.: 14-013444
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: December 3, 2014
County: Wayne (55)

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 December 3, 2014, from Hamtramck, Michigan. Participants included the above-named Claimant, [REDACTED], Claimant's fiancé, testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker (via telephone).

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 [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 5-6).
4. On [REDACTED], DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 3-4) 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 35 year old female with a height of 5'10" and weight of 240 pounds.
7. Claimant has no known relevant history of alcohol or illegal substance abuse.
8. Claimant's highest education year completed was the 10th grade.
9. Claimant alleged disability based on restrictions related to diagnoses of scoliosis, arthritis, slipped spinal discs, severe anxiety, and bipolar disorder.

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 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

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 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 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.

Hospital documents (Exhibits 32-34) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of right upper quadrant abdominal pain, ongoing for a few days. It was noted that pain was worse when eating greasy foods. Claimant denied any weight loss. A positive Murphy's sign was noted. Musculoskeletal examination was unremarkable. A final impression of undiagnosed acute abdominal pain (possibly cholelithiasis) was noted. Follow-up for reevaluation was recommended.

A radiology report of Claimant's left knee (Exhibit A1) dated [REDACTED] was presented. An impression of moderately advanced tri-compartmental degenerative osteoarthritic disease was noted.

A radiology report of Claimant's right knee (Exhibit A2) dated [REDACTED] was presented. An impression of mild-to-moderate degenerative changes and degenerative osteoarthritic disease was noted.

A radiology report of Claimant's lumbar (Exhibit A3) dated [REDACTED] was presented. An impression of "very minimal" levoscoliosis and mild degenerative changes was noted.

A Medical Examination Report (Exhibits 17-19) dated [REDACTED] was presented. The form was completed by an internal medicine physician with an unspecified history of treating Claimant; Claimant credibly testified that she began seeing her physician in 4/2014. Claimant's physician listed diagnoses of asthma, GERD, obesity, severe degenerative joint disease of the knee, and lumbar pain. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant can meet household needs.

A Psychiatric Evaluation (Exhibits 20-25) dated [REDACTED] was presented. The evaluation was completed by a treating mental health agency physician. It was noted that Claimant reported anxiety and depression symptoms. It was noted that Claimant medications included Klonopin, Xanax, Prozac, and lithium. It was noted that Claimant reported difficulty with sleeping. A history of alcohol abuse and 2 year sobriety was noted. It was noted that Claimant ran out of meds two months prior. A psychiatric hospital admission and suicide attempt from Claimant's teenage years was noted. Observations of Claimant included the following: cooperative attitude, average grooming, anxious mood, constricted affect, normal psychomotor activity, normal speech, no hallucinations, goal directed thought process, paranoid thought, normal concentration, adequate impulse control, and adequate judgment. Axis I diagnoses of bipolar disorder and PTSD were noted. Claimant's GAF (as of [REDACTED]) was noted to be 50.

Mental health treating agency evaluation and management documents (Exhibits 26-31) dated [REDACTED] were presented. It was noted that Claimant was prescribed alprazolam, Fluoxetine, and lithium.

Presented documents verified one hospital visit for abdominal pain. No diagnosis was made. No follow-up treatment was verified. Claimant failed to verify a severe impairment related to abdominal pain.

Claimant verified problems with both of her knees, lumbar and psyche. Claimant's physical problems were verified by radiology reports. Claimant's psychological obstacles were verified by a documented, but short, treatment history.

Claimant alleged that she has work restrictions of anxiety, ambulation, standing, and needing to shift when sitting. Claimant's testimony was consistent with presented documents. 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 bilateral 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 lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for anxiety-related disorders (Listing 12.06) was considered based on Claimant's treating physician's diagnosis of an anxiety disorder. 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 had a complete inability to function outside of the home.

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 past jobs included the following: hotel housekeeper, certified nursing assistant, cashier, and movie cashier. Claimant testimony implied that she is unable to perform the standing and ambulation required of her past jobs. Claimant's testimony was 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.

Physician statements of restrictions were provided. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*.

In a Medical Examination Report dated [REDACTED], Claimant's physician provided various physical restrictions. Claimant's physician did not specify any sitting restrictions for Claimant, presumably, because Claimant has none. Claimant testified that she is capable of sitting for two hour periods when allowed to shift positions. Claimant's testimony was consistent with an ability to perform the sitting required of sedentary employment.

Claimant's physician stated that Claimant was capable of repetitive arm and hand movements such as reaching, fine manipulating, and simple grasping. Claimant did not allege having such restrictions. This consideration supports finding that Claimant's sedentary employment opportunities are not decreased by hand and/or arm restrictions.

Claimant's physician opined that Claimant was restricted to less than 2 hours of standing and walking over an eight-hour workday. Claimant's physician also stated that Claimant was restricted from repetitively operating foot/leg controls.

Claimant's physician did not list any treatment history with Claimant. Generally, as treatment history increases, so does a physician's knowledge of a patient. Claimant's unknown history with her physician lessens the credibility of provided restrictions.

Claimant's physician did not provide any stated reason for the restrictions or cite any radiology or medical testing. This consideration lessens the credibility of provided restrictions. As discussed in step 2, radiology was presented to support some degree of restrictions.

Generally, an inability to stand and/or walk for 2 hours within an 8 hour workday is consistent with severe abnormalities. *Moderate* degenerative arthritis in Claimant's left knee was verified. *Mild-to-moderate* arthritis in Claimant's right knee was verified. *Minimal* levoscoliosis and *mild* degenerative changes in Claimant's lumbar were verified.

Claimant testified that she might be prescribed a cane. It was not disputed that Claimant has not yet been prescribed a cane. This consideration supports finding that Claimant can perform the ambulation and/or standing required of sedentary employment.

A consideration of disability is also hampered by Claimant's very limited treatment history. Claimant testified that physical therapy for her back over 2010-2012 did not relieve her pain. The therapy was not verified. No attempted treatment (e.g. surgery, therapy, chiropractor, steroid injections...) was verified other than pain meds. This consideration is suggestive that Claimant's pain could lessen with treatment.

The most compelling evidence supporting walking/standing restrictions was the diagnosis. Tri-compartmental arthritis is understood to affect the medial femoro-tibial, lateral femoro-tibial, and patellofemoral compartments. Tri-compartmental arthritis is accepted to be a significantly worse condition than the more common unicompartmental arthritis. This consideration supports finding that Claimant is unable to perform the ambulation and/or standing required of sedentary employment.

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Claimant also presented a limited amount of psychological treatment. On [REDACTED], Claimant's GAF was 50. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." Claimant's GAF is consistent with restrictions that would impede employment.

Very little treatment history was verified, though a longer period of treatment was suggested. The little history that was verified suggested that Claimant's symptoms diminished. During evaluation, Claimant reported that "I feel better now" (see Exhibit 20). Claimant's improvement is presumed to be primarily due to medication compliance.

This consideration suggests that Claimant's restrictions may have improved from marked to moderate.

Presented evidence verified that Claimant has moderate tri-compartmental arthritis of the left knee, mild-to-moderate right knee arthritis, a small degree of degeneration in her back causing abnormal curvature, and fairly serious psychological symptoms that limit her concentration. It is a close call, however, Claimant's problems, taken together, would likely preclude the performance of even sedentary employment. Accordingly, it is found that Claimant is a disabled individual and that DHS erred in denying 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: **12/19/2014**

Date Mailed: **12/19/2014**

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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 48909-8139

CC:

