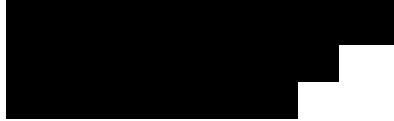


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-014007
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: November 26, 2014
County: Wayne (35)

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 November 26, 2014 from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Hearings Facilitator.

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 9/2/14, Claimant applied for SDA benefits.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On 10/2/14, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-6).
4. On 10/6/14, DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 10/9/14, Claimant requested a hearing disputing the denial of SDA benefits.
6. On 11/26/14, an administrative hearing was held.

7. During the hearing, Claimant and DHS waived the right to receive a timely hearing decision.
8. During the hearing, the record was extended 30 days to allow Claimant to submit primary care physician and dental treatment documents; an Interim Order Extending the Record was subsequently mailed to both parties.
9. By 12/26/14, Claimant failed to submit additional documents.
10. As of the date of the administrative hearing, Claimant was a 39 year old male.
11. Claimant has no substantial gain activity since 2008.
12. Claimant has no known relevant history of alcohol or illegal substance abuse.
13. Claimant's highest education year completed was the 12th grade, via general equivalency degree.
14. Claimant alleged disability based on restrictions related to tooth decay, diabetes mellitus (DM), knee pain, psoriasis, toe pain, neuropathy in hands and feet, 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 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

Claimant credibly testified that he has not performed employment since the date of the SDA 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 period 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.

Physician office visit documents (Exhibits 61-63) dated 10/2/13 were presented. It was noted that Claimant complained of worsening DM, dental disease, increasing fatigue, and slow healing wounds. Humalog and Lantus were noted as prescribed.

Physician office visit documents (Exhibits 64-65) dated 10/17/13 were presented. Ongoing DM treatment was noted.

Hospital documents (Exhibits 32-41) from an admission dated 11/5/13 were presented. It was noted that Claimant presented with severe anion gap metabolic acidosis. It was noted that Claimant was placed in ICU and treated with an insulin drip. It was noted that Claimant failed to take insulin in the prior week and a half due to a lack of health insurance. It was noted that Claimant's condition improved following compliance with diabetes medication. Noted discharge diagnoses included medical noncompliance, resolved diabetic ketoacidosis, poorly controlled DM, psoriasis, and tobacco abuse. A discharge date of 11/7/13 was noted.

Physician office visit documents (Exhibits 68-72) dated 12/12/13 were presented. It was noted that Claimant's DM was improving. An unstable gait was noted. It was noted that Claimant was noted to be positive for Trendelenburg. Glove and stocking hypoesthesia was noted. Assessments of DM, COPD, and polyneuropathy were noted.

Physician office visit documents (Exhibits 73-76) dated 1/9/14 were presented. Burning of extremities was noted (specifics were not noted). An ongoing prescription for Humalog was noted.

Physician office visit documents (Exhibits 77-80) dated 2/6/14 were presented. It was noted that Claimant's glucose readings ranged from 83 to 173. It was noted that Claimant denied dental disease and dysesthesia. Physical examination findings were all noted as negative.

Hospital documents (Exhibits 42-60) from an encounter dated 2/18/14 were presented. It was noted that Claimant presented with complaints of constipation. It was noted that Claimant's last bowel movement was 11 days before admission. It was noted that chest and abdomen radiology was performed; normal views were noted. It was noted that an enema was performed, resulting in passage of a large amount of stool; it was also noted that abdominal discomfort was relieved.

Physician office visit documents (Exhibits 81-82) dated 3/6/14 were presented. A refill for Humalog was noted.

Physician office visit documents (Exhibits 84-85) dated 5/8/14 were presented. Ongoing DM treatment was noted.

Physician office visit documents (86-88) dated 6/12/14 were presented. Ongoing DM and polyneuropathy treatment was noted. DM was described as stable. Physical examination findings were all noted as negative.

Physician office visit documents (89-91) 7/17/14 were presented. It was noted that Claimant's glucose readings ranged from 140-180. Claimant's DM was described as stable.

A Medical Examination Report (Exhibits 29-31) dated 9/15/14 was presented. The form was completed by an internal medicine physician with an approximate one year history of treating Claimant. It was noted that Claimant was last examined on 7/17/14. Claimant's physician listed diagnoses of diabetes mellitus II (with complications), limb tingling, and limb numbness. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant can meet household needs. It was noted that neuropathy in all limbs justified various restrictions (addressed in the step three analysis).

Claimant testified that he has standing and ambulation restrictions related to neuropathy. Claimant's testimony was consistent with presented records which verified treatment for polyneuropathy, a hospital admission related to DKA, and recurring diabetic problems. It is found that Claimant established a severe impairment beginning 9/2014 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.

Claimant's most prominent impairment appears to be neuropathy. The listing most applicable is covered by 11.14, which reads (in combination with Listing 11.04B):

11.14 *Peripheral neuropathies.* With disorganization of motor function characterized by significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C), in spite of prescribed treatment.

Claimant's physician diagnosed Claimant with polyneuropathy. Polyneuropathy is consistent with diminished function in multiple limbs. The diagnosis is consistent with a finding that Claimant experiences motor function disorganization in multiple extremities.

Claimant was found positive for Trendelenburg's sign. The test is understood to verify an abnormal gait consistent with weak hip muscles and body pain. Positive testing is consistent with disturbance of gait.

Generally, a positive Trendelenburg's sign is indicative of ambulation restrictions. As it happened, Claimant's physician did not list any walking restrictions on a Medical Examination Report. This consideration suggests that Claimant does not meet the above SSA listing.

Claimant's physician opined that Claimant was restricted from performing the following repetitive actions: simple/grasping, reaching, pushing/pulling, fine manipulating, and operating foot/leg controls. Such restrictions are highly indicative of significant motor function disorganization and dexterity restrictions which prevent the performance of any employment.

Consideration was given to the fact that Claimant alleged polyneuropathy restrictions, yet failed to verify any neurologist treatment. Generally, restrictions related to neuropathy are more persuasive when from a neurologist than from a primary care physician. Claimant's hospital treatment history, diagnosis of polyneuropathy and positive Trendelenburg's sign were sufficient to justify accepting Claimant's treating physician's statements concerning repetitive movement restrictions.

Consideration was also given to the general absence of multiple treatment records despite Claimant's apparently lengthy history with his physician. This consideration is more troubling when factoring that the hearing record was extended for Claimant to provide additional treatment records. Despite Claimant's failure to submit additional records, presented records were sufficient to justify a finding that Claimant has multiple extremity motor function disorganization.

Claimant's medical history and treating physician statements are supportive in finding that Claimant meets the SSA listing for peripheral neuropathies. It is found that Claimant meets SSA Listing 11.14 and is a disabled individual. Accordingly, it is found 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 9/2/14;
- (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**.

Christine Dardach

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

Date Signed: **1/2/2015**

Date Mailed: **1/2/2015**

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 48909-8139

cc: 

