

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 15-006081  
Issue No.: 4009  
Case No.: [REDACTED]  
Hearing Date: May 21, 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 May 21, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Hearing Facilitator.

**ISSUE**

The issue is whether DHS properly terminated Claimant's eligibility 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. Claimant was an ongoing SDA benefit recipient.
2. Claimant's only basis for SDA eligibility was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual for purposes of SDA eligibility (see Exhibit 10).
4. On [REDACTED], DHS terminated Claimant's eligibility for SDA benefits, effective February 2015, and mailed a Notice of Case Action (Exhibits 3-4) informing Claimant of the termination.
5. On [REDACTED], Claimant requested a hearing disputing the termination of SDA benefits.

6. As of the date of the administrative hearing, Claimant was a 51-year-old female.
7. Claimant's highest education year completed was the 8<sup>th</sup> grade.
8. Claimant alleged disability based on hypertension (HTN), anemia, back pain, and restless leg syndrome.

### **CONCLUSIONS OF LAW**

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (January 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 (July 2014), 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.*

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. The definition of SDA disability is identical except that only a three month period of disability is required.

Substantial gainful activity 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. BEM 260 (July 2014), p. 10. 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.*

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. Claimant was previously certified by the DHS Medical Review Team (MRT) as unable to work for at least 90 days. At Claimant's most recent SDA benefit redetermination, DHS determined that Claimant was no longer disabled.

In evaluating a claim for ongoing disability benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding if an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The below described evaluation process is applicable for clients that have not worked during a period of disability benefit eligibility. There was no evidence suggesting that Claimant received any wages since receiving disability benefits.

The first step in the analysis in determining the status of a claimant's disability requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue and no further analysis is required. This consideration requires a summary and analysis of presented evidence.

Physician office visit notes (Exhibits 40-42) dated [REDACTED] were presented. It was noted that Claimant reported ongoing back pain from scoliosis (5/10 with pain medications, 10/10 without meds). Claimant reported difficulty with bending and an inability to lift. Medications included Xanax, Norco (10-325 mg, 2x per day), Lexapro, Celexa, Topamax, and Norvasc. A normal gait and lumbar tenderness were noted. Normal spinal curvature was noted. Diagnoses included lower back pain, restless leg syndrome, benign HTN, depression, scoliosis, and migraine headaches. A plan to continue medications were noted.

An internal medicine examination report (Exhibits 12-19; 24-28) dated [REDACTED] was presented. The report was noted as completed by a consultative physician. It was noted that Claimant reported HTN, blurry vision, mild depression, arthritis, left shoulder pain, and back pain related to scoliosis. Reported current medications included Xanax, butalbital, and topiramate. It was noted that Claimant did not require use of a cane. Restricted motion ranges in lumbar and left shoulder were noted. Bilateral hip

flexion was also noted to be reduced. Tandem walk, heel walk, and toe walk were noted as slowly performed. It was noted that Claimant was able to perform 23 various work-related activities (e.g. sitting, standing, lifting, carrying, stooping, bending, and reaching). Assessments of HTN, left shoulder arthritis, and chronic back pain were noted.

A mental status examination report (Exhibits 20-23) dated [REDACTED] was presented. The report was noted as signed by a consultative limited licensed psychologist and a licensed psychologist. It was noted that Claimant reported a learning disability, depression, and anxiety. Claimant reported having a recent mild seizure after learning that her nephew died from a heroin overdose; a history of seizures was noted. Claimant reported that she spends her time taking short walks and watching television. Noted observations and assessments of Claimant made by the consultative examiner included the following: in touch with reality, cooperative, appropriate affect, self-conscious mood, logical stream of mental activity, and orientation x3. It was noted that Claimant's depression symptoms were improving with medication. It was noted that Claimant did not exhibit significant psychiatric symptoms, though Claimant would be restricted to performing simple work due to limited reading skills and mild-to-moderate short-term memory problems, and limited concentration. Diagnoses of intellectual disability disorder (mild-to-moderate), grief bereavement disorder, and adjustment disorder were noted.

Claimant testified that she was recently hospitalized 4 days for anemia. Hospital records were not presented.

Claimant testified that she had a brain operation requiring placement of a shunt in the left side of her head. Claimant reported to a physician that she was only six months old at the time of surgery (see Exhibit 12). Claimant testified that she thinks that she is in need of a follow-up surgery to repair or replace the shunt. Presented documents did not verify Claimant's testimony.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of shoulder pain. The listing was rejected due to a failure to establish that Claimant is unable to effectively perform fine and gross movements.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's back pain 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 blurry vision. This listing was rejected due to a failure to establish a corrected eyesight of worse than 20/200 in Claimant's worst 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 a diagnosis for 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 does not meet a SSA listing. Accordingly, the disability analysis may proceed to the second step.

The second step of the analysis considers whether medical improvement occurred. CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i).

An administrative hearing decision dated [REDACTED] (Exhibits 48-57) from a hearing dated [REDACTED] was presented. The decision stated that Claimant was disabled, effective June 2012. Corresponding Claimant medical records (Exhibits 58-287) were presented.

Physician office visit notes (Exhibits 60-61) dated [REDACTED] were presented. It was noted that Claimant complained of back pain related to scoliosis, arthritis, and a disc bulge. Complaints of seizures and poor memory were also noted. Lumbar tenderness was noted. Assessment of back pain and memory impairment were noted.

A Medical Examination Report (Exhibits 58-59) dated [REDACTED] was presented. The form was completed by an internal medicine physician with an approximate one month history of treating Claimant. Claimant's physician listed diagnoses of scoliosis, HTN, anemia, and back pain.

An internal medicine examination report and accompanying Medical Examination Report (Exhibits 77-91) dated [REDACTED] was presented. Both reports were noted as completed by a consultative physician. It was noted that Claimant presented with a healthcare aide who provided treatment to Claimant for the prior 2 years. Claimant was observed to have a "very badly limping" gait. Claimant reported that she was born with water in her brain which required shunt placement. A recent history of seizures was noted; Claimant reported that the seizures persisted despite medication compliance. A history of COPD was noted. Claimant was found unable to stand, therefore, ranges of motion for Claimant's lumbar, hips, and knees could not be assessed. Reduced range

of motions in Claimant's shoulders and lumbar were also noted. It was noted that Claimant was never capable of lifting/carrying, restricted to less than 2 hours per workday of standing/ambulation, and no repetitive arm or foot actions.

A consultative I.Q. test report (Exhibits 64-67; 92-95; 102-106) dated [REDACTED] was presented. Claimant's full scale I.Q. was 78; this placed Claimant in the borderline range.

A Psychiatric/Psychological Examination Report (Exhibits 68-70; 96-98) dated [REDACTED] was presented. The form was completed by a consultative psychiatrist. It was noted that Claimant used a walker. A diagnosis of major depressive disorder was noted. Claimant's GAF was found to be 55. A fair prognosis was noted (see Exhibit 67).

Additional medical documents (see Exhibits 121-287) from Claimant's previous disability-related applications were presented. The medical documents (dated from 2012 and earlier) noted treatment for back pain and abdominal pain.

Presented records established that Claimant's ability to walk improved from non-existent to normal. Improvements in Claimant's mental health and left shoulder were also demonstrated. It is found that Claimant improved medically. Accordingly, the disability analysis may proceed to the third step.

The third step of the analysis considers medical improvement and its effect on the ability to perform SGA. Medical improvement is not related to the ability to work if there has been a decrease in the severity of the impairment(s) present at the time of the most recent favorable medical decision, but *no* increase in functional capacity to do basic work activities. 20 CFR 416.994(b)(1)(ii). If there has been any medical improvement, but it is not related to the ability to do work and none of the exceptions applies, benefits will be continued. *Id.* If medical improvement is related to the ability to do work, the process moves to step five.

Claimant's improvement in ambulation, depression, and left shoulder function each relate to Claimant's ability to work. Accordingly, the analysis skips step four and proceeds to the 5<sup>th</sup> step.

Step five of the analysis considers whether all the current impairments in combination are severe. 20 CFR 416.994(b)(5)(v). When the evidence shows that all current impairments in combination do not significantly limit physical or mental abilities to do basic work activities, these impairments will not be considered severe and the claimant will not be considered disabled. *Id.* If the impairments are considered severe, the analysis moves to step six. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.921 (a). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921 (b). 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. (*Id.*)

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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> Cir. 1986).

Claimant presented no treatment documents from the prior 12 months. The only treatment document presented since Claimant was deemed disabled stated that Claimant had normal spine curvature. Normal spine curvature is not expected for someone who was previously disabled in large part to scoliosis.

Claimant testified that she is restricted in left arm function, bending, lifting/carrying, and ambulation. Consultative examination records verified that Claimant has some degree of back pain, shoulder pain, and shoulder problems. The diagnoses were sufficient to infer some degree of exertional and non-exertional restrictions that are expected to last at least 90 days.

Claimant testified that she has ongoing learning disabilities. Updated intellectual testing was not presented, however, such an update would be unnecessary. The nature of I.Q. is such that it is not expected to significantly change over time. Thus, Claimant's I.Q. testing from 2013 is found to verify ongoing learning restrictions. This finding is also consistent with cognitive restrictions made by a consultative mental health examiner.

It is found that Claimant established having severe impairments for purposes of SDA benefits. Accordingly, the analysis may proceed to the sixth step.

The sixth step in analyzing a disability claim requires an assessment of the Claimant's RFC and past relevant employment. 20 CFR 416.994(b)(5)(vi). 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 a history of employment working for a fast food restaurant. Claimant stated that she did “everything” for her former employer (see Exhibit 34). Claimant testified that she attempted to work in 2014 but had to quit because her job required more standing than she is capable of performing.

Fast food employment generally requires a “light” exertional level. An analysis of whether Claimant can perform light employment will be reserved for the final step of the analysis.

In the seventh and final 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.

Claimant reported that she attended physical therapy. Claimant also attempted back injections (see Exhibit 12).

Claimant testified that she sometimes uses a cane. Claimant testified that she can only walk ½ of a block. Claimant testified that she is restricted to 10-15 minutes of standing. Claimant testified that she takes Tylenol #3 to control pain. Claimant says she could not bend over enough to do dishes. Claimant testified that when she most recently tried working, she required extra breaks to deal with the job's standing requirements.

Claimant testified that her left arm pain is caused by bone-to-bone friction. Claimant testified that she tried physical therapy for her left arm. Claimant testified that she cannot wash her hair with her left arm.

Claimant's biggest obstacle to continuing disability is her lack of treatment records and clear medical improvement since being found disabled. Despite the lack of treatment records, reduced ranges of motion in Claimant's lumbar, hip, and left shoulder were verified by a consultative examiner in 2014. Most notably, Claimant's bilateral hip flexion was half (50°) of a normal range of motion (100°). The examiner stated that Claimant does not require a cane and can ambulate, however, a need to walk and/or stand for 6 hours in a workday is a demanding obligation.

Though Claimant has substantially medically improved, it is improbable that she can stand and/or ambulate for the requirements of light employment. When Claimant's cognitive abilities and left arm dysfunction are factored, Claimant's employment opportunities for light employment are further diminished. It is found that Claimant is limited to sedentary employment.

Based on Claimant's exertional work level (sedentary), age (closely approaching advanced age), education (limited), employment history (semi-skilled with no 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 DHS improperly terminated Claimant's MA eligibility on the basis of a finding that Claimant is not disabled.

### **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 eligibility, effective February 2015;
- (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**.



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

Date Signed: **7/1/2015**

Date Mailed: **7/1/2015**

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:

