

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-019380
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: February 5, 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, a telephone hearing was held on February 5, 2015, 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 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 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 49 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 multiple sclerosis (MS).

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.

Neurologist appointment documents (Exhibits 31-34) dated [REDACTED] were presented. It was noted that Claimant complained of a left arm tremor and bilateral leg weakness. An unspecified gait abnormality was noted. A brain MRI was noted as planned.

An MRI report of Claimant's brain (Exhibits 29-30) dated [REDACTED] was presented. A patchy area of high T2 weighed signal involving peri-ventricular white matter was noted. An impression of likely demyelinating plaques was noted.

Neurologist appointment documents (Exhibits 24-27) dated [REDACTED] were presented. A complaint of left arm tremor and leg weakness was noted. Claimant's motor strength was noted to be 5/5 in all extremities. Reflexes were noted to be normal. A cervical spine MRI was noted as planned. Blood testing results (Exhibits 28) were presented but not referenced.

Neurologist appointment documents (Exhibits 19-21) dated [REDACTED] were presented. A complaint of left arm tremor and unspecified right arm extremities were noted. It was noted that radiology demonstrated plaques and atrophy in Claimant's cervical spine (see Exhibits 22-23). Gait abnormality and a tremor were noted as starting 5/2014. Claimant's motor strength was noted to be 5/5 in all extremities. Reflexes were noted to be normal. It was noted that Claimant was able to stand and ambulate without difficulty. A favored diagnosis of progressive MS was noted. It was noted that Claimant rejected medication unless symptoms worsen.

A Medical Examination Report (Exhibits 16-18) dated [REDACTED] was presented. The form was completed by a neurologist with an approximate 1 ½ month history of treating Claimant. Claimant's physician listed diagnoses of tremor, multiple sclerosis, gait abnormality, and demyelinating disorder. A tremor and gait abnormality were noted as physical examination findings. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant can meet household needs. Claimant's neurologist noted that MS was incurable. Work restrictions were not noted.

Physician prescriptions (Exhibits A1-A2) from 1/2015 were presented. The faxed copies were illegible but hearing testimony indicated that the prescriptions were for a walker with wheels and physical therapy.

Claimant testified that he has walking and ambulation restrictions due to leg weakness. Claimant also testified that his left arm and hands shake, which greatly limits his left hand use. The testifying DHS representative added that she observed Claimant's left hand tremors throughout the hearing.

Claimant's testimony was credible and consistent with a recent MS diagnosis and medical treatment history. It was odd that Claimant's neurologist failed to specify any restrictions to Claimant's ability to ambulate or lift/carry. The neurologist's failure to cite restrictions is more likely due to an absence of thorough functional capacity testing rather than an indication that Claimant has no restrictions.

It was notable that Claimant denied an offer of medication. It could be presumed that Claimant's symptoms must not have been severe if medication was declined. The declining of medication could also be interpreted as medical non-compliance. Non-compliance was not found because physician statements did not indicate that declining medication was unreasonable.

More compelling than Claimant's refusal of medication was consistent documentation of Claimant's deteriorating state. In 5/2014, Claimant complained of a tremor and leg weakness. By 1/2015, Claimant had a medical need for a walker.

It is found that Claimant established a severe impairment. Accordingly, 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 symptoms related to MS. MS is covered by Listing 11.09 which states that disability is established by the following:

Multiple sclerosis. With:

- A. Disorganization of motor function as described in 11.04B; or
- B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or
- C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

Listing 11.04B requires “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). Evidence of such motor function dysfunction was presented.

Continuing complaints of leg weakness leading to a need for a walker is highly suggestive of motor dysfunction in lower extremities. Claimant’s left hand tremor was also consistently documented to be problematic for Claimant.

Based on the presented evidence, it is found that Claimant meets the SSA Listing 11.09. 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 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: **2/11/2015**

Date Mailed: **2/11/2015**

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:

