

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017951
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: January 12, 2015
County: Oakland (03)

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 January 12, 2015 from Southfield, Michigan. Participants included the above-named Claimant. [REDACTED], Case Manager for [REDACTED], testified on behalf of Claimant. 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 A1-A3; A50-A53) 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 52 year old female.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant's highest education year completed was the 11th grade.
9. Claimant has a history of semi-skilled employment, with no transferrable job skills.
10. Claimant alleged disability based on restrictions related to lumbar pain, right arm pain, 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 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.* 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.

Various rehabilitation physician documents (Exhibits 46-72) from 2011 and 2012 were presented. It was noted that Claimant reported neck and lumbar pain related to a work injury. It was noted that Claimant's work required use of carrying a four pound computer hung around Claimant's neck.

An MRI report of Claimant's lumbar spine (Exhibits 29-30) dated [REDACTED] was presented. An impression of degenerative changes at L5-S1 was noted. It was noted that Claimant had no significant lumbar canal stenosis. Two lesions near Claimant's liver were noted.

A rehabilitation physician office visit document (Exhibits 45) dated [REDACTED] was presented. It was noted that Claimant was working with restrictions, though doing better with her sacroiliac pain. Motor strength was noted as 5/5 in each extremity. Faber testing was noted to be positive.

A rehabilitation physician office visit document (Exhibits 44) dated [REDACTED] was presented. It was noted that Claimant reported "doing much better" since attending the core exercise program.

Rehabilitation physician office visit documents (Exhibits 42-43) dated [REDACTED] were presented. It was noted that Claimant reported feeling better since aggravating back pain by vacuuming. Back motion was noted to be "quite good."

A rehabilitation physician document (Exhibit 41) dated [REDACTED] was presented. It was noted that Claimant refused to schedule an appointment due to a lack of health insurance.

Various handwritten physician documents (Exhibits 83-89) from 2013 and 2014 were presented. Complaints of back pain were consistently noted.

A handwritten physician treatment document (Exhibits 82) dated [REDACTED] was presented. An assessment of chronic lumbar pain with radiculopathy was noted.

A handwritten physician treatment document (Exhibits 81) dated [REDACTED] was presented. It was noted that Claimant reported an inability to stand for showers. A prescription for Vicodin was noted.

A Psychological Evaluation (Exhibits 21-28; A8-A15) dated [REDACTED] was presented. The evaluation was completed by a treating psychiatrist. Reported Claimant symptoms included the following: crying spells, insomnia, suicidal thoughts, avoiding social interactions, poor hygiene habits, and erratic eating habits. Claimant reported being in an unhealthy living situation but having nowhere else to live. Notable observations of Claimant included the following: guarded attitude, anxious, depressed, dysphoric mood, sad affect, slowed psychomotor activity, normal speech, limited judgment, adequate impulse control, and orientation x3. Diagnoses of major depressive disorder (recurrent and severe), obsessive-compulsive disorder, and post-traumatic stress disorder were noted. Claimant's GAF was noted to be 48.

A handwritten physician treatment document (Exhibits 78; 80) dated [REDACTED] was presented. Complaints of right shoulder pain, lumbar pain, and depression were noted. A positive straight leg raising test was noted.

Mental health agency documents from a treating social worker (Exhibits A16-A18) dated [REDACTED] were presented. It was noted that Claimant reported that she "lost herself" and experiencing depression symptoms since moving in with a fiancé five year earlier.

Rehabilitation physician office visit documents (Exhibits 114-115) dated [REDACTED] were presented. It was noted that Claimant reported being unable to work due to back pain and emotional stress. Motor strength was noted to be 5/5 in all extremities. Lumbar

tenderness was noted. An antalgic gait was observed. An impression of back pain with spondylosis was noted.

Mental health agency documents from a treating physician (Exhibits A19-A25) dated [REDACTED] were presented. Observations of Claimant included the following: slowed psychomotor activity, dysphoric mood, soft speech, delusional thought content, adequate concentration, adequate judgment, adequate impulse control, and orientation x4.

A Mental Residual Functional Capacity Assessment (Exhibits 16-17) dated [REDACTED] was presented. The form was completed by Claimant and not considered to be a medical document.

Rehabilitation physician office visit documents (Exhibits 32-34) dated [REDACTED] were presented. It was noted that recently completed imaging demonstrated spondylosis. Claimant's muscle strength was noted as 5/5 in all extremities. A positive straight leg raising test was noted. An antalgic gait was noted. Impressions of severe back pain causing spondylosis, depression and anxiety, and significant debility were noted. It was stated that Claimant was unable to work. The documents were consistent with earlier appointments dated [REDACTED] (see Exhibits 35-37) and [REDACTED] (see Exhibits 38-40).

A Medical Examination Report (Exhibits 13-15) dated [REDACTED] was presented. The form was completed by a family medicine physician with an approximate 3 ½ year history of treating Claimant. Claimant's physician listed diagnoses of diabetes mellitus, right arm pain, and back pain. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs.

Mental health agency documents from a treating physician (Exhibits A26-A32) dated [REDACTED] were presented. It was noted that Claimant reported crying spells, insomnia, anxiety, and back pain. Observations of Claimant included the following: normal psychomotor activity, depressed mood, and labile affect. Claimant was considered to have moderate suicidal risk factors. Cymbalta and trazadone were noted to be continued prescribed medications.

Mental health agency documents from a treating physician (Exhibits A33-A41) dated [REDACTED]. A diagnosis of recurrent major depression with psychotic tendencies was noted. Observations of Claimant included the following: slowed psychomotor activity, constricted affect, dysphoric mood, and adequate concentration.

Rehabilitation physician office visit documents (Exhibits A5-A6) dated [REDACTED] were presented. It was noted that Claimant reported increasing back spasms and right shoulder pain. It was noted that Claimant would be unable to work. It was noted that lifting, bending and/or extended sitting periods exacerbated the pain. A positive straight leg raising test was noted. Limited lumbar forward flexion and lumbar extension with

hypersensitivity was noted. A plan to prescribe Norco for pain management was noted. It was noted that would start physical therapy.

Claimant alleged ambulation and lifting restrictions related to lumbar pain. Presented radiology from 2011 verified degenerative changes but was not compelling evidence of abnormalities that would significantly restrict Claimant's walking and lifting. It is plausible that Claimant's lumbar problems worsened since 2011.

Physician treatment documents from 2014 regularly noted back pain. In 8/2014, a bulging disc at S1 was noted (see Exhibit 80). Relatively strong narcotic medication (e.g. Norco) was prescribed. Restrictions were noted by Claimant's physician (see Exhibits 13-15). Despite an absence of recent radiology, treatment records were sufficient to establish a degree of ambulation and lifting/carrying restrictions due to lumbar pain.

Claimant also alleged restrictions based on depression symptoms. It was verified that Claimant attended regular psychiatry appointments. Diagnoses and treatment for depression were verified. Of particular concern was that Claimant's depression included psychotic features. Claimant's diagnoses and treatment history was sufficient to establish restrictions related to concentration and social interaction.

It is found that Claimant established severe impairments. Accordingly, 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 shoulder pain. The listing was rejected due to a failure to establish that Claimant is unable to perform fine and gross movements.

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 affective disorder (Listing 12.04) was considered based on diagnoses of depression. 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 required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

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 she previously worked as an auditor for a marketing company. Claimant testified that her duties required traveling to stores. Claimant testified that her employment essentially mandated that a laptop computer be strapped around her neck so she could access a computer while standing and ambulating.

Claimant also testified that she performed past work as a territory representative. Claimant testified that her employment required traveling to stores to insure proper displaying of products. Claimant testified that her job required extensive meetings and driving.

Claimant testified that she is unable to perform the ambulation and lifting required of her past employment. Claimant's testimony was consistent with presented evidence. It is found that Claimant cannot perform past employment and the analysis may proceed to the final step of the analysis.

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 light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

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*.

Claimant's physician opined that Claimant was restricted to less than 2 hours of standing and/or walking over an eight-hour workday. Claimant was restricted to occasional lifting/carrying of under 10 pounds, never 10 or more pounds. Claimant's physician opined that Claimant was restricted from performing repetitive pushing/pulling and operating foot/leg controls. The stated basis for restrictions was an MRI.

It is somewhat tempting to reject the above restrictions because Claimant did not present an MRI that justifies the physician-stated ambulation and lifting restrictions. Claimant sufficiently presented a lengthy history of back pain treatment which included physical therapy, narcotic medication, and monthly appointments. The evidence was sufficient to justify restrictions that would prevent the performance of light employment.

Claimant's history of depression was consistent with psychological restrictions, but also physical restrictions. Mental health treatment records regularly noted that Claimant's depression was exacerbated by chronic pain.

It is found that Claimant is restricted to sedentary employment. Based on Claimant's exertional work level (sedentary), age (approaching advanced age), education (limited), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 201.10 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of SDA benefits.

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: **1/30/2015**

Date Mailed: **1/30/2015**

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:

