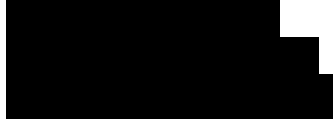


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-014357
Issue No.: 4009 3001
Case No.: [REDACTED]
Hearing Date: December 17, 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 December 17, 2014 from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Hearings Facilitator.

ISSUES

The first issue is whether DHS properly determined Claimant's Food Assistance Program (FAP) eligibility.

The second 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. Claimant was an ongoing FAP benefit recipient.
2. Claimant was the only member of her FAP benefit group.
3. On 3/7/14, Claimant applied for SDA benefits.
4. Claimant's only basis for SDA benefits was as a disabled individual.
5. Claimant had no employment income since applying for SDA.

6. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2), in part, by determining that Claimant can perform other work.
7. On [REDACTED], DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
8. On [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits.
9. On [REDACTED], Claimant also requested a hearing to dispute her 9/2014 FAP benefit eligibility of \$189/month.
10. As of the date of the administrative hearing, Claimant was a 36 year old female.
11. As of the date of the administrative hearing, Claimant was a high school graduate with an unspecified amount of college credits.
12. Claimant alleged disability based on restrictions related to back pain and depression.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Claimant requested a hearing, in part, to dispute the amount of her FAP eligibility. Claimant initially stated that she received \$189/month in FAP benefits. After checking the DHS database, DHS responded that Claimant received \$189/month through 9/2014; beginning 10/2014, Claimant received \$194/month. The DHS testimony was credible.

It was not disputed that Claimant was the only member of her FAP benefit group. Through 9/2014, the maximum amount of FAP benefits that could be issued to a one-person FAP group was \$189. RFT (10/2013), p. 1. Beginning 10/2014, the maximum amount of FAP eligibility for a one-person FAP group was \$194. RFT (10/2013), p. 1.

Claimant received the maximum amount of FAP eligible. Claimant is not entitled to receive more than the maximum issuance available for her FAP benefit group size. It is found that DHS properly determined Claimant's FAP eligibility.

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 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 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.

Physician office visit documents (Exhibits 36-38) dated [REDACTED] were presented. It was noted that Claimant reported leg pain. A diagnosis of sciatica was noted.

A radiology report (Exhibit 35) dated [REDACTED] was presented. It was noted that an MRI of Claimant's lumbar spine was performed. An impression of a large central and paramedian disc extrusion at L4-L5 was noted. The disc bulge was noted to cause moderate to severe compression of the left thecal sac and nerve root compressions.

A physician letter (Exhibit 32) dated [REDACTED] was presented. It was noted that Claimant was an ongoing patient treated for lumbosacral radiculopathy with an onset month of 7/2013. Claimant's physician noted that persistent pain caused difficulty with lifting and bending. Claimant's physician also noted that Claimant has difficulty with sitting and standing for prolonged periods. It was noted that Claimant's pain would last indefinitely.

Physician office visit documents (Exhibits 33-34) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of anxiety, fatigue, and sciatica. It was noted that Claimant reported worsening psyche with recent stressors; a low dosage of Prozac was noted as prescribed.

An internal medicine examination report (Exhibits 6-13) dated [REDACTED] was presented. The report was completed by a consultative physician. It was noted that Claimant reported depression, anxiety, chronic back pain, insomnia, and fatigue. A physical examination revealed no obvious spinal deformity, swelling, or muscle spasm. It was noted that Claimant slowly performed tandem walk, heel walk, and toe walk. Reduced lumbar flexion and hip forward flexion motion was noted. It was noted that Claimant could perform all 23 listed abilities (sitting, standing, bending, carrying...), but each with pain. Impressions of chronic back pain, depression and anxiety, and insomnia were noted.

Claimant alleged that back pain causes her walking, sitting, and lifting restrictions. Presented documents established that Claimant's restrictions persisted since 7/2013. Claimant's testimony was consistent with treatment documents and presented radiology. It is found that Claimant established a severe impairment related to back problems.

Claimant also alleged that depression and/or anxiety causes her fatigue and that her medications make her drowsy. Claimant's testimony was consistent with presented documents. Some degree of restriction can be inferred based on treatment for depression and Claimant's medication list.

It is found that Claimant established a severe impairment. Accordingly, the analysis may proceed to step three of the analysis.

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 back pain. Spinal disorders are covered by Listing 1.04 which reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Claimant estimated that she is only capable of walking “a few feet”. Claimant testified that back pain prevents her from sitting longer than 5-10 minutes. Claimant’s testimony was consistent with what she reported to a treating physician and consultative physician. Claimant’s statements were also consistent with restrictions stated by her physician in a letter from 3/2014. This evidence is consistent with a spinal disorder that meets SSA listing levels.

Claimant’s back pain was diagnosed as chronic by her treating physician. Claimant’s pain was also described as radiating. Weakness can be inferred by Claimant’s limited walking restrictions.

Most importantly, radiological evidence supported Claimant’s testimony. “Moderate to severe” stenosis is highly indicative of being unable to ambulate effectively. Nerve root compression was also verified; this is consistent with immense pain that would likely cause a person to have difficulty ambulating.

A consultative examiner noted that Claimant reported trying epidural injections (see Exhibit 6) to treat back pain. The examiner also noted that Claimant reportedly attempted physical therapy in early 2014. Reported medical improvement was noted (see Exhibit 6), but Claimant credibly testified that her back pain returned shortly after completing therapy. Claimant’s effort in pursuing different treatments is further support for Claimant’s testimony.

Based on presented evidence, it is found that Claimant meets Listing 1.04 (c). 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 Claimant is not entitled to receive more than the maximum of FAP benefits authorized by DHS policy for a one-person FAP benefit group. The actions taken by DHS are **AFFIRMED**.

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**

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:

