

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-005015
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: June 1, 2015
County: Macomb (20)

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 June 1, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Health and Human Services (DHHS) included [REDACTED], hearing facilitator.

ISSUE

The issue is whether DHHS 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 29-31), in part, based on a finding that Claimant can perform past employment as an auto claim adjuster.
4. On [REDACTED], DHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 25-27) informing Claimant of the denial.

5. On [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits (see Exhibit 5).
6. As of the date of the administrative hearing, Claimant was a 55 year old male.
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 12th grade.
9. Claimant has a history of unskilled employment, with no transferrable job skills.
10. Claimant alleged disability based on restrictions related to neuropathy and congestive heart failure (CHF).

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHHS 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 (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 DHHS 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 testified that he makes ongoing income from making and selling salsa. Claimant testified that the last month that he cleared \$1,000 was in November 2014. 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 the second step.

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 90 day duration of disability.

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

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

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented medical documentation.

Physician office visit notes (Exhibits 51-56; 167-172) dated [REDACTED], were presented. It was noted that Claimant presented with complaints of a left leg wound, ongoing for 1 week. Claimant's gait and strength was noted to be normal. Normal cardiovascular, neurological, and musculoskeletal physical examination findings were noted. An assessment of cellulitis was noted. A plan to start Cipro and restart Mupirocin was noted. Physician office noted dated [REDACTED] (Exhibits 57-58; 173-174) noted improvement in Claimant's leg wound.

Physician office visit notes (Exhibits 59-64; 175-180) dated [REDACTED], were presented. It was noted that Claimant complained of lower back pain. A diagnosis of back pain was noted. A plan to start Tramadol was noted.

Physician office visit notes (Exhibits 65-70; 181-184) dated [REDACTED], were presented. It was noted that Claimant presented with a complaint of a superficial leg wound. Assessments of DM, HTN, back pain, and cellulitis were noted.

Physician office visit notes (Exhibits 71-76; 121-128; 185-192) dated [REDACTED], were presented. It was noted that Claimant presented for medication refills. Claimant's gait and strength was noted to be normal. Normal cardiovascular, neurological, and musculoskeletal physical examination findings were noted. Medications included the following: Lasix, Klor-Con, Metformin, Spironolactone, Lantus, and Tramadol. Assessments of DM, HTN, and back pain were noted.

A lab order (Exhibit 151-152) dated [REDACTED], was presented. Claimant's thyroid stimulating hormone was noted to be above the normal range level.

Physician office visit notes (Exhibits 77-86; 129-134; 193-198) dated [REDACTED], were presented. It was noted that Claimant presented for blood work (see Exhibits 99-108; 147-156; 211-20) and medication refills. It was noted that Claimant complained of a skin lesion on his scalp ongoing for 18 months. Claimant's gait and strength was noted to be normal. Normal cardiovascular, neurological, and musculoskeletal physical examination findings were noted. Assessments of DM, HTN, and back pain were noted.

Physician office visit notes (Exhibits 87-90; 135-138; 199-202) dated [REDACTED], were presented. It was noted that Claimant presented to discuss lab work. Assessments of hypothyroidism, elevated bilirubin, DM, HTN, and potassium deficiency were noted.

Physician office visit notes (Exhibits 91-98; 139-144; 203-208) dated [REDACTED], were presented. It was noted that Claimant complained of leg pain. Diagnoses of HTN, DM, hypothyroidism, potassium deficiency, and venous stasis of lower extremity were noted.

Claimant testified that he has CHF. Claimant testified that he typically sees a cardiologist monthly, though he has not seen one lately. Claimant testified that his legs retain fluids and that he was told by his physician that his legs must be elevated at least 30% of the day. Claimant testified that he went to hospital in August 2013 to treat an infected leg cut. Claimant testified that he had 40 pounds of water drained from his body in 2012.

Claimant testified that he does not drive because he does not trust himself to operate a vehicle because he has no feeling in his feet. Claimant testified that he lost foot sensation due to neuropathy. Claimant testified that neuropathy is spreading to his fingers. When Claimant was asked for an example of how neuropathy affects his fingers, Claimant testified that he was unable to button his shirt the very date of hearing.

Claimant testified that he has misaligned L4-L5 back disc. Claimant testified that lumbar problems cause him sciatic nerve pain.

Between Claimant's lumbar and neuropathy problems, Claimant testified that he uses a cane about 50% of the time. Claimant testified that he uses it for trips longer than 150-200 feet. Claimant testimony estimated that he could walk a maximum of 300 feet before running out of breath. Claimant testified that he could stand for 5 minutes before needing a cane. Claimant testified that sitting is not a problem. Claimant testimony estimated that he is restricted to lifting of 25-30 pounds. Claimant estimated that he could stand 2 hours, at most, over an 8 hour period.

Claimant testified that he spends his days trying to help his diabetic uncle. Claimant testified he provides little caregiving and that he primarily tries to keep his uncle safe and socially engaged.

Claimant testimony suggested walking, lifting, and standing restrictions. Claimant's testimony was highly unsupported.

Presented physician documents verified ongoing diagnoses of HTN, DM, and back pain. A medical history of diabetic neuropathy was verified. Medication to treat each was verified. This evidence was somewhat indicative of exertional restrictions.

Presented physician noted consistently noted that Claimant has a normal gait, full strength in all extremities, no abnormal neurological findings, and normal reflexes. Explicit statement of physician restrictions was not presented. Lumbar radiology was not presented. Neurologist treatment was not verified. Neurological testing was not presented. A diagnosis of CHF was not verified. Cardiac testing indicative of a disability was not presented.

Some appreciation is given that Claimant's testimony might be more representative of his restrictions rather than presented medical documents. DHHS testimony even tended to corroborate Claimant's testimony of ambulation problems by indicating that Claimant was observed to use a cane and to walk slowly. Though testimony was indicative that Claimant has work-related restrictions, presented medical documents were highly underwhelming, even based on a de minimus standard.

It is found that Claimant failed to establish a work-related restriction expected to last 90 days or longer. Accordingly, it is found that DHHS 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 DHHS properly denied Claimant's SDA benefit application dated [REDACTED] based on a determination that Claimant is not disabled.

The actions taken by DHHS are **AFFIRMED**.



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

Date Signed: **6/5/2015**

Date Mailed: **6/5/2015**

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:

