

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-29351
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: July 2, 2014
County: Macomb (20)

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 July 2, 2014, 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 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 8-9).

4. On [REDACTED], DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 3-7).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 reliance on a Disability Determination Explanation and application of Medical-Vocational Rule 202.18.
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A26) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
11. On [REDACTED], an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by State Hearing Review Team was subsequently issued which extended the record 90 days from the date of hearing.
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.18.
13. On [REDACTED] the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
14. As of the date of the administrative hearing, Claimant was a 41-year-old male with a height of 6'0" and weight of 274 pounds.
15. Claimant's highest education year completed was the 8th grade.
16. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient.
17. Claimant alleged disability based on impairments and issues including neuropathy, carpal-tunnel syndrome (CTS), diabetes mellitus, and back pain.

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 stated that he does not read well and may need assistance in reading documents. Claimant agreed that he would be accommodated if DHS staff assisted him with any reading.

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 days period of disability.

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.*, 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 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 a summary of the relevant submitted medical documentation.

A radiology report (Exhibits 49-50) dated [REDACTED] was presented. It was noted that an MRI of Claimant's lumbar was performed. An impression of disk bulges and facet degeneration at L4-L5 and L5-S1 were noted.

A radiology report (Exhibit 52) dated [REDACTED] was presented. It was noted that an MRI of Claimant's lumbar was performed. An impression of normal lumbar alignment was noted. An impression of minimal degenerative changes and minimal disc bulges at L3-L4, L4-L5, and L5-S1 were noted. Mild facet arthrosis throughout the spine was noted.

A radiology report (Exhibit 51) dated [REDACTED] was presented. It was noted that an EMG of lower extremities was performed. An impression of peripheral neuropathy and bilateral L4-S1 nerve root irritation was noted.

A Procedure Note (Exhibit 23) dated [REDACTED] from Claimant's pain management physician was presented. It was noted that Claimant received trigger point injections to treat muscle pain.

A Procedure Note (Exhibit 24-25) and Progress Note (Exhibits 26-27) from Claimant's pain management physician dated [REDACTED] was presented. Assessments of lumbar radiculopathy and spinal stenosis were noted. It was noted that Claimant underwent a left L5 transforaminal epidural steroid injection to treat back pain.

A Progress Note (Exhibits 22) dated [REDACTED] from Claimant's pain management physician was presented. It was noted that Claimant reported dyspnea. A plan for a sleep study and refill medication was noted.

A Progress Note (Exhibits 28-32; 55-57) dated [REDACTED] was presented. It was noted that Claimant's last steroid injection had no apparent effect. It was noted that Claimant reported improvement in foot tingling. A full range of motion was noted. Strength of 5/5 was noted in all extremities. It was noted that Claimant reported a painful mass in his left-side; a palpable mass in Claimant's lower back was noted. A CT was ordered for the mass. It was noted that Claimant reported that he manages pain by taking Norco 4x/day and a nerve stimulation unit.

A Progress Note (Exhibits 33-37) dated [REDACTED] from Claimant's pain management physician was presented. It was noted that Claimant suffered a stab injury when he was 12 years old, which has since caused chronic back pain. It was noted that Norco is not sufficiently managing Claimant's pain. It was noted that Claimant was not attending physical therapy due to transportation issues. It was noted that Claimant was able to stand without difficulty.

A Progress Note (Exhibits 38-41) dated [REDACTED] from Claimant's pain management physician was presented. It was noted that Claimant reported no benefit to taking MSContin 15 mg bid.

A Medical Examination Report (Exhibits 15-18) dated [REDACTED] was presented. The form was completed by a physical medicine and rehabilitation physician with an approximate 2 ½ month history of treating Claimant. A diagnosis of chronic low back pain was noted. An antalgic gait was noted. It was noted that Claimant walks with a cane for the purpose of safety. It was noted that Claimant scored 5/5 in a manual muscle test. An impression was given that Claimant's condition was stable. Noted medications included the following: Norco, Morphine, Flexeril, Cymbalta, Lyrica, and Nortriptyline.

Hospital documents (Exhibits A22-A26) from an encounter dated [REDACTED] were presented. It was noted that Claimant was treated for abdominal pain and colitis. A diagnosis of gastrointestinal hemorrhage was noted.

Hospital documents (Exhibits A9-A21) from an encounter dated [REDACTED] were presented. It was noted that Claimant was treated for abdominal pain and colitis. A diagnosis of gastrointestinal hemorrhage was noted. A discharge disposition of home or self-care was noted. Generic hernia and enlarged spleen instructions were provided.

Hospital documents (Exhibits A1-A8) from an encounter dated [REDACTED] were presented. A social history noted that Claimant independently completes ADLs. Generic enlarged spleen and hernia instructions were provided.

Claimant testified that he wears a muscle stimulant unit but that he still has significant walking, standing, and lifting restrictions. Diagnoses and treatment history for neuropathy and back pain were sufficient to infer standing, walking, and lifting restrictions. Claimant's restrictions were verified to have lasted at least since 11/2013,

the first month that Claimant seeks SDA benefits. It is found that Claimant has a severe impairment and 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 spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. The listing was rejected due to a failure to verify that Claimant is unable to ambulate effectively or that Claimant has a loss of muscle strength.

A listing for peripheral neuropathies (Listing 11.14) was factored based on a documented diagnosis. The listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

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 he has past relevant employment as a car part inspector and direct care worker. Claimant testified that he could not perform the required lifting or standing to perform past employment. In fact, Claimant testified that he lost his inspector job because he was unable to physically perform the job. Claimant's testimony was credible and consistent with presented medical evidence. 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. Physician statements of specific restrictions were presented.

On a Medical Examination Report dated [REDACTED], Claimant's physician opined that Claimant was restricted from repetitively operating leg or foot controls. The stated basis for restrictions was chronic back pain. Claimant testified that he drives. Claimant's continued driving tends to minimize the severity of his physician's stated restriction concerning operation of leg/foot controls.

No sitting, standing, or walking restrictions were provided. Based on severe pain medication which Claimant takes, it can be inferred that Claimant would be in immense pain if required to perform long periods of standing. The evidence was not sufficient to infer that Claimant could not perform sedentary employment.

Claimant testified that he performs all his ADLs, though he stated that he cleans slowly. Claimant's testimony was consistent with presented evidence. Claimant's physician noted that Claimant needs household assistance but the physician failed to specify what those restrictions were (see Exhibit 17).

Claimant's use of a cane is consistent with ambulation difficulty, however, there was little evidence that Claimant could not perform the walking required of sedentary employment. For example, it was noted that Claimant's gait was coordinated and smooth on [REDACTED]. There was also no evidence of muscle strength loss.


The lack of treatment documents after 12/2013 is problematic for Claimant. No explanation was given for why Claimant's treatment appeared to suddenly stop after 12/2013. It was not disputed that Claimant had health insurance since at least 4/2014, thus, Claimant would appear to have access to continued treatment. Hospital documents from 5/2014 and 6/2014 verified some type of treatment, but the records

provided few details. Based on the presented evidence, it is found that Claimant can perform sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 18-44), education (less than high school), employment history (semi-skilled- not transferrable), Medical-Vocational Rule 201.25 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly 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 properly denied Claimant's SDA benefit application dated [REDACTED] based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.


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

Date Signed: 8/15/2014

Date Mailed: 8/15/2014

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.

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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:

