

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-12726
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: March 10, 2014
County: Wayne (57)

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 March 10, 2014, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

ISSUE

The issue is whether DHS properly denied Claimant's application for State Disability Assistance (SDA) 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. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.21.
7. As of the date of the administrative hearing, Claimant was a 43 year old female with a height of 5'7 ½ " and weight of 253 pounds.
8. Claimant has no known relevant history of alcohol or illegal substance abuse.
9. Claimant's highest education year completed was the 12th grade (via general equivalency degree).
10. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient.
11. Claimant alleged disability based on impairments and issues including bipolar disorder and various spinal injuries.

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).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant noted special arrangements in order to participate in the hearing. Claimant testified that she did not understand the question and that no special arrangements are required.

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 Medicaid eligibility without undergoing a medical review process (see BAM 815) which determines whether Claimant is a disabled individual. *Id.* at 4.

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.

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.* at 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 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Claimant credibly denied performing any employment since the date of the MA 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 MA 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 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 background information from Claimant's testimony and medical history along with a summary of the relevant submitted medical documentation.

Claimant testified that she applied for SSA benefits approximately 6-7 times. Claimant testified that she has psychological problems which affect her ability to maintain employment. Claimant testified that she has never held a job for longer than three

months other than a job that she had for 4-5 months in 2010. Claimant testified that her situation worsened in 2010 when she claims that a police officer assaulted her which caused her to suffer multiple back injuries.

A report of an MRI of Claimant's left shoulder (Exhibit 30) dated 4/9/12 was presented. An impression of a 9mm low grade partial tear of the anterior most fibers of the infraspinatus tendon was noted. Mild shoulder joint effusion was noted.

Various letters (Exhibits 34-35; 38-51) from a spine and rehabilitation center were presented. The letters ranged in date from [REDACTED] through [REDACTED] and verified regular monthly appointments by Claimant on and in-between these dates. It was noted that Claimant presented with complaints of throbbing neck pain, present at all times. An assessment noted that an MRI showed disc herniations "essentially at every level versus disc bulges in the cervical and thoracic spine". On [REDACTED], a recommendation of physical therapy was noted.

A consultation letter (Exhibits 36-37), spine and rehabilitation center dated [REDACTED] was presented. It was noted that Claimant reported constant neck pain, muscle spasms, upper back pain, decreased range of motion in the shoulder and cramping pain. Complaints of photophobia, phonophobia, blurred vision and lightheadedness were also noted. It was noted that Claimant was unable to do physical therapy, chiropractic care or injections. An assessment of cervical spondylosis with facet arthropathy and cervical radiculopathy were noted. Other noted assessments included the following: occipital neurology, myofascial pain syndrome and left shoulder pain.

A consultative mental examination report (Exhibits 65-68) dated [REDACTED] was presented. The report was completed by a licensed psychologist. It was noted that Claimant reported symptoms of depression including withdrawal, irritability, poor social interactions and sadness. It was noted that Claimant was not involved in mental health counseling. It was noted that Claimant reported three previous psychiatric hospitalizations, the most recent occurring in either 2005 or 2006. An Axis I diagnosis of bipolar disorder was noted. A polysubstance dependence (cocaine and alcohol) was noted and reported by Claimant to be in remission. Claimant's GAF was noted to be 50. A guarded prognosis was noted. The examiner noted that Claimant had mild impairments concerning understanding, retaining and following simple instructions. It was noted that Claimant had severe impairments concerning her ability to interact with others outside of the home, supervisors and the public.

A report of an MRI of Claimant's lumbar/sacral spine (Exhibit 31) dated [REDACTED] was presented. An impression of a disc bulge at L2-L3 impinging on the thecal sac was noted. Foraminal disc herniation and moderate right foraminal neuro-foraminal narrowing at L3-L4 was noted; comparable impressions were also noted at L4-L5 and L5-S1.

A Medical Examination Report (Exhibits 8-10) dated [REDACTED] was presented. The form was completed by a physician who noted an approximate 2-month history of treating

Claimant. The physician provided diagnoses of left shoulder tear/pain, cervical spondylosis, multiple disc bulges in the thoracic and cervical spine. Shoulder radiculopathy was noted. An impression was given that Claimant's condition was stable. It was noted that Claimant could occasionally lift less than 10 pounds, but never more. It was noted that Claimant was limited in bending, pushing, pulling and twisting. No mental limitations were noted. It was noted that Claimant could meet household needs. Additional documents from Claimant's treating physician (Exhibits 32-33) noted that Claimant was disabled for the months of 2/2013 and 3/2013.

Hospital documents (Exhibits 25-29) from an encounter dated [REDACTED] were presented. A primary diagnosis of neck pain was noted. A secondary diagnosis of eczema was noted.

Hospital documents (Exhibits 22-24) from an encounter dated [REDACTED] were presented. A complaint of a muscle spasm was noted. Prescriptions for diazepam, hydrocortisone-acetaminophen and loratadine were noted.

Hospital documents (Exhibits 17-21) from an encounter dated [REDACTED] were presented. Generic discharge instructions for treating a headache and muscle spasms were included. It was noted that an MRI of Claimant's brain was performed.

Various pain center documents (Exhibits 52-57) were presented. Two appointments were noted with Claimant though no details were provided. Disability Certificates noted that Claimant was disabled from [REDACTED] and [REDACTED].

Claimant testified that back pain restricts her to sitting for 30-minute periods and standing for 8-minute periods. Claimant's physician restricted Claimant to minimal lifting. The restrictions provided by Claimant and her treating physician were consistent with the medical evidence which verified multiple problems throughout Claimant's spine. It was also established that Claimant's restrictions have lasted since at least since 5/2013, the month of SDA application.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 3 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move 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.

Listings for spine disorders (Listing 1.04), joint disorders (Listing 1.02) and affective disorders (Listing 12.04) were considered. Each listing was rejected due to a lack of recent evidence supporting marked restrictions. 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 stated she performed part-time cleaning for 4-5 months in 2010. Claimant also stated that she had multiple jobs in fast food (which lasted no longer than three months). Claimant also testified that she has performed some temporary employment. Claimant testified that each of her former jobs were primarily standing and required more lifting than she is capable of performing. Claimant's testimony was consistent with the medical evidence. It is found that Claimant may not perform past relevant employment and the analysis may proceed to step five.

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 sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Presented radiology evidence established multiple problems throughout Claimant's spine. The severity and amount of problems were such that Claimant is at best, limited to sedentary employment. This conclusion is also consistent with Claimant's treating physician who restricted Claimant to less than 10 pounds of lifting.

Claimant is further restricted by psychological restrictions. Claimant's mental health problems are lengthy as multiple hospitalizations were referenced (as was a previous drug habit). A consultative examiner's statement that Claimant is severely impaired from performing detailed instructions is a reasonable conclusion based on Claimant's psychiatric history. A marked restriction from performing detailed instructions restricts Claimant's sedentary employment opportunities. The examiner's statement that Claimant is mildly impaired from performing even simple employment restricts Claimant's employment opportunities even further.

Simple and sedentary employment may exist that Claimant can perform and maintain. Such an employment opportunity is improbable. DHS failed to present any evidence that such employment is available to Claimant. It is found that employment opportunities for Claimant are so slight, based on her exertional and non-exertional restrictions, that Claimant is a disabled individual.

Consideration was given to Claimant's lack of ongoing psychological treatment. Claimant's abilities could improve with treatment and effort, though a consultative examiner's guarded prognosis is suggestive that Claimant's abilities would not improve to the point where employment is a reasonable option for Claimant.

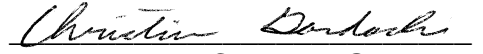
Based on the presented evidence, it is found that Claimant is a disabled individual. Accordingly, it is found that DHS improperly denied Claimant's SDA application.

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 MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's SDA benefit application dated [REDACTED];
- (2) evaluate Claimant's eligibility for SDA benefits 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 SDA benefits.

The actions taken by DHS are **REVERSED**.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/1/2014

Date Mailed: 4/1/2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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 48909-07322

CG/hw

cc:

