

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-006888
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: June 10, 2015
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 June 10, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Health and Human Services (DHHS) included [REDACTED], hearing facilitator.

ISSUE

The issue is whether MDHHS 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 4-6).
4. On [REDACTED] MDHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (see Exhibits 7-8) informing Claimant of the denial.

5. On [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits (see Exhibits 2-3).
6. As of the date of the administrative hearing, Claimant was a 52-year-old female with a height of 5'7 ½" and weight of 260 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 the 9th grade.
9. Claimant has a history of semi-skilled employment, with no transferrable job skills.
10. Claimant alleged disability based on restrictions related to high blood pressure, diabetes, obesity, arthritis, chronic back pain, headaches, blurred vision, depression, thyroid removal and fibromyalgia.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS 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 MDHHS 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 2015 monthly income limit considered SGA for non-blind individuals is \$1,090.

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 minimis 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 was diagnosed with thyroid cancer in 2013 (see Exhibit 36). Claimant testified that her thyroid was removed but that she did not undergo chemotherapy or radiation treatment.

A chest x-ray report (Exhibit 39) dated [REDACTED] was presented. A normal chest x-ray was noted.

Oncologist office visit notes (Exhibit 37) dated [REDACTED] were presented. It was noted that Claimant reported feeling tired and weak. A plan of thyroid testing and adjusting Claimant's Synthroid was noted.

Oncologist office visit notes (Exhibit 36) dated [REDACTED] were presented. It was noted that Claimant presented for thyroid follow-up. Claimant reported ongoing fatigue, joint pain, and weakness. Claimant reported that she felt better on a higher dose of Synthroid. A plan for thyroid function testing was noted.

A body scan report (Exhibit 50) dated [REDACTED] was presented. An impression of arthritic changes was noted.

A CT report of Claimant's abdomen dated [REDACTED] (Exhibit 38; 48) was presented. An impression of an unremarkable report was noted.

Physician office visit notes (Exhibit 43-45) dated [REDACTED] were presented. Claimant's active problems were noted to include BMI exceeding 40, major depressive disorder, and unspecified myalgia. Active medications included Amlodipine, Drisdol, Hydroxyzine, Levothyroxine, Mobic, Metformin, Cyclobenzaprine, and Cymbalta.

Physician office visit notes (Exhibit 42) dated [REDACTED] were presented. It was noted that Claimant needed evaluation for physical therapy.

An internal medicine examination report (Exhibits 9-17) dated [REDACTED] was presented. The report was noted as completed by a consultative physician. Claimant reported alleged disability based on high blood pressure, diabetes, obesity, arthritis, chronic back pain, headaches, blurred vision, and fibromyalgia. Claimant reported depression symptoms of mood swings, crying spells, and sadness. Claimant's weight was noted to be 265 pounds. It was noted that Claimant used a cane for balance and pain reduction, though she did not use during the examination. Tandem walk, toe walk, and heel walk were noted as slowly performed. Reduced ranges of motion were noted in Claimant's lumbar flexion (75°- normal 90°) and bilateral hip forward flexion (50°- normal 100°). It was noted that Claimant was able to perform all 23 listed work-related activities (e.g. sitting, standing, lifting, carrying, stooping, bending, and reaching) though most with pain. The examiner stated that clinical evidence supported a need for a cane.

Rheumatology office visit notes (Exhibit A1) dated [REDACTED] were presented. An assessment of fibromyalgia was noted. New prescriptions for Lyrica and Tylenol-Codeine were noted.

A physician statement (Exhibit A4) dated [REDACTED] was presented. Diagnoses of fibromyalgia and back pain were noted. A referral for physical therapy for 4-6 weeks was noted.

Claimant testified that she has blurry vision. The complaint was also reported to a consultative examiner. Claimant presented no vision treatment records. Claimant testified that she will follow-up with eye doctor in September 2015. Based on presented records, Claimant failed to establish a vision-related impairment.

Claimant testified that she experiences loss of balance when ambulating. Claimant speculated that it may be related to removal of her thyroid gland. Claimant also testified that she has full body pain, likely related to fibromyalgia. Claimant also testified that bone density testing found that she has “fragile bones.”

Claimant testified that she has difficulty with ambulation, sitting, and standing. MDHHS testified that Claimant was observed to appear to be very unstable when ambulating, despite Claimant’s use of a cane.

Claimant testified that she has recurring feelings of sadness, anger, and bitterness. Claimant testified that she is upset because that she has no job and no income. Claimant testified that she began monthly appointments with a psychiatrist in January 2015.

Presented evidence established that Claimant has ambulation, sitting, standing, lifting/carrying, and mental restrictions. It is found that Claimant established significant impairment to basic work activities for a period longer than 90 days. Accordingly, it is found that Claimant established having a severe impairment and the disability 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.

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 visual acuity (Listing 2.02) was considered based on complaints of poor eyesight. This listing was rejected due to a failure to establish a corrected eyesight of worse than 20/200 in Claimant’s best eye.

A listing for affective disorder (Listing 12.04) was considered based on diagnoses of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

A listing for inflammatory arthritis (Listing 14.09) was considered based on Claimant’s complaints of arthritis. The presented medical records were insufficient to establish that

Claimant has an inability to ambulate effectively, perform fine and gross movements, or suffers inflammation or deformities with a diagnosis of ankylosing spondylitis or other spondyloarthropathies, or suffers repeated manifestations of inflammatory arthritis.

It is found that Claimant failed to establish meeting an 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 worked as a truck driver for most of the past 15 years. Claimant testified that she typically worked 12 hour shifts. Claimant testified that most of her employment hours were spent driving. Claimant testified that she was also responsible for strapping down her loads. Claimant testified that she worked as a bus driver in 1999.

Claimant testified that she could not perform truck driving employment because she could not get in and out of her truck. Claimant also testified that she would not be able to manually bring down the trailer legs of her haul. Claimant testified that she could not sit long enough to perform her school bus driving duties.

Claimant's testimony that she is unable to perform past employment was consistent with presented documents. It is found that Claimant cannot perform past employment and the analysis may proceed to the final step.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform

specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR

416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

Physician statements of Claimant's restrictions were not presented. Restrictions can be inferred based on presented evidence.

Claimant testified that she cannot walk even a block before her hip feels like it's coming out of a socket or like she's carrying a heavy brick in her back. Claimant testified that she regularly uses a cane, and sometimes a walker. Claimant testified that she has difficulty getting up from a sitting position. Claimant testified that she cannot climb stairs though she can drive and do her own shopping. Claimant's testimony was indicative of an inability to perform light employment.

Presented records established Claimant's need for a cane. Presented records also establish ongoing body pain related to fibromyalgia, fatigue related to removal of Claimant's thyroid gland, a need for narcotic medication, and reduced ranges of motion in Claimant's lumbar and hips. The evidence was sufficient to establish that Claimant is unable to perform the standing and ambulation required of light employment.

Based on presented evidence, it is found that Claimant is not capable of performing light employment. For purposes of this decision, it will be found that Claimant is capable of performing sedentary employment, though not of a nature that mandates long stretches of sitting (such as bus driving).

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly denied Claimant's application for SDA benefits. It is ordered that MDHHS:

- (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 MDHHS are **REVERSED**.



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

Date Signed: **6/18/2015**

Date Mailed: **6/18/2015**

CG / cl

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:

