

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016663
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: January 22, 2015
County: Marquette

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 22, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist, and [REDACTED], Supervisor.

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 7-8).
4. On [REDACTED], DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 5-6) 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 46 year old male.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant alleged disability based on restrictions related to bilateral shoulder restrictions, cervical spine pain, headaches, finger arthritis, and sleep apnea.

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 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 presented medical documentation.

An MRI report of Claimant's cervical spine (Exhibits 77-79) dated [REDACTED] was presented. An impression of mild stenosis at C5-C6 was noted, Moderate-to-severe bilateral neural foraminal narrowing at C5-C6 was noted to cause impingement on exiting nerve roots.

Physician office visit documents (Exhibits 64-66) dated [REDACTED] were presented. It was noted that Claimant presented for ongoing treatment for cervical and lumbar pain. Medications of Flexeril, Lortab, and Lyrica (low dose) were noted as prescribed. Recommendations of physical therapy and Naprosyn were noted. It was noted that radiology of Claimant's lumbar and thoracic spine from 1.5 years ago were unremarkable.

Physician office visit documents (Exhibits 62-63) dated [REDACTED] were presented. It was noted that Claimant presented for ongoing treatment for cervical and lumbar pain. It was noted that Claimant was unable to complete physical therapy because his health insurance only covered a single visit.

Physician office visit documents (Exhibits 59-61) dated [REDACTED] were presented. It was noted that Claimant presented for ongoing treatment. A new diagnosis of HTN was noted. A prescription for hydrochlorithiazide was noted.

Various physician office visit documents (Exhibits 32-58) were presented. The documents detailed various physician appointments from 4/2012 through 11/2013. The documents were not notable other than remaining consistent with other records.

An ultrasound report of Claimant's neck (Exhibits 75-76) dated [REDACTED] was presented. An impression of a prominent left submandibular lymph node was noted.

Physician office visit documents (Exhibits 27-31) dated [REDACTED] were presented. It was noted that Claimant presented for ongoing neck pain treatment. Ongoing assessments of cervical disc degeneration, lymph node enlargement, and HTN were noted.

Physician office visit documents (Exhibits 24-26; A1) dated [REDACTED] were presented. It was noted that Claimant presented for ongoing treatment and for disability paperwork completion. Ongoing complaints of the following were noted: lumbar pain, thoracic spine back, right shoulder pain, enlarged lymph nodes, and HTN. It was noted that Claimant requires frequent position changes. Drowsiness from meds was noted. Current medications included the following: Hydrochlorithiazide, Claratin, Flexeril, Lyrica, Cozaar, and Simastatin. Lab results were attached (Exhibits 67-68) but not accompanied by analysis.

Physician office visit documents (Exhibits 20-23) dated [REDACTED] were presented. It was noted that Claimant complained of ongoing neck pain. Diagnoses of HTN, cervical disc degeneration, lymph node enlargement, and shoulder pain were noted.

Physician office visit documents (Exhibits 17-19) dated [REDACTED] were presented. It was noted that Claimant presented for a flu shot and for disability paperwork completion.

Procedure Orders (Exhibit 4; A3) dated [REDACTED] were presented. It was noted that Claimant was scheduled to undergo right shoulder arthroscopic surgery with rotator cuff repair on [REDACTED].

Procedure Orders (Exhibit A2) dated [REDACTED] were presented. It was noted that Claimant was scheduled for left shoulder arthroscopic surgery on [REDACTED].

Presented documents verified that Claimant was scheduled for arthroscopic surgery on each of his shoulders. Arthroscopic surgery is understood to be a relatively non-invasive surgery with partial recovery typically occurring after one week and full recovery after 6-8 weeks. Though Claimant's surgery recovery time may not reach SDA durational requirements, when factored with neck pain from moderate-to-severe stenosis, it is reasonable to infer that Claimant would require a full recovery from surgery before Claimant has functional use of his upper extremities.

It is found that Claimant has limited use of upper extremities since 10/2014. Accordingly, Claimant has a severe impairment for purposes of SDA eligibility 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.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of shoulder pain. The listing was rejected due to a failure to establish that Claimant is unable to perform fine and gross movements with multiple extremities.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's cervical spine complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

Claimant's isolated problems fail to meet a SSA listing. The combination of Claimant's restrictions is more suggestive of disability.

As noted in the second step of the analysis, Claimant was scheduled for arthroscopic surgeries on each of his shoulder. Also noted was Claimant's moderate-to-severe stenosis from radiology from 2011. Though the radiology is fairly old, the nature of the condition is one that it is not likely to improve over time. The combination of moderate-to-severe cervical stenosis and shoulder problems make it improbable that Claimant can perform fine and gross movements with either arm for a period of 90 days. It is found that Claimant's restrictions are sufficient to meet Listing 1.02 and is therefore a disabled individual.

It should be noted that Claimant is likely to recover from shoulder surgeries within a few weeks. Claimant's other conditions such as sleep apnea, cervical spine dysfunction, and reported lumbar pain would make ongoing employment difficult for Claimant. Though employment may be difficult, sedentary employment appears to be a reasonable expectation after Claimant fully recovers from shoulder surgeries. The reasonable expectation of medical improvement justifies reducing Claimant's review period to six months.

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 **SIX MONTHS** 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: **2/17/2015**

Date Mailed: **2/17/2015**

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:

