

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-008628
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: July 2, 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 2, 2015, from Detroit, Michigan. Participants included the above-named Claimant, [REDACTED], Claimant's chore provider, testified on behalf of Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included [REDACTED], 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 [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 10-12).
4. On [REDACTED], 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 [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits.
6. As of the date of the administrative hearing, Claimant was a 35 year old male.
7. Claimant alleged disability based on restrictions related to a motor vehicle accident.

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).

In response to a hearing request question about special arrangements for hearing participation, Claimant stated that he used a walker and cane. Claimant attended the hearing with the use of a cane. Claimant testified that he required no special arrangements to participate or attend the hearing and the hearing was conducted accordingly.

Claimant's hearing request noted a dispute concerning Family Independence Program (FIP) benefits. FIP is a cash program intended for caretakers to minor children and pregnant women. Claimant testified that he seeks cash benefits solely based on disability. Claimant testimony conceded that he did not intend to dispute FIP eligibility, only his SDA eligibility.

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 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 background information from Claimant's testimony and a summary of presented medical documentation.

Claimant testified that he was in a car accident in 2014. Claimant testified that he does not remember the accident but he was told that he drove drunk and hit an abandoned home.

Hospital documents (Exhibits 44-176; 181-191) from an admission dated [REDACTED], were presented. It was noted that Claimant presented with injuries from an auto accident. Notable injuries included the following: right femoral shaft fracture, left femoral

head fracture, mesenteric laceration, bilateral renal contusion, and pulmonary contusion. It was noted that Claimant was admitted to the ICU for ventilator management and hemodynamic resuscitation. It was noted that both femur fractures were surgically repaired. It was noted that Claimant underwent a left hip arthrotomy to remove a loose body that was pressuring a femoral head. It was noted that Claimant's recovery was complicated by sepsis, left leg deep vein thrombosis (DVT) prophylaxis, and ARDS. It was noted that Claimant underwent catheterization on [REDACTED] to address DVT. A discharge date was not apparent though [REDACTED] was the last date of treatment noted.

Orthopedic clinic documents (Exhibits 192-194) from an encounter dated [REDACTED], [REDACTED] were presented. It was noted that Claimant presented for follow-up for poly-trauma. It was noted that radiology demonstrated abundant callous formation in Claimant's right hip and heterotopic bone forming around Claimant's left hip. A prescription for 18 physical therapy appointments was noted.

Orthopedic clinic documents (Exhibits 195-198) from an encounter dated [REDACTED], [REDACTED] were presented. It was noted that Claimant required use of a walker for ambulation. It was noted that Claimant's pelvis moves when he tries to move his left hip. An ongoing diagnosis of heterotopic bone in the left hip was noted.

Internal medicine physician office visit notes (Exhibits 218-219) dated [REDACTED], [REDACTED] were presented. It was noted that Claimant was still taking Coumadin for DVT treatment. Ongoing severe pain was reported by Claimant.

Internal medicine physician office visit notes (Exhibits 216-217) dated [REDACTED], [REDACTED] were presented. It was noted that Claimant reported needing assistance with household activities including laundry and mobility.

Internal medicine physician office visit notes (Exhibits 214-215) dated [REDACTED], [REDACTED] were presented. It was noted that Claimant reported 10/10 pain when trying to ambulate.

Orthopedic clinic documents (Exhibits 199-203) from an encounter dated [REDACTED], [REDACTED] were presented. It was noted that Claimant required use of a walker for ambulation. An impression of a right femur healed fracture with excellent alignment was noted. Mature heterotopic ossification at Claimant's left hip was noted. A recommendation of excision was noted, however, the physician noted trepidation because of the extent of the ossification.

Hospital documents (Exhibits 15-23; 28-35) from an encounter dated [REDACTED], [REDACTED] were presented. It was noted that Claimant presented with left hip and leg pain following a fall. An impression of extensive heterotopic bone adjacent to the left hip was noted following a left hip x-ray. Ongoing Assessments of fracture of femur shaft, sciatic

neuropathy, and loose body in hip joint were noted. A recommendation for a surgery consultation was noted.

Internal medicine physician office visit notes (Exhibits 211-213) dated [REDACTED], were presented. It was noted that Claimant complained of ongoing hip pain and a recent slip and fall. It was noted that Claimant reported that his neurologist recently changed his medication from Norco to Ultram.

Orthopedic clinic documents (Exhibits 204-207) from an encounter dated [REDACTED], [REDACTED] were presented. It was noted that Claimant required use of a walker for ambulation. An ongoing diagnosis of left hip heterotopic bone ossification was noted. A prescription for physical therapy was noted. A follow-up in 4 months was noted.

Physician office visit notes (Exhibits 208-210) dated [REDACTED], were presented. It was noted that Claimant complained of pain. A prescription for Norco (5/325) was noted.

A Medical Examination Report (Exhibits 222-224; 255-257) dated [REDACTED], was presented. The form was completed by an internal medicine physician with an approximate 6 month history of treating Claimant. Claimant's physician listed a diagnosis of venous insufficiency. Current medications included coumadin, lavenox, and Norco. It was noted that Claimant was unable to ambulate 5 feet due to hip pain; a limited standing ability was also noted. An impression was given that Claimant's condition was stable. It was noted that Claimant required assistance with ADLs.

Presented evidence sufficiently verified that Claimant has standing, lifting/carrying, and ambulation restrictions that are expected to last 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.

Claimant's most prominent problem appeared to ambulation restrictions due to bone ossification of his left hip. Disability by joint degeneration is established by the following SSA listing:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s),

and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

The ability to ambulate effectively is the crux of the joint deformity listing. Listing 1.00B2b defines what SSA requires for effective ambulation:

To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail.

On a Medical Examination Report dated [REDACTED], Claimant's physician opined that Claimant was restricted to less than 2 hours of standing and/or walking over an 8 hour workday. Claimant's physician also opined that Claimant was restricted from performing any left leg repetitive action. Both restrictions are consistent with an inability to ambulate effectively.

Claimant testified that he was in a wheelchair for 3 months after his motor vehicle accident. Claimant testified that he now uses a cane for shorter distances and a walker for longer distances. MDHHS testified that Claimant brought a cane to the hearing and has used a cane for previous encounters. Claimant's testimony was credible and consistent with an inability to ambulate effectively.

Claimant and his caretaker each testified that Claimant requires assistance lifting his left leg getting into the shower. Claimant and his caretaker also testified that Claimant requires assistance with below the waist dressing, below-knee washing, laundry, cooking, and other activities requiring bending or lengthy periods of standing. Claimant's testimony was credible and consistent with a Medical Examination Report. The evidence was also indicative of an inability to ambulate effectively.

It is very possible that Claimant's ambulation will improve following surgery to remove bone from his hip. Claimant testified that he is unable to schedule surgery until his bone ossification bone stops growing. Claimant's SDA eligibility should be reevaluated after Claimant undergoes surgery to remove the heterotopic bone from his left hip. Until Claimant undergoes surgery, Claimant is disabled based on his inability to ambulate effectively.

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:

