

**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.: 15-007886
Issue No.: 4009
Case No.: ██████████
Hearing Date: August 20, 2015
County: Wayne (31)

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 August 20, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included ██████████ supervisor.

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. Claimant was an ongoing SDA benefit recipient.
2. Claimant's only basis for SDA eligibility was as a disabled individual.
3. Claimant was employed full-time during his period of SDA eligibility.
4. On May 19, 2015, the Medical Review Team (MRT) determined that Claimant was not a disabled individual for purposes of SDA eligibility (see Exhibits 1-3).
5. On May 21, 2015, DHS terminated Claimant's eligibility for SDA benefits, effective June 2015, and mailed a Notice of Case Action (Exhibits 4-6) informing Claimant of the termination.

6. On May 29, 2015, Claimant requested a hearing disputing the termination of SDA benefits.
7. As of the date of the administrative hearing, Claimant was a 53-year-old male.
8. Claimant's highest education year completed was the 12th grade.
9. Claimant alleged disability based on body pain, a broken pinky toe, and mental health problems.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. MDHHS (formerly known as the Family Independence Agency) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and 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 (7/2014), p. 1.

A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. The definition of SDA disability is identical except that only a three month period of disability is required.

Substantial gainful activity means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. BEM 260 (7/2014), p. 10. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a

household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. It was not disputed that Claimant was previously certified as disabled by MDHHS. At Claimant's most recent SDA benefit redetermination, MDDHS determined that Claimant was no longer disabled.

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

The below described evaluation process is applicable for clients that are not employed. There was no evidence suggesting that Claimant was employed as of the date of hearing.

The first step in the analysis in determining the status of a claimant's disability requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue and no further analysis is required. 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 motor vehicle accident on March 31, 2015. Claimant testified that he was the driver in a roll-over semi-truck accident which caused him to break his pinky toe.

An Initial psychiatric Evaluation (Exhibits 15-16) dated January 9, 2014, was presented. It was noted that Claimant reported symptoms of social isolation, feeling overwhelmed, anxiety, sleep difficulty, forgetfulness, and difficulty with concentration. A distant history (5-6 years earlier) of drug abuse was noted. It was noted that Claimant reported hearing voices a few months earlier. An Axis I diagnosis of major depressive disorder (recurrent and severe, with psychotic features) was noted. A GAF of 50 was noted. Pristiq and Latuda were noted as prescribed. Outpatient psychotherapy was recommended.

Hospital physician office visit notes (Exhibits 10-14) dated April 23, 2015, were presented. It was noted that Claimant presented with a complaint of muscle pain

following a motor vehicle crash. It was noted that Claimant's left-pinky toe was swollen. It was noted that x-rays demonstrated a left-pinky-toe fracture. Assessments included myalgia related to a motor vehicle accident, joint pain, and HTN.

A Medical Examination Report (Exhibits 7-9) dated April 30, 2015, was presented. The form was completed by an internal medicine physician with an approximate 9-month history of treating Claimant. A left toe fracture was noted. An impression was given that Claimant's limitation(s) was not expected to last 90 days. The only stated restriction involved performance of left leg movements. It was noted that Claimant can meet household needs.

Claimant's most prominent impairment appears to be pain and/or restrictions from a broken pinky-toe bone. The applicable SSA listing reads as follows:

1.06 Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones.

With:

A. Solid union not evident on appropriate medically acceptable imaging and not clinically solid;

And

B. Inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

Presented evidence did not verify the absence of a solid union. Presented evidence also did not verify that Claimant is unable to ambulate effectively. Evidence also did not verify a restriction expected to last 90 days.

A listing for affective disorder (Listing 12.04) was considered based on a diagnosis 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 does not meet a SSA listing and the analysis may proceed to step two.

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

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

Typically a second step analysis requires MDHHS to provide documents related to the previous determination of disability. The documents are necessary to be compared to recent documents to determine if medical improvement occurred. In the present case, no such documents are necessary.

Claimant stated that he worked as a driver from May 2014 through March 2015 (see Exhibit 19). Claimant testified that some of that period was for unpaid training, though he testified that his training lasted only about two months. Claimant's period of employment verifies medical improvement in Claimant's condition from the time Claimant was certified as disabled. The inferred medical improvement can also be found to be related to work. Accordingly, the analysis may proceed to the fifth step.

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

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

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting. (*Id.*)

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (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).

Claimant testified that he has neck pain, back headaches, hands, and shoulder, arms, legs. Claimant does not know the cause of the pain though he suspects it is related to his recent truck crash. Claimant also testified that he has torn tendons in his right-hand-pinky finger. Claimant testified that he currently uses a cane and is limited to a 1-block walking limit. Claimant testified that he is restricted to 1-hour periods of sitting. Claimant testified that he has difficulty getting in-and-out of his bathtub and that his mother performs his shopping for him. Claimant testified that he has not drove since his truck accident because driving is too painful.

Presented documents verified a single complaint of general body pain. The complaint was documented within one month of Claimant's accident. The complaint was not found to be related to any particular body dysfunction. Presented evidence was not suggestive of a severe impairment.

Claimant's physician did not note body pain as a diagnosis. Claimant's doctor only recognized Claimant's pinky toe as a complaint. The only stated restriction was not expected to last 90 days. This evidence was not indicative that Claimant has a severe impairment.

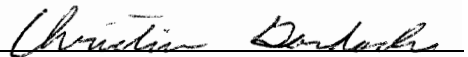
Claimant testified he has been seeing a psychiatrist consistently since January 2015. Claimant testified he began treatment 2 years ago though there was a period of non-attendance. Claimant testified that mental stress and irritability would prevent performance of returning to his truck driving employment.

Only one psychiatric treatment document was presented. The psychiatric evaluation demonstrated some evidence of severe mental health problems (e.g. low GAF and various symptoms). When considering Claimant obtained employment approximately five months later, the document is not deemed to be persuasive evidence of a severe impairment. The absence of any other mental health treatment documents is further support for this conclusion.

It is found that Claimant failed to establish a severe impairment. Accordingly, it is found that MDHHS properly denied Claimant's SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Claimant's SDA eligibility, effective June 2015, 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: **8/26/2015**

Date Mailed: **8/26/2015**

GC/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]