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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-016018
Issue No.: 4009
Case No.: [redacted]
Hearing Date: January 8, 2015
County: Macomb (36)

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 January 8, 2015, from Detroit, Michigan. Participants included the above-named Claimant. [redacted], Claimant's mother, testified and appeared as Claimant's authorized hearing representative (AHR). 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 (Exhibits 49-50) 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 25 year old male.

7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.

8. Claimant has a history of semi-skilled employment, with no transferrable job skills.

9. Claimant's highest education year completed was the 12th grade.

10. Claimant alleged disability based on injuries sustained in a motor vehicle accident.

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 day period of disability.

SGA means a person does the following: performs significant duties, 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 SGA. *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 CRF 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 F2d 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.

Claimant was involved in a motor vehicle accident in 3/2010. Reported details of the accident noted that a driver cut-off Claimant's vehicle causing Claimant to hit a wall resulting in Claimant's vehicle flipping. Claimant testified that the accident caused traumatic head injuries.

Hospital discharge instructions (Exhibit 37) dated [redacted] were presented. A diagnosis of seizures was noted. Treatment details were not apparent. Discharge instructions noted that Claimant could not drive for 6 months.

Hospital discharge instructions (Exhibits 35-36) dated [redacted] were presented. Treatment for seizures was noted. Treatment details were not apparent.

A Return to Work/School letter dated [redacted] (Exhibit 34) from a treating physician was presented. It was noted that Claimant would be hospitalized from [redacted] for seizure monitoring.

An epilepsy program director/physician letter (Exhibit 25; 33) dated [redacted] was presented. It was noted that Claimant had an MRI of his brain on [redacted] and epilepsy monitoring over [redacted].

An epilepsy program director/physician letter (Exhibit 24; 32) dated [redacted] was presented. It was noted that Claimant reported a history of seizure, post-MVA. It was noted that Claimant recently underwent a long-term recording EEG which did not capture any episodes. The EEG was noted to capture evidence of irritative focus over the left anterior temporal lobe. A follow-up on [redacted] was noted. Restrictions from driving, working near open water, working with heavy machinery, and working with flame were noted.

Hospital discharge instructions (Exhibit 38) dated [redacted] were presented. A primary diagnosis of breakthrough seizure was noted. Treatment details were not apparent. A history of traumatic brain injury was noted.

A referral script dated [redacted] (Exhibit 29) from a treating physician was presented. It was noted that Claimant was referred for a dental consultation due to broken teeth related to jaw pain and tension.

A prescription dated [redacted] (Exhibit 28) from a treating physician was presented. A need for 24 hour attendant care was noted. The reason for care was noted to be seizure disorder. The dates of need were noted to be from [redacted].

A neurologist letter (Exhibits 40-46) dated [redacted] was presented. It was noted that Claimant presented for a neurological consultative examination. Noted reported symptoms included grand mal seizures, silent seizures, memory loss, intermittent taste bud loss, headaches, and lack of motivation. A detailed medical history was noted. It was noted that Claimant's responsiveness improved when he was socially engaged. The neurologist opined that reported symptoms of non-responsiveness thought to be seizures were more likely due to underlying depression symptoms. It was noted that there was no neurological basis for Claimant's complaints of full body pain. It was noted that Claimant's reported headaches were consistent with post-traumatic headaches. A recommendation of psychotherapy was noted. It was noted that Clamant had no neurological deficits and no nerve injury to explain reported hip and/or leg pain. It was noted that Claimant neither required attendant care nor household assistance.

A Medical Examination Report (Exhibits 13-15) dated [redacted] was presented. The form was completed by a rehabilitation physician with an approximate 5 month history of treating Claimant. Claimant's physician listed diagnoses of a traumatic brain injury, post-traumatic seizures, and depression. An impression was given that Claimant's condition

was stable. Carbamazepine was noted as Claimant only current medication. It was noted that Claimant cannot meet household needs and that his family provided 24 hour supervision. Slowed cognitive processing was noted as a physical examination finding. Claimant's physician opined that Claimant was restricted as follows over an eight-hour workday, less than 2 hours of standing and/or walking, and less than 6 hours of sitting. Claimant's physician opined that Claimant was unrestricted in performing listed repetitive actions (simple grasping, reaching, fine manipulation, and pushing/pulling). Claimant's physician restricted Claimant to performing occasional lifting/carrying of 25 pounds, never 50 pounds or more. Restrictions were based on Claimant's seizure history. Claimant's physician also noted restrictions in comprehension, sustaining concentration, reading/writing, memory, following simple directions, and social interaction.

Physician office visit documents (Exhibits A2-A3) dated [redacted] were presented. Ongoing seizure treatment was noted. A 3 month follow-up was noted as scheduled.

A physician office visit document (Exhibits A4) dated [redacted] was presented. It was noted that Claimant reported a complaint of dyspnea. A diagnosis of chronic rhinitis was noted.

Hospital discharge instructions (Exhibit A5) dated [redacted] were presented. A primary diagnosis of breakthrough seizure was noted. Treatment details were not apparent. A history of traumatic brain injury was noted.

A physician office visit document (Exhibits A6) dated [redacted] was presented. It was noted that Claimant reported foot pain. Ibuprofen was noted as prescribed.

Presented records verified ongoing treatment for seizures. The cause of reported seizures was disputed. Claimant's treating physician opined that Claimant's ongoing difficulties were caused by abnormal neurology. A consultative neurologist opined that Claimant's conditions were rooted in depression. The precise cause of Claimant's difficulties is not as important (for disability evaluation purposes) as the degree of Claimant's restrictions.

Claimant's mother and Claimant testified that Claimant has concentration difficulties, social interaction difficulties, and memory loss. The testimony was suggestive of difficulty for Claimant to perform daily activities of cleaning, bathing and cooking.

Claimant and his mother also testified that Claimant has physical pain, likely related to neurological dysfunction. The testimony was consistent with Claimant's treating physician who restricted Claimant's ability to lift/carry and ambulate.

Based on Claimant's medical history, some degree of exertional restrictions (e.g. ambulation) and non-exertional restrictions (e.g. concentration) can be inferred. It is found that Claimant has significant impairment to performing basic work activities, which

has lasted longer than 90 days. Accordingly, it is found that Claimant is a disabled individual and the analysis may proceed to Step 3.

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 pain and functioning difficulties related to a fall. Listing 12.02 covers organ brain disorders and reads:

> **12.02 Organic mental disorders**: Psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.
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> A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:
> 1. Disorientation to time and place; or
> 2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
> 3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
> 4. Change in personality; or
> 5. Disturbance in mood; or
> 6. Emotional liability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
> 7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., Luria-Nebraska, Halstead-Reitan, etc.;
>
> AND
>
> B. Resulting in at least two of the following:
> 1. Marked restriction of activities of daily living; or
> 2. Marked difficulties in maintaining social functioning; or
> 3. Marked difficulties in maintaining concentration, persistence, or pace; or
> 4. Repeated episodes of decompensation, each of extended duration;
>
> OR
>
> C. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to

do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of one or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

It should be noted that Claimant did not provide any records from treatment immediately following his car accident. A head injury can be found based on more recent treatment which noted that Claimant had a traumatic brain injury.

A letter dated [redacted] (Exhibit A1) from a friend of Claimant's was presented. The letter was hearsay and not given significant consideration for its specific claims; the gist of the letter was persuasive. Claimant's friend stated that Claimant's lifestyle and attitude dramatically changed for the worse since Claimant's car accident. The letter was consistent with Claimant's and his mother's testimony. It is found that Clamant had a change in personality since his car accident, and therefore, meets Part A of the above listing.

On a Medical Examination Report, Claimant's physician noted Claimant had restrictions in comprehension, sustaining concentration, reading/writing, memory, following simple directions, and social interaction. Claimant's seizure history was the basis to support stated restrictions. Claimant's treating physician stated that Claimant requires 24 hour supervision. A need for 24 hour care is highly consistent with marked restrictions to performing ADLs and concentration.

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.*

A neurologist stated that Claimant did not have a need for 24 hour care. The neurologist provided a reasonable argument that Claimant may not have neurological deficits, however, the neurologist was less familiar than Claimant's physician with Claimant's reported ongoing difficulties. Claimant's social engagement during the neurologist interview of Claimant appeared to be the basis for rejecting a need for 24 hour care. A medical conclusion based on an isolated incident is less persuasive than a medical conclusion based on multiple appointments. This consideration is supportive in rejecting the neurologist's lack of restrictions for Claimant.

A neurologist would likely have superior expertise with brain dysfunction than Claimant's physician who was a rehabilitation physician. The examining neurologist also supported his conclusions with a detailed report. Claimant's physician appeared to base

Claimant's restrictions primarily on reporting by Claimant and his family. It is unknown if Claimant's physician considered any neurological testing whatsoever in restricting Claimant. These considerations support rejecting Claimant's physician's stated-restrictions.

Claimant presented an exceptionally flawed case for disability. Presented neurological testing did not reveal any abnormalities. Hospital encounters for seizure treatment were verified, however, details of the treatment were not presented. An examining neurologist unequivocally rejected that Claimant had neurological deficits and reasonably opined that Claimant complaints of body pain and seizures were unsupported by medical evidence. Though psychological treatment was recommended, Claimant there was no evidence that Claimant ever sought such treatment.

Despite the above failings, presented evidence was highly suggestive of ongoing marked concentration and social difficulties. One physician found that Claimant required 24 hour care and Claimant's treatment is indicative of a sincere belief that he is neurologically challenged.

Based on presented evidence, it is found that Claimant has marked social interaction and concentration difficulties due to neurological and/or psychological deficits. Accordingly, Claimant meets SSA Listing 12.02 and is a disabled individual.

It should be noted that this decision does not find that Claimant is permanently disabled. Claimant is relatively young and medical improvement, with treatment, is a reasonable expectation. Per DHS policy, Claimant's medical records will be annually reviewed to determine ongoing disability.

It is also doubtful that presented evidence would justify a finding of disability of 12 months, a requirement for Social Security Administration benefits. Presented evidence was sufficient to find that Claimant established an ongoing disability for at least 90 days.

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 Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/5/2015**

Date Mailed: **2/5/2015**

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: [redacted]