

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

IN THE MATTER OF:

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Reg. No.: 15-008626
Issue No.: 4009
Case No.: ██████████
Hearing Date: July 16, 2015
County: Wayne (57)

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 16, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included ██████████ ██████████, specialist.

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 February 27, 2015, Claimant applied for SDA benefits.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On June 17, 2014, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 10-12).
4. On June 24, 2014, MDHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 6-9) informing Claimant of the denial.
5. On July 3, 2014, Claimant requested a hearing disputing the denial of SDA benefits (see Exhibits 2-3).

6. As of the date of Claimant's earliest potential SDA pay period, Claimant was a 50 year old female.
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 10th grade.
9. Claimant has a history of unskilled employment, with no transferrable job skills.
10. Claimant alleged disability based on restrictions related to her back.

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 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.

Claimant testified that she previously worked as a certified nursing assistant (CNA). Claimant testified that she injured her back when transferring a patient on August 25, 2014. Claimant testified that her patient fell backwards during the lift causing Claimant injuries to her upper, middle, and lower back.

Medical center notes (Exhibits 17-19; 36-37) dated August 27, 2014, were presented. It was noted that Claimant reported lower back pain from a work-related injury. Claimant reported having a back spasm on August 26, 2014. Positive tenderness at the lumbosacral junction was noted. An assessment of lumbosacral sprain was noted. Ibuprofen was noted as prescribed. A restriction to 10 pounds of lifting was noted. Restrictions of no over-shoulder reaching and limited bending were also noted.

Medical center notes (Exhibits 32-35) dated August 29, 2014, were presented. It was noted that Claimant reported ongoing back pain (5/10).

Medical center notes (Exhibits 24-27) dated September 4, 2014, were presented. It was noted that Claimant reported ongoing back pain (5/10).

Medical center notes (Exhibits 24-27) dated September 10, 2014, were presented. It was noted that Claimant reported ongoing back pain (5/10). It was noted that Claimant reported that pain was exacerbated by pushing, pulling, twisting, raising arms, squatting, and prolonged standing. A physician signed report of Claimant's lumbar (Exhibit 16) noted an impression of mild spondylosis.

Medical center notes (Exhibits 20-23) dated September 16, 2014, were presented. It was noted that Claimant reported ongoing back pain (7/10). A recommendation of continued physical therapy was noted. Positive tenderness at the lumbosacral junction was noted. An assessment of lumbosacral sprain was noted. A restriction to 20 pounds of lifting was noted. No squatting and limited bending restrictions were also noted.

Medical center notes (Exhibit 82) dated October 7, 2014 were presented. Diagnoses of lumbar and thoracic strain were noted.

Medical center notes (Exhibits 81; 83) dated December 18, 2014, were presented. It was noted that Claimant could return to regular work duty on December 18, 2014. Diagnoses of lumbar and cervical strain were noted.

A Certificate of Professional Care dated December 22, 2014, (Exhibit 84) from Claimant's primary care physician was presented. The certificate stated that Claimant is "totally unable to work at this time." A probable end of disability date of January 26, 2015 was noted.

A Certificate of Professional Care dated January 27, 2015, (Exhibit 85) from Claimant's PCP was presented. The certificate stated that Claimant is "totally unable to work at this time." A probable end of disability date of March 4, 2015 was noted.

A Certificate of Professional Care dated February 19, 2015, (Exhibit 86) from Claimant's PCP was presented. The certificate stated that Claimant is "totally unable to work at this time." A probable end of disability date of March 23, 2015 was noted.

Neurology surgery department office visit notes (Exhibits 47-49) dated March 12, 2015, were presented. It was noted that Claimant reported a worsening of cervical, thoracic, and lumbar pain. It was noted that Claimant reported that pain was exacerbated by daily activities. A mildly herniated disc with disc height and loss was noted at C5-C6. A disc bulge was noted at C3-C4. It was noted that Claimant reported no improvement after completing physical therapy. A recommendation of pain clinic treatment and possible surgery was noted. A diagnosis of mild lumbar spondylosis was also noted. An assessment of obesity was noted.

A Medical Examination Report (Exhibits 59-61) dated March 16, 2015 was presented. The form was completed by a family practice physician with an approximate 5 month history of treating Claimant. Claimant's physician listed 3 diagnoses, none of which were legible. A guarded prognosis was noted. It was noted that Claimant can meet household needs while it was also noted that Claimant needed help performing activities of daily living. Weakness in Claimant's arms and back were noted.

Claimant testified that she started seeing a psychiatrist 3 months ago, on a monthly basis. No psychiatric treatment records were presented. Claimant failed to establish any psychiatric or psychological restrictions.

Claimant testified that she had 8 weeks of physical therapy (2-3 appointments per week) which only worsened her back pain. Claimant testified that she has undergone 8 back injections since April 2015. Claimant testified that her physician tried different injection locations in the hopes of finding an area that provided Claimant with pain relief. Claimant testified that the injections have offered her little pain relief. Claimant testified that she currently relies on a back brace and pain medications (Percocet, Baclofen, and Ibuprofen) for some pain relief.

Claimant testified that she has ongoing sitting, standing, and ambulation restrictions related to a back injury she suffered at her former employment. Claimant testified that she has relied on use of a cane since January 2014. Claimant's testimony was consistent with presented medical documentation.

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.

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 she worked for 2 years as a bar waitress. Claimant estimated she had to carry no more than 5 pounds during her employment. Claimant testified that her job required long periods of standing and ambulation.

Claimant stated that balance of Claimant's full-time employment from the last 15 years was spent as a certified nursing assistant (CNA). Claimant testified that she worked as a CNA for various employers, but most were for nursing homes. Claimant testified that each of her CNA jobs required similar duties. Claimant testified that her CNA duties included providing the following assistance to residents: transferring, bathing, grooming, and driving to medical appointments.

Claimant testified that she cannot do the standing or walking required of her waitressing employment. Claimant testified that she cannot perform the lifting, squatting, or bending required of her CNA employment. Claimant's testimony was consistent with presented records. 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).

Claimant applied for SDA on February 27, 2015. Clients are eligible for SDA benefits in the pay period which encompasses the 30th day following a client's application date (see BAM 115). Claimant turned 50 years of age during the earliest SDA pay period for which she could be eligible. Claimant's age during her first potentially eligible SDA pay is the age that should be factored in the 5th step of the analysis. Thus, the disability analysis will factor that Claimant was 50 years of age (aka "closely approaching advanced age").

Claimant testified that she can stand and/or walk 10-15 minutes before experiencing back spasms. Claimant's testimony implied that she has very limited ability of lifting/carrying. Claimant's testimony was indicative of an inability to perform light employment.

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 March 16, 2015, Claimant's physician opined that Claimant was restricted as follows over an eight-hour workday, less than 2 hours of standing and/or walking, and less than 6 hours of sitting. Claimant's physician restricted Claimant from any lifting/carrying. Claimant's physician opined that Claimant was restricted from performing the following hand/arm repetitive actions: bilateral simple grasping, bilateral reaching, bilateral pushing/pulling, and bilateral fine manipulating. A restriction from performing repetitive leg/foot operations was also noted. The basis of restrictions was noted to be lumbar disc disease and a cervical intervertebral disc.

Provided physician restrictions appeared somewhat exaggerated and/or unsupported. Diagnoses of lumbar and/or cervical disc disease were verified, but the diagnoses hardly justify most of the stated restrictions. Radiology can verify such a degree of restrictions. The only presented radiology verified mild lumbar spondylosis which is not particularly indicative of extensive walking, standing, or repetitive arm action restrictions. the degree of any of the stated restrictions. Fortunately for Claimant, a finding of disability does not require verifying such a degree of restrictions.

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.

Presented evidence sufficiently verified a need for a cane, mild lumbar spondylosis, diagnoses of cervical and lumbar disease. Treatment history verified unsuccessful physical therapy and a need for relatively strong pain medication (e.g. Percocet). Claimant's testimony concerning epidural treatment was sufficiently credible. Based on

presented records, it is found that Claimant cannot perform light employment. For purposes of this decision, it will be found that Claimant can perform sedentary employment.

Based on Claimant's exertional work level (sedentary), age (closely approaching advanced age), education (less than high school), employment history (unskilled 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.

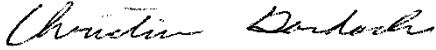
Claimant testified that she is 5'2" and weighs 212 pounds. Claimant conceded that her primary care physician advised her that she is overweight and that her weight may worsen her back problems. Though Claimant's weight may be a partial factor to a finding of disability, presented evidence did not suggest that it was a significant factor. Presented evidence also did not verify that Claimant's weight amounted to medical noncompliance. Thus, a materiality analysis of Claimant's medical non-compliance due to obesity will not be undertaken.

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 February 27, 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**.



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

Date Signed: **7/17/2015**

Date Mailed: **7/20/2015**

CG/tm

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]