

**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.: 15-003442
Issue No.: 4009
Case No.: ██████████
Hearing Date: April 22, 2015
County: Wayne-District 49

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on April 22, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Family Independence Manager.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

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 October 6, 2014, Claimant submitted an application for public assistance seeking SDA benefits.
2. On January 22, 2015, the Medical Review Team (MRT) found Claimant not disabled.
3. On January 23, 2015, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability because the condition lacked the 12 month duration.
4. On March 4, 2015, the Department received Claimant's timely written request for hearing.
5. Claimant alleged physical disabling impairment due to diabetes, hypertension, and ankle surgery.

6. On the date of the hearing, Claimant was [REDACTED] with an [REDACTED] birth date; she is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Claimant graduated from high school. She received an associate's degree and is working on a bachelor's degree. She has certifications in human services case management, fundamentals of substance abuse counseling, medical assistance, and mental health and has training as a certified addiction counselor and risk assessment counselor.
8. Claimant has an employment history of work as substance abuse counselor and as a case manager, senior case manager and program supervisor assisting the homeless population.
9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

At the hearing, there was evidence on the record concerning the Social Security Administration's denial of Claimant's application for Supplemental Security Income (SSI) and discussion of the impact of Claimant's failure to request a hearing on the SSI matter on her SDA case. A review of Department policy shows that individuals who receive SDA and apply for, or receive, disability-related MA, must apply for SSI as a potential resource. BEM 270 (October 2014), p. 1; BEM 271 (October 2014), p. 1. Because Claimant was denied SDA, she was not required to pursue SSI. Therefore, Claimant's SDA claim is not precluded by the adverse SSI decision, and the merits of Claimant's issue are addressed below.

A disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives SSI or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity

by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

To determine whether an individual is disabled for SSI purposes, the trier of fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in substantial gainful activity (SGA);
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985).

In the present case, Claimant alleges physical disabling impairment due ankle surgery and recovery. Although Claimant also alleged diabetes and hypertension in the medical-social questionnaire, DHS-49F, she completed on October 24, 2014 (Exhibit B, pp. 3-5), the medical evidence presented at the hearing, as summarized below, was limited to her ankle surgery and recovery. As such, the disability at issue is limited to the ankle surgery and recovery.

On October 28, 2014, Claimant's orthopedic surgeon completed a medical examination report, DHS-49, indicating that Claimant had right ankle ligament reconstruction surgery on October 2, 2014. The doctor indicated that Claimant was not able to fully bear weight or drive, was unable to climb stairs or do everyday household chores, and would eventually have to go to physical therapy. The doctor identified Claimant's condition as stable. He stated she had the following limitations: (i) she could occasionally lift up to 10 pounds occasionally (1/3 of an 8 hour day) "once medically cleared" and never more, (ii) she could stand and/or walk less than 2 hours in an 8-hour workday, (iii) she could sit less than 6 hours in an 8-hour workday, and (iv) she could use neither leg or foot to

operate foot and leg controls. When asked whether the limitation was expected to last more than 90 days, the doctor indicated "TBD." (Exhibit B, pp. 6-8). The doctor also completed a Medical Needs form, DHS-54A, the same day. In response to whether Claimant could work at her usual occupation or at any job, the doctor responded negatively. When asked how long she would be unable to perform her job or any other job, the doctor wrote in "TBD." (Exhibit B, pp. 9-10.)

On April 13, 2015, Claimant's orthopedic surgeon completed a progress note. In his notes, the doctor indicated that Claimant reported doing very well and able to perform activities of daily living. The doctor's physical examination of Claimant's right foot and ankle showed no instability on stress testing of the ankle and full range of motion. The surgeon released Claimant from his care and referred her to another doctor for any further pain management issues. (Exhibit 1.)

In consideration of the de minimus standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments due to her ankle surgery. Although Claimant's orthopedic surgeon responded "TBD" in the DHS-49 and DHS-54A he completed on October 28, 2014, in response to the questions whether Claimant's physical limitations were expected to last more than 90 days, in light of the evidence that he did not release her from his care until April 13, 2015, the evidence was sufficient to establish that Claimant's impairments lasted for a continuous period of not less than 90 days. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual'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 an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on Claimant's ankle issues, Listing 1.00 (musculoskeletal system), particularly 1.02 (major dysfunction of a joint) was reviewed. To meet a listing under 1.02(A), the client must have a gross anatomical deformity with findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint involving one major peripheral weight-bearing joint (which includes the ankle) resulting in an inability to ambulate effectively. The medical evidence does **not** show that Claimant's impairments meet, or are equal to, the required level of severity of a listing under 1.02 to be considered as disabling without further consideration. Because Claimant's physical impairments are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The RFC takes into consideration the total limiting effects of all impairments, including those that are not severe. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

Sedentary work.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. 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. If someone can do light work, . . . he or she can also do

sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, . . . he or she can also do sedentary and light work.

Heavy work.

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, . . . he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, . . . he or she can also do heavy, medium, light, and sedentary work. 20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions 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).

In this case, Claimant alleges only exertional limitations due to her ankle condition. Claimant testified that from October 2, 2014, the date of her ankle surgery, to mid-January 2015, her foot was in a cast and she had to use crutches to walk. During the period her foot was in a cast, Claimant testified that she was limited to walking within her home and could not do any of her cooking, cleaning or laundry. Instead, one of her daughters helped with those chores. She testified that, before the cast was removed, she had difficulty standing because she had to avoid weight-bearing on her right side, she had to keep her ankle elevated to avoid swelling, and she could not bend or squat. She was able to bathe because she had grab bars in her bathroom and a shower chair and her daughters assisted her. She also testified that she could not lift any weight because her balance was off. She admitted that she could work after her cast was removed in mid-January 2015 even though she had to wear a walking boot and then an ankle brace, which she continued to wear.

Claimant's testimony is supported by the DHS-49 completed on October 28, 2014, by her orthopedic surgeon who identified limitations in Claimant's ability to lift ten or more pounds, to use her legs or feet for repetitive motions, to stand more than two hours, and to sit less than six hours in an eight hour workday (Exhibit B, pp. 6-8).

Therefore, in light of the medical evidence and Claimant's testimony, Claimant was able to perform at best sedentary work from October 2, 2014, to mid-January 2015, when her cast was removed. After her cast was removed, per Claimant's own testimony, she could return back to work. Therefore, the issue of Claimant's eligibility for SDA on the basis of a disability is limited to the period from October 2, 2014, to January 7 2015, when her cast was removed, during which time she had the RFC to perform at best sedentary work activities.

Claimant's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As discussed above, Claimant admitted she had the RFC to return to her former employment after January 7, 2015. Therefore, Claimant was not disabled after January 7, 2015 at Step 4. As determined in the RFC analysis above, Claimant is limited at best to sedentary work activities from October 2, 2014, to January 7, 2015. Claimant's work history in the 15 years prior to the application consists of work as a substance abuse counselor and as a case manager, senior case manager and program supervisor assisting the homeless population. Claimant testified that although some of these positions involved minimal lifting, each of these positions required her to stand up to 65% of the day. In light of Claimant's RFC to perform at best sedentary work activities, it is found that Claimant is unable to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Claimant's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 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).

In this case, Claimant was 60 years old at the time of application and at the time of hearing, and considered to be closely approaching retirement (age 60-64) for purposes of Appendix 2. She is a high school graduate with some college experience with a history of skilled work experience. As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform at best sedentary work activities for the period October 2, 2014, to mid-January 2015. After review of the entire record and in consideration of Claimant's age, education, work experience, and physical RFC, Claimant is found disabled at Step 5 for purposes of SDA benefit program for the period October 2, 2014, to January 7, 2015.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the SDA benefit program for the period October 2, 2014, to January 7, 2015.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED IN PART with respect to the Department's denial of Claimant's SDA application for any period after January 7, 2015 AND REVERSED IN PART with respect to the Department's denial of Claimant's SDA application for the period between the date of application and January 7, 2015.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reregister and reprocess Claimant's October 6, 2014, SDA application to determine if all the other non-medical criteria are satisfied from the date of application through January 7, 2015 and notify Claimant of its determination; and
2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified from October 6, 2014, to January 7, 2015.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/8/2015**

Date Mailed: **5/8/2015**

ACE / tlf

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:

Recipient	Percentage
[Redacted]	~18%
[Redacted]	~15%
[Redacted]	~30%
[Redacted]	100%
[Redacted]	~8%
[Redacted]	~10%
[Redacted]	~18%
[Redacted]	~12%
[Redacted]	~3%