

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-007883
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: July 2, 2015
County: Wayne (49)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on July 2, 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 1-3).
4. On [REDACTED], MDHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits.

6. As of the date of the administrative hearing, Claimant was a 52 year old male with a height of 5'9" and weight of 190 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, via general equivalency degree.
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 diabetes mellitus (DM), neuropathy, and angina.

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 (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 (January 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 2.

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 disability duration of 90 days.

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.

A hospital document (Exhibit 12) from an encounter dated [REDACTED], was presented. Claimant's A1C was noted to be 11.4 as of April 2014; an assessment of DM was noted. Mild vessel attenuation and an assessment of HTN were noted. It was noted that Claimant was evaluated for ocular HTN vs. glaucoma. A visual test in 6 months was recommended.

Hospital documents (Exhibits 13-15) from encounters dated [REDACTED], and [REDACTED] were presented. It was noted that Claimant reported numbness from his left elbow to his fingers, ongoing for 3 years. A report of foot tingling in his feet, ongoing for 5 years, was also noted. A loss of strength (5- /5) in Claimant's left arm was noted. A loss of pinprick was noted in Claimant's left arm and bilateral lower extremities was noted. It was noted that an electrodiagnostic study was consistent with left and right ulnar mononeuropathy.

Hospital documents (Exhibits 16, 21-24) from an encounter dated [REDACTED], were presented. It was noted that Claimant presented after experiencing dizziness and weakness. Claimant reported that his symptoms were relieved after he had juice and toast, but then he felt chest pain and a headache. It was noted that Claimant's chest pain resolved with nitroglycerin and aspirin. It was noted that Claimant left against medical advice (Claimant reported that he had to leave to take care of his mother with dementia).

Hospital documents (Exhibits 17-20) from an encounter dated [REDACTED], were presented. It was noted that Claimant reported recurring panic attacks, anhedonia, fatigue, decreased appetite, and poor sleep. Assessments of syncope, DM, HTN, and depression were noted. It was noted that Claimant increased his smoking to one pack per day. Claimant's last A1C was noted to be 8.1.

Hospital physician documents (Exhibits 25-26) dated [REDACTED], were presented. It was noted that Claimant presented for optimization of bilateral ulnar nerve decompression. It was noted that Claimant was reluctant to undergo a cardiologist recommended 2d echo. An assessment of chronic lower back and arm pain were noted. A prescription for tramadol was noted.

A Medical Examination Report (Exhibits 6-7) dated [REDACTED], was presented. The form was completed by an internal medicine physician with an approximate 2 ½ year history of treating Claimant. Claimant's physician listed a diagnosis of left ulnar neuropathy. Claimant's current medications were listed as Neurontin and tramadol. An impression was given that Claimant's condition was either stable or deteriorating. It was noted that Claimant reported right arm pain, though no defect was found during examination. Left arm weakness was noted during a physical examination. A good range of motion was noted in upper and lower extremities. A sensory deficit in left ulnar distribution was noted. It was noted that Claimant can meet household needs.

Physician office visit notes (Exhibits 9-11) dated [REDACTED], were presented. Active problems included the following: type 2 DM, benign HTN, ulnar neuropathy at elbow, chest pain, syncope, major depressive disorder (recurrent, moderate), anxiety, nicotine dependence, and hyperlipidemia. A primary problem of coronary artery disease was noted for that visit though details were not provided. Active medications included Lisinopril, gabapentin, tramadol, insulin, and bupropion.

Physician office visit notes (Exhibits A17-A22) dated [REDACTED], were presented. A diagnosis of hypertensive urgency was noted. An increase in Lisinopril was noted.

Physician office visit notes (Exhibits A10-A13) dated [REDACTED], were presented. It was noted that Claimant presented for neuropathy treatment.

Physician office visit notes (Exhibits A1-A9) dated [REDACTED], were presented. It was noted that Claimant presented for a heart problem. A diagnosis of angina, Class III was noted. Claimant's current medications included atenolol, gabapentin, hydrocodone-acetaminophen, insulin, metformin, nitroglycerin, and tramadol.

Physician office visit notes (Exhibits A14-A16) dated [REDACTED], were presented. It was noted that Claimant presented for left leg pain treatment. An order for an echocardiogram was noted.

Claimant alleged disability, in part, due to psychological restrictions such as depression and anxiety. Both diagnoses were referenced in treatment documents. Anti-depressant medication was also verified as part of his medication history (e.g. bupropion). Claimant testified that he sees a psychiatrist once every 2-3 months. Claimant testified that he sees therapist on weekly basis. Psychiatrist and/or therapist documents were not presented.

The only reference to mental restrictions came from an internal medicine physician who indicated Claimant may perhaps be limited by depression, but he is still undergoing evaluation (see Exhibit 7). Despite some evidence of depression and anxiety in Claimant's history, the overall evidence was insufficient to infer that Claimant has psychological restrictions.

Claimant testified that he expects to have surgery on his left and right arms to prevent the loss of muscle mass due to neuropathy. Claimant testimony described the surgeries as a form of nerve blockage. Claimant testified that his cardiologist has to first clear him before he can have surgery. Claimant testified that he hopes to return to work after having surgery.

Claimant testified that he is restricted in lifting/carrying. Claimant's testimony was consistent with presented documents which verified treatment, radiological evidence, and medication consistent with neuropathy and angina.

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.

Cardiac-related listings (Listing 4.00) were considered based on Claimant's cardiac treatment history. Claimant failed to meet any cardiac listings.

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 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.

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

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to the fourth step.

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 full-time for several years for a cable company. Claimant testified that his work duties included driving around to locate areas in need of service. Claimant testified that he was also responsible for some of the repair work. Claimant testified that some of his job tasks included climbing ladders and using tools, neither of which he can still perform.

Claimant's testimony that he is unable to perform his past job was credible and consistent with presented evidence. Accordingly, the disability 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 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*.

On a Medical Examination report dated [REDACTED] Claimant's internal medicine physician opined that Claimant was unrestricted in standing or sitting. Claimant was restricted to occasional lifting of 10 pounds, never more than 10 pounds. Claimant's physician opined that Claimant was restricted from performing the following repetitive actions with his left arm: simple grasping, reaching, pushing/pulling, and fine manipulating. The stated-restrictions were consistent with presented evidence. The restrictions were also consistent with an inability to perform light employment.

Claimant testified that he is restricted to one block of walking before he loses his breath. Claimant testified that he believes the restriction may be related to his unstable angina.

Presented documents verified a diagnosis for Class III angina. Class III angina is understood as causing moderate symptoms with daily activities. Claimant's testimony was somewhat contradicted by his internal medicine physician who stated that Claimant has no standing restrictions (see Exhibit 7). It is worth noting that the Class III angina diagnosis occurred after Claimant's physician provided restrictions; thus, Claimant's

specialist may not have been aware of the diagnosis. It is also worth noting that the diagnosis came from a vascular specialist. A vascular specialist is a more credible medical source than an internal medicine physician, at least concerning angina.

Claimant is certainly not helpless. He conceded that he does not use a cane or a walker. Claimant conceded that he can drive, though he uses only his right hand. Claimant conceded that he can independently perform daily activities, though Claimant also testified that he performs them with pain. Claimant also testified that he takes high doses of gabapentin and Norco, both of which cause Claimant fatigue.

Claimant's testimony concerning his abilities and restrictions was very credible and well supported by medical documentation. It is found that Claimant's ambulation and lifting restrictions prevent Claimant from performing light employment.

Based on Claimant's exertional work level (sedentary), age (approaching advanced age), education (high school with no direct entry into skilled employment), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 201.14 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: **7/7/2015**

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

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:

