

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-006892
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: June 10, 2015
County: Wayne (18)

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 Michigan Department of Health and Human Services (MDHHS) included [REDACTED], medical contact worker.

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 5-6).
4. On [REDACTED], MDHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 61-64) informing Claimant of the denial.
5. On [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits (see Exhibits 65-66).

6. As of the date of the administrative hearing, Claimant was a 43-year-old male with a height of 5'11" and weight of 460 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 12th grade.
9. Claimant has a history of unskilled employment, with no transferrable job skills.
10. Claimant alleged disability based on restrictions related to diagnoses of morbid obesity, osteoarthritis, hypertension (HTN), and diabetes mellitus (DM).

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 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 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.

A Psychological Evaluation (Exhibits 28-35) dated [REDACTED] was presented. It was noted that the evaluation was performed for the purpose of assessing Claimant for learning disorders. The evaluation was well-detailed. It was noted that Claimant underwent Weschler Adult Intelligence Scale-Fourth Edition (WAIS4). WAIS4 testing noted the following composite scores in the following areas: verbal comprehension 76, perceptual reasoning 90, working memory 86, and processing speed 90. Claimant's full scale IQ was noted to be 80. Claimant was assessed at the following grade equivalent following Wide Range Achievement Test-Fourth Edition (WRAT4) testing: word reading 8.9, sentence comprehension 4.9, spelling 10.3, and math computation 9.8. It was stated that Claimant needed neurological and personality testing to pinpoint the cause of learning difficulties. "Significant ADHD symptomology" was noted.

Physician office visit notes (Exhibits 42-43) dated [REDACTED] were presented. It was noted that Claimant presented for follow-up of right leg cellulitis. It was noted that

various medications were prescribed. Assessments of obesity, DM, and HTN were also noted.

Hospital documents (Exhibits 36-40) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with a complaint of right knee pain. It was noted that Claimant reported that he slipped and twisted his knee 2 weeks earlier. Normal knee range of motion was noted. An impression of no acute bony abnormality was noted following views of Claimant's right knee. A plan of treatment was not apparent.

Physician office visit notes (Exhibits 44-45) dated [REDACTED] were presented. It was noted that Claimant requested an increase in Norco dosage due to severe right knee pain. A plan to continue Norco (7.5-3.25 mg every 6 hours) was noted.

Physician office visit notes (Exhibits 46-47) dated [REDACTED] were presented. It was noted that Claimant complained of ongoing knee pain. Various medications were noted as continued.

Physician office visit notes (Exhibits 48-49) dated [REDACTED] were presented. It was noted that Claimant report right leg itching due to stasis dermatitis. A prescription for ammonium lactate lotion was noted.

Physician office visit notes (Exhibits 50-51) dated [REDACTED] were presented. It was noted that Claimant requested a change in ADHD medication from Strattera to Adderall. A full range of musculoskeletal motion was noted. Bilateral stasis dermatitis on Claimant's right leg was noted.

Physician office visit notes (Exhibits 52-55) dated [REDACTED] were presented. Ongoing assessments for cellulitis, diabetes, HTN, and obesity were noted.

A mental status examination report (Exhibits 17-21) dated [REDACTED] was presented. The report was noted as completed by a consultative licensed psychologist. A history of ADHD was reported. It was noted that Claimant received medication for ADHD, but that he does not attend therapy or counseling. Claimant reported that he had attention difficulties following a near-drowning accident. Claimant reported that he can perform daily activities, though he sometimes neglects his grooming and hygiene when he is depressed. Claimant reported a history of suicidal ideation though Claimant denied any previous attempts. Notable observations and assessment of Claimant made by the consultative examiner included the following: labile affect, low self-esteem, tense and anxious appearance, tearful during interview, logical thought content, normal speech, fidgetiness, and some difficulty with immediate recall. It was noted that Claimant exhibited symptoms of a poorly controlled mood disorder. Claimant's ability to work was noted to be impacted by his ability to manage his mood, along with physical restrictions.

An internal medicine examination report (Exhibits 7-14) dated [REDACTED] was presented. The report was noted as completed by a consultative physician. It was noted that Claimant's weight was 461 pounds. A history of DM, HTN, arthritis, and depression was noted as reported by Claimant. Claimant reported that he has chronic back pain stemming from a 2007 lifting injury. It was noted that Claimant has a slow and wide-based gait. Tandem walk, heel walk, and toe walk were noted as slowly performed. An impression of poorly controlled HTN was noted. An impression that Claimant does not check his blood sugar was noted. Reduced ranges in lumbar flexion (70°- normal 90°), bilateral knee flexion (140°- normal 150°), and hip forward flexion (90°- normal 100°) were noted. 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.

A bilateral knee x-ray report (Exhibit 15) dated [REDACTED] was presented. Asymmetrical narrowing of the medial tibiofemoral joint compartment was noted. Peripheral articular spur formation was also noted. An impression of degenerative changes was noted.

Claimant testified that he is depressed because of his life circumstances. Claimant testified that he sometimes sits "in a daze" and lacks confidence. Claimant's testimony was credible enough but was not supported with treatment records. Claimant testified that he saw a psychiatrist once but he did not return.

Treatment for ADHD was established by physician records and a consultative examiner. The consultative examiner noted that Claimant demonstrated significant difficulties with attention, concentration, short-term memory, judgment, basic vocabulary, and abstract thinking. It is found that Claimant verified severe psychological-related restrictions.

Claimant testified that he has difficulties with ambulation and standing. Claimant's testimony was consistent with his morbid obesity and presented x-ray report.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. 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 joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of knee pain. The listing was rejected due to a failure to establish that Claimant is unable to ambulate effectively.

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.

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 he worked for 15 years on an assembly line. Claimant's testimony implied that his past employment required periods of standing and ambulation which he can no longer perform. Claimant's testimony was consistent with presented evidence. 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 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 Claimant's restrictions were not presented. Restrictions can be inferred based on presented documents.

Claimant testified that he is in the process of getting a cane. A need for a cane was not established. Without verification, a need for ambulation assistance cannot be inferred. Generally, a lack of walking assistance device is consistent with the ability to perform the low demand of standing and ambulation required of sedentary employment.

Claimant testified that he has arthritis in his lumbar. Radiology was not presented. A back diagnosis was not even verified.

Claimant testified that he cannot walk far because he loses his breath and/or he needs to lean on something. A respiratory disorder was not verified.

Claimant testified that his physician wants him to have surgery (presumably bariatric surgery). Claimant states that his insurance requires one year of monitoring before he can have the surgery. Presented records did not reference a need for bariatric surgery.

Claimant testified that he cannot bathe because he is unable to get up. Claimant testified that he has to sit down to shower because he cannot stand long. Claimant estimated that showers take 45-60 minutes because he has to take multiple breaks from standing. Claimant testified that he can dress himself, though he has to sit down to do it. Claimant testified that he washes dishes (does it sitting down) and takes out the garbage). Claimant testified that he is physically unable to mow his lawn. Claimant testified that he does laundry, but sits when folding clothes. Claimant testified that he does his own shopping but gets around with a scooter. Claimant testified that he can drive. Claimant's testimony was somewhat indicative of ambulation and standing restrictions that may prevent the performance of sedentary employment. Presented documentation was less supportive.

Some knee degeneration was verified through radiology. Claimant credibly testified that he uses a right knee brace. Presented knee radiology, a need for a knee brace, even when factored with Claimant's morbid obesity, was not sufficient to infer with probability

that Claimant cannot perform the standing and ambulation required of sedentary employment.

Based on presented records, it is found that Claimant can perform sedentary employment. The analysis will proceed to consider the impact of Claimant's non-exertional restrictions.

Claimant testified that he has problems focusing. As an example, Claimant testified that he has to read something multiple times before he understands what he read. Claimant's testimony was consistent with restrictions from ADHD and/or depression.

Claimant would be limited to non-complex sedentary employment. Examples of such employment would include telemarketing, telephone customer service, data entry, receptionist, and many office setting jobs. MDHHS did not present evidence of the availability of such jobs but it is presumed that they are not so rare that employment opportunities are not available to Claimant.

Based on Claimant's exertional work level (sedentary), age (younger individual 18-44), education (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 MDHHS 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 MDHHS properly denied Claimant's SDA benefit application dated [REDACTED] based on a determination that Claimant is not disabled. The actions taken by MDHHS are **AFFIRMED**.



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

Date Signed: **6/17/2015**

Date Mailed: **6/17/2015**

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:

