

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-006984
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: June 22, 2015
County: Jackson

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 22, 2015, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included [REDACTED], specialist, and [REDACTED], program manager.

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 659-660).
4. On [REDACTED], MDHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 665-668) 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 49 year old male with a height of 5'11" and weight of 220 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 9th grade.
9. Claimant has a history of unskilled employment, with no transferrable job skills.
10. Claimant alleged disability based on restrictions related to degenerative disc disease.

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. 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 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 a summary of presented medical documentation.

Claimant testified that he was injured in 1991 when he attempted to lift a 55 gallon drum at his workplace. Claimant testified that his back pain has worsened over the years. Claimant testified that he has repeatedly and unsuccessfully applied for Social Security Administration.

An MRI lumbar report (Exhibits 446-447) dated [REDACTED], was presented. An impression of grade 1 spondylolisthesis and mild foraminal narrowing with nerve impingement at L3 nerve roots. Degenerative disc disease with mild bulging discs at L5-S1 and L1-L2 was noted.

A CT lumbar report (Exhibits 478-479) dated [REDACTED], was presented. An impression of grade 1 anterolisthesis of L3 over L4 was noted.

Hospital documents (Exhibits 1-10) from an encounter dated October 23, 2014, were presented. It was noted that Claimant presented with complaints of a radiating lower back pain. Claimant reported numerous falls over the past 2 months. Claimant reported difficulty with sitting, standing, and bending. A physical examination revealed mid-spinal tenderness. Lumbar flexion was noted to be slightly less than 50% of normal motion. Claimant's gait was noted to be normal. It was noted that a CT scan demonstrated 1st degree spondylolisthesis and marked disc narrowing at L3-L4. Canal stenosis at L3-L4 was also noted. A recommendation of fusion surgery was noted. A discharge diagnosis of spondylolisthesis was noted.

Neurosurgery clinic documents (Exhibits 11-18) dated [REDACTED], were presented. It was noted that Claimant was referred for the purpose of discussing surgery options for his back. An ongoing Claimant complaint of back pain radiating to his legs was noted. It was noted that Claimant's gait was antalgic but not unstable. Claimant was noted to be a good candidate for a L3-L4 transforaminal lumbar interbody fusion surgery.

Neurosurgery clinic documents (Exhibits 19-55) dated [REDACTED] were presented. It was noted that Claimant was scheduled for a posterior spinal fusion at L3-L4 on [REDACTED].

Neurosurgery clinic documents (Exhibits 56-58) dated [REDACTED], were presented. It was noted that Claimant presented for pre-operation education.

Hospital documents (Exhibits 59-376; 440-444; 619-629) from an admission dated [REDACTED] were presented. It was noted that Claimant underwent a laminectomy and L3-L4 spinal fusion. It was noted that Claimant's activity increased and that Claimant was discharged on December 22, 2014. A follow-up in 4 weeks was noted.

Neurosurgery clinic documents (Exhibits 377-384) dated [REDACTED] were presented. It was noted that Claimant reported no improvement in pain. Full strength in all tested areas was noted. A medication refill for oxycodone and methocarbamol was noted.

Neurosurgery clinic documents (Exhibits 385-412; 610-613; 618) dated [REDACTED], [REDACTED] were presented. It was noted that Claimant reported ongoing midline axial back pain and intermittent tingling and paresthesias of his right leg and foot. Claimant's pre-operative L4 radiculopathy was "nearly completely resolved." It was noted that Claimant remained active by walking short distances. Radiology noted good hardware placement. Full muscle strength was noted. A refill of Neurontin and oxycodone was noted. A follow-up in 3 months was noted.

Treating physician office visit notes (Exhibits 510-517) dated [REDACTED], were presented. It was noted that Claimant reported foot pain. Claimant's active medications included aspirin, tramadol, gabapentin, Lisinopril, simvastatin, glipizide, and oxycodone. A longer acting Oxycontin was noted as prescribed.

Treating physician office visit notes (Exhibits 514-517; 545-549) dated [REDACTED], were presented. It was noted that Claimant reported bilateral foot pain and numbness which causes Claimant to regularly fall. Claimant reported a stabbing back pain, radiating to his groin. A complaint of recurrent charley horses in his feet was noted. It was noted that Claimant's active medications included aspirin, tramadol, and gabapentin.

A letter from Claimant's neurosurgeon (Exhibit 541-542; 606-607) dated [REDACTED], [REDACTED] was presented. It was noted that Claimant reported continuing back and leg pain. It was noted that Claimant required high doses of narcotics and reported a new pain radiating from his groin to right heel. A plan of conservative treatment for 3 months was noted. Physical therapy and injections were recommended. An option of a second back surgery was noted as discussed with Claimant. It was noted that a CT of Claimant's lumbar (see Exhibit 543-544) showed restoration of vertebral body height.

A Medical Examination Report (Exhibits 644-645) dated [REDACTED] was presented. The form was completed by a family practice physician with an approximate 11 month history of treating Claimant. Claimant's physician listed diagnoses of lower back pain, s/p L3-L4 fusion, hip pain radiating to groin, and right leg pain radiating to Claimant's foot. It was noted that Claimant required assistance with shopping, dressing, transportation, cleaning, and housework.

An Assessment/Plan (Exhibit A1) was presented. The document was signed by Claimant's nurse practitioner and physician. The document was undated but the narrative suggested a fairly recent (within 3 months) drafting. It was noted that Claimant complained that his back pain was worse after surgery. It was noted that Claimant reported that 2014 back pain treatment including back surgery, multiple physical therapy sessions, TENS unit, pain medications, and back injections. It was stated that Claimant could not be seen returning to work in any capacity due to his deteriorating back condition and associated pain.

Claimant seeks a finding of disability since March 2015. Presented documents established that despite back surgery in December 2014, Claimant still experiences back pain and exertional restrictions (e.g. lifting/carrying, standing, sitting, and ambulating).

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 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 impairment appears to be back pain. Spinal disorders are covered by Listing 1.04 which reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Looking at Part C, the inability to ambulate effectively is a requirement. SSA defines this as follows:

Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

Claimant testified that he is restricted to less than 200 feet of walking before leg and back pain prevent further ambulation. Claimant testified that pain similarly limits his standing and sitting ability to 10 minutes each. Claimant testified that he was prescribed a walker in October 2014. Claimant's testimony was suggestive of an inability to ambulate.

Presented document sufficiently verified that Claimant has a medical history of back pain, including a recent surgery which appears to have worsened Claimant's condition. Presented documents noted that Claimant's pain requires a relatively high level of narcotic medication. Claimant's physician stated that Claimant's ambulation was such that he could not be expected to be employed. It is also appreciated that numerous methods of rehabilitation and treatment (e.g. TENS unit, surgery, pain medication, steroid injections, physical therapy) were attempted.

Claimant's presented medical documents also noted a history of falling. Claimant's AHR testified that she has witnessed Claimant collapsing on multiple occasions.

Based on the presented evidence, it is found that Claimant meets the equivalent of SSA Listing 1.04. Accordingly, Claimant is disabled and it is found that MDHHS improperly 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 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: **7/1/2015**

Date Mailed: **7/1/2015**

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:

