

**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.: 15-013502
Issue No.: 4009
Case No.: ██████████
Hearing Date: September 9, 2015
County: Wayne (17)

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 September 9, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included ██████████, 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 April 23, 2014, Claimant applied for SDA benefits.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On June 24, 2015, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 87-89).
4. On July 8, 2015, MDHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On July 14, 2015, Claimant requested a hearing disputing the denial of SDA benefits.

6. As of the date of the administrative hearing, Claimant was a 41 year old female with a height of 5'6" and weight of 260 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 11th grade.
9. Claimant has a history of unskilled employment, with no transferrable job skills.
10. Claimant alleged disability based on restrictions related to right-sided hip pain and lumbar pain.

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. SDA differs in that a 90 day period is required to establish 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. 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 durational 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 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 requirements are 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.

Hospital emergency room documents (Exhibits 44-46) dated December 3, 2013, were presented. It was noted that Claimant presented with complaints of a left-sided headache. Tenderness and painful right hip range of motion was noted. It was noted that Claimant's symptoms improved with administration of pain medications.

Hospital emergency room documents (Exhibits 47-48) dated January 13, 2014, were presented. It was noted that Claimant presented with complaints of weakness and urination discomfort. A diagnosis of a strained abdominal muscle was noted. Claimant was provided with Flexeril, Norco, and Naprosyn prescriptions.

Hospital physician office visit documents (Exhibits 49-51; 75-78) dated June 17, 2014, were presented. It was noted that Claimant presented for the purpose of establishing primary care. A history of chronic pain and mental health symptoms was reported. Unspecified musculoskeletal tenderness was noted. A physical therapy referral and radiology were noted as planned. It was noted that right shoulder radiography indicated moderate degenerative changes. Right hip views indicated "moderate is not severe" degenerative changes (presumed to have meant "moderate, if not severe" changes).

Lumbar radiography indicated mild degenerative changes with facet hypertrophy and endplate sclerosis.

Hospital physician office visit documents (Exhibits 51-52) dated June 24, 2014, were presented. It was noted that radiography demonstrated a bullet fragment in Claimant's right hip; an impression of a progression of osteoarthritis (compared to radiography from 6 months earlier) was noted. A plan of possible joint replacement surgery was noted.

Hospital physician office visit documents (Exhibits 52-53) dated June 27, 2014, were presented. A complaint of ongoing hip pain was noted. Claimant reported that use of a cane helps to restrict his pain. It was noted Claimant received an injection to treat bursitis. Assessments of right trochanteric bursitis and osteoarthritis were noted.

Physical therapist notes (Exhibits 53-54) dated August 5, 2014, were presented. It was noted that Claimant made progress with his hip in physical therapy. Decreased pain and increased range of motion were noted.

Physical therapist notes (Exhibits 54-55) dated August 7, 2014, were presented. It was noted that Claimant reported 10/10 right hip pain.

Physical therapist notes (Exhibits 55-56) dated August 12, 2014, were presented. It was noted that Claimant reported feeling better. A mild antalgic gait without cane was noted.

Physical therapist notes (Exhibits 56-57) dated August 14, 2014, were presented. It was noted that Claimant appeared without his cane and with an improved gait.

Hospital emergency room documents (Exhibits 57-62) dated October 3, 2014, were presented. It was noted that Claimant presented with complaints of chronic right hip pain, worse with movement and prolonged immobilization. Neurological testing indicated reduced hip strength (4/5). Lumbar tenderness was noted. A right greater trochanteric bursa injection was planned for a future appointment.

Hospital emergency room documents (Exhibits 63-65) dated October 22, 2014, were presented. Claimant underwent a right greater trochanteric bursa injection.

Hospital physician office visit documents (Exhibits 66-68) dated November 19, 2014, were presented. A complaint of erectile dysfunction was noted.

A mental status examination report (Exhibits 17-21) dated January 27, 2015, was presented. The report was noted as completed by a consultative licensed psychologist. Claimant reported social isolation, audio hallucinations, paranoid thoughts, suicidal thoughts, and anhedonia. Claimant reported taking unspecified psychiatric medications. The consultative examiner noted that Claimant displayed adequate contact with reality and responded to questions in a logical and goal directed manner. Strength in mathematical calculations and immediate memory were noted. Diagnoses of adjustment

disorder with mixed emotional features and antisocial personality disorder were noted. Claimant was deemed capable of performing work of moderate complexity on a sustained basis.

An internal medicine examination report (Exhibits 23-38) dated January 27, 2015, was presented. The report was noted as completed by a consultative physician. Claimant reported complaints of right hip pain, groin pain, left knee pain, right shoulder pain, mental illness, insomnia, and headaches. A history of unspecified right hip and knee injections was reported. Claimant reported no prior treatment for headaches. It was noted that Claimant brought a cane but did not use it during the physical examination. A right-sided limp was noted as observed. Tandem-walk, toe-walk, and heel-walk were noted as slowly performed. Claimant was noted to be capable of recovering from a 70% squatting distance. Claimant was noted capable of recovering from an 80% bending distance. Reduced ranges of motion were noted in Claimant's lumbar flexion (80°-normal 90°) and bilateral hip forward flexion (50°- normal 100°). It was noted that Claimant was able to perform all 23 listed work-related activities which included sitting, standing, lifting, carrying, stooping, bending, and reaching, though most were limited due to pain. The examiner stated that clinical evidence did not support the need for a cane.

Claimant alleged disability, in part, due to hip pain. Claimant testified PT only worsened his pain. Claimant testified that injections and medications (e.g. Flexeril) also did not help to reduce his pain. During the hearing, Claimant asked why he continues to take medication if it does not help; Claimant responded it is because he takes medication that is prescribed. Claimant testified that hydrocodone helps, but it is not a medication that was prescribed for him.

Claimant testified that he is limited in walking and ambulation due to hip and/or lumbar pain. Claimant's testimony was generally consistent with presented treatment and radiography records. Medical records sufficiently verified that Claimant's limitations have continued since before Claimant applied for SDA benefits.

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 determining whether the Claimant's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a claimant's impairments are listed and deemed to meet the durational requirement, then the claimant is deemed disabled. If the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of hip pain and treatment for shoulder. The listing was rejected due to a

failure to establish that Claimant is unable to ambulate effectively or perform fine and gross movements.

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.

Various mental health listings (Listings 12.00) were considered based on references to schizophrenia and personality disorders. The listings were rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

It is found that Claimant failed to establish meeting 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 has past employment as an assembly line operator. Claimant testified that he also performed work repairing vehicle transmissions. Claimant testified that his employment history is limited because of an extended period of incarceration.

Claimant testified that his previous jobs involved at least 40 pounds of lifting and long periods of standing, neither of which he can continue to perform. Claimant's testimony was consistent with presented documents. It is found that Claimant cannot perform past relevant 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.

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 non-exertional. 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 (e.g. 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 Claimant restrictions were not presented. Restrictions can be inferred based on presented documents.

Claimant testified he can walk only half a block before his left hip would give out. Claimant estimated he could stand for a 20 minute period on a good day. Claimant estimated he can sit for a 30 minute period before needing to lie down. Claimant testified that bending over is hard. Claimant testified he has to sleep on his left side because of right-sided hip pain.

Claimant testified he is sufficiently comfortable when sitting in tub but standing for showers is difficult. Claimant testified that he sits in a chair when he cooks. Claimant testified he can dress himself but it "takes awhile." Claimant testified he cannot go up and down stair. Claimant testified he uses a scooter when he shops.

Claimant testified he currently attends college classes to become an addiction counselor. Claimant testified that he will likely be in a wheelchair by the time he graduates.

Presented treatment document verified extensive treatment for right hip, lumbar, and some right shoulder pain. Radiology verified bullet shrapnel in Claimant's hip along with moderate-to-severe degenerative changes over an approximate 8 month period. Physical therapy and an injection appeared to provide Claimant little-to-no relief for his pain. A consultative examiner tended to indicate ongoing pain and restrictions in range of motion. Overall, presented evidence was persuasive that Claimant cannot perform light employment. For purposes of this decision, it will be found that Claimant can perform sedentary employment.

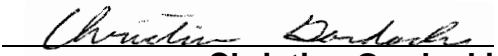
Based on Claimant's exertional work level (sedentary), age (approaching advanced age), education (high school equivalency), employment history (semi-skilled with no known transferable skills), Medical-Vocational Rule 201.14 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, 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 April 23, 2014;
- (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: **9/10/2015**

Date Mailed: **9/11/2015**

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]
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