

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

IN THE MATTER OF:



Reg. No.: 15-004421
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: April 29, 2015
County: Wayne (35)

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 April 29, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Health and Human Services (DHHS) included [REDACTED], hearings facilitator.

ISSUE

The issue is whether DHHS 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 5-7).
4. On [REDACTED], DHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 36-37) informing Claimant of the denial.

5. On [REDACTED], Claimant requested a hearing (see Exhibits 2-3) disputing the denial of SDA benefits.
6. As of the date of the administrative hearing, Claimant was a 43 year old female with a height of 5'4" and weight of 230 pounds.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant's highest education year completed was an Associate's Degree in liberal arts.
9. Claimant has a history of semi-skilled employment, with no transferrable job skills.
10. Claimant alleged disability based on restrictions related to diagnoses of coronary artery disease (CAD), asthma, hypertension (HTN) and anxiety attacks.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHHS 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 DHHS 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.

Claimant presented a urologist bill (Exhibit A1) from an [REDACTED] date of service. The bill contained no treatment information.

An MRI report of Claimant's cervical spine (Exhibits 28-29) dated [REDACTED] was presented. An impression of multilevel degenerative disc disease with stenosis most pronounced at C5-C6 was noted.

An MRI report of Claimant's lumbar spine (Exhibits 30-31) dated [REDACTED] was presented. An impression of a small central disc herniation superimposed on diffuse disc bulging without spinal stenosis was noted at L5-S1; mild bilateral

neuroforaminal stenosis was also noted at L5-S1. Mild central canal stenosis was also noted at L4-L5 and L3-L4.

A Medical Examination Report (Exhibits 23-27) dated [REDACTED] was presented. The form was completed by a family practice physician with an approximate 1 ½ year history of treating Claimant. Claimant's physician listed diagnoses of lower back pain, bulging disc, annular tear, cervical pain, bulging discs, osteophytes, HTN, and pre-diabetes. Claimant's reported pain level was 9/10. Claimant's gait and reflexes were noted to be normal. Unspecified lumbar motion restrictions were noted. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant can meet household needs. Prescribed medications included the following: Norco, Flexeril, Metoprolol, and cardizem.

Claimant testified that she is limited to one block of walking before she is susceptible to an asthma attack. Spirometry testing was not presented. Asthma or other respiratory problems were not listed as a diagnosis. Hospital encounters for asthma were not documented. Asthma treatment was not documented. It is found that Claimant failed to establish a severe impairment related to asthma.

Claimant testified that she regularly experiences anxiety attacks. Claimant presented no psychiatric or psychological treatment. The only reference to mental limitations was a statement from Claimant's physician who noted that Claimant had none (see Exhibit 25). It is found that Claimant has no mental restrictions.

Claimant alleged that she has ongoing restrictions in walking, standing, and lifting/carrying due to back pain. Diagnoses, prescribed medications, and radiology supported Claimant's testimony. It is found that Claimant has a severe impairment and the analysis may proceed to the third step.

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 lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for asthma (Listing 3.03) was considered based on Claimant's testimony. The listing was rejected due to a failure to establish chronic asthmatic bronchitis or a sufficient number of asthma attacks requiring physician intervention, despite following prescribed treatment.

A listing for anxiety-related disorders (Listing 12.06) was considered based on Claimant's treating physician's diagnosis of an anxiety disorder. 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 had a complete inability to function outside of the home.

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 has past employment as a nursing assistant. Claimant testimony implied that she is unable to perform the standing and lifting required of her past employment.

Claimant testified that she has past employment as a job coach for persons attending mental health treatment. Claimant testified that one of the patients hit her in the back. Claimant testified that she believes that this incident is the origin of her back problems.

Claimant testified that she worked most recently doing work-study for a community college. Claimant testified that her specific job was as a financial aid assistant.

Detailed testimony was not provided concerning Claimant's financial aid assistant duties. Claimant's job duties are likely consistent with sedentary employment duties, though this conclusion is speculative. Rather than speculate on whether Claimant can perform her prior financial aid assistant duties, Claimant's ability to perform sedentary employment will be reserved for 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 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

Claimant testified that she saw a chiropractor in March 2015; Claimant also testified that her chiropractor relieved her spinal pain for only 30 minutes before it returned. Claimant testified that she recently completed 21 appointments of physical therapy. Claimant testified that she needs back surgery to remove fluid from her spine. Claimant testified that she sometimes uses a cane but is supposed to use it all the time.

Claimant's testimony, if verified, could support a claim of disability. Claimant's physical therapy, need for surgery, chiropractor treatment, and need for a cane were all unverified.

Claimant testified that she is unable to reach around and shower herself; as a result, Claimant testified that her daughter has to help her with showering. Claimant testified that she only showers when her daughter is available to help her.

Claimant testified that she cannot even dress herself. Claimant testified that back pain prevents her from putting on her own shirt, pants, or shoes.

Claimant also testified that she cannot clean her house or drive. Claimant testified that she has to lie down whenever she is a vehicle passenger.

Claimant's testimony concerning activities of daily living was consistent with restrictions that would prevent the performance of even sedentary employment. Claimant's testimony was not consistent with her physician statement that Claimant can meet her household needs.

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 restricted Claimant to frequent lifting/carrying of 10 pounds or less, occasional lifting/carrying of 20 pounds, but never 25 pounds or more. Claimant testified that she is limited to 10 pounds or less of lifting/carrying due to back pain. Claimant's lifting restrictions are consistent with an ability to perform sedentary employment.

Claimant testified that she can only stand for 10-20 minutes before her left leg buckles. Claimant testified that she can only sit for 10-minute periods before back pain requires her to stand.

On a Medical Examination Report dated [REDACTED], Claimant's physician opined that Claimant was restricted as follows over an eight-hour workday: less than 2 hours of standing and/or walking, and less than 6 hours of sitting. Claimant's physician opined that Claimant was restricted from performing the following repetitive actions: simple grasping, reaching, pushing/pulling, and operating foot/leg controls. Restrictions were stated to be based on an MRI report.

Concerning standing, sitting, and repetitive actions, Claimant's testimony and her physician's statements were indicative of an inability to perform sedentary employment. Other evidence was less supportive.

The only physician statement of Claimant's gait was that it was a normal. A normal gait is not indicative of an inability to repetitively operate leg/foot controls.

On the Medical Examination Report, Claimant's physician stated that Claimant had an annular tear. An annular tear was not apparent based on presented radiology. This inconsistency is not supportive in accepting Claimant's physician's restrictions as accurate.

Presented cervical spine radiology verified a diagnosis of degenerative disc disease. The diagnosis, by itself, is not indicative of sitting, standing, or repetitive arm restrictions. Stenosis was noted, which may be indicative of restrictions, depending on the degree of stenosis.

At C3-C4 and C6-C7, diffuse disc osteophyte complex effacing the ventral subarachnoid space was noted. At C4-C5, minimal diffuse disc osteophyte complex partially effacing the ventral subarachnoid space was noted. At C5-C6, right uncovertebral hypertrophy and mild foraminal stenosis was noted. Degenerative minimal retrolisthesis of L5 on S1 and L3 on L4 was noted on a lumbar radiology report.

Generally, radiology reports describe degrees of abnormalities as either "mild", "moderate", or "severe" (or "marked"). *Mild* stenosis at C5-C6, *minimal* diffuse disc complex, *minimal* retrolisthesis, and *mild* stenosis are abnormalities which surely cause Claimant pain. Use of the least severe degree of pain descriptors is generally consistent with a need for pain medication; this was verified by Claimant's need for Norco, a relatively strong pain medication. The degree of abnormalities is not particularly indicative of incorrigible pain preventing the performance of sedentary employment. It is found that Claimant is capable of performing sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 18-44), education (more than high school), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 201.28 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHHS 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 DHHS properly denied Claimant's SDA benefit application dated [REDACTED] based on a determination that Claimant is not disabled. The actions taken by DHHS are **AFFIRMED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/8/2015**

Date Mailed: **5/8/2015**

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:

