

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-007086
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: June 4, 2015
County: Wayne (18)

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 4, 2015, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED], Claimant's fiancée, testified on behalf of Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included [REDACTED], 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 [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 2-4).
4. On [REDACTED], MDHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 41-43) 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 40-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, via general equivalency degree.
9. Claimant has a history of unskilled employment, with no transferrable job skills.
10. Claimant alleged disability based on restrictions related to back pain, hip replacement surgeries, depression, and osteoarthritis.

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 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

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 two.

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 evidence.

Various medical documents (Exhibits A74-A119) were presented. It was noted that Claimant reported falling off his roof 5-6 years earlier. It was noted that Claimant reported ongoing back and hip pain. It was noted that Claimant underwent bilateral hip total arthroplasties in 2013.

Physician office visit notes (Exhibits A3-A5; A76) dated [REDACTED] were presented. It was noted that Claimant reported constant and intractable back pain. Claimant reported that back pain radiates to his legs and feet causing weakness and ambulation difficulty. "Profound" sitting, ambulation, and standing intolerance was noted. Claimant reported that medications, working out, and an epidural injection provided no relief. Claimant's gait was noted to be antalgic to the left side, with a positive Trendelenburg component. Leg strength was noted to be 5/5 though bilateral anterior tibia strength was

noted to be 3-4/5. An impression of L4-S1 disk disease with spinal stenosis was noted. A plan of surgical intervention was noted.

Physician office visit notes (Exhibits A10-A12) dated [REDACTED] were presented. It was noted that Claimant reported ongoing back pain and that Claimant still wanted to pursue a surgery option. Depression and acute renal failure were noted as resolved diagnoses. It was noted that 2 months of physical therapy provided no relief; equivocal seated and supine nerve root tension was also noted.

Hospital admission documents (Exhibits A13-A16; A70-A73) dated [REDACTED] were presented. Pre-operative diagnoses of displacement of lumbar disc, spinal stenosis without neurogenic claudication, and lumbar disc degeneration were noted. It was noted that Claimant underwent a combined posterior post-lateral lumbar fusion including laminectomy and discectomy (L4-S1). It was noted that Claimant tolerated the procedure well and there were no complications. A discharge date of [REDACTED] was noted.

Physician office visit notes (Exhibits A17-A20) dated [REDACTED] were presented. It was noted that Claimant presented following back surgery. Claimant reported some lower back pain with certain activities though he also reported improvement compared to preoperative symptoms. Bilateral tibia strength noted to improve to 4+/5. A plan to continue using a back brace was noted. A restriction of no bending, lifting, or twisting for 2 ½ months was noted.

Physician office visit notes (Exhibits A21-A22) dated [REDACTED] were presented. Prescriptions of oxycodone-acetaminophen and diazepam were noted as started.

Physician office visit notes (Exhibits A23-A24) dated [REDACTED] were presented. A refill of Percocet was noted.

Physician office visit notes (Exhibits A31-A34) dated [REDACTED] were presented. It was noted that Claimant reported interval back pain improvement. Ongoing pain with some activities and intermittent right leg paresthesia was noted. Claimant's improvement was described as "dramatic" when compared to preoperative symptoms. A plan to wean Claimant from his brace, with discontinuance in 2 weeks, was noted. A plan to wean Claimant from pain meds was noted. A follow-up in 3-4 months was noted.

Physician office visit notes (Exhibits A44-A47) dated [REDACTED] were presented. It was noted that Claimant presented with an ongoing complaint of right hip pain (7/10) and numbness. Claimant was noted to have full range of hip motion but 4/5 muscle strength. An impression of mild heterotopic ossification was noted following hip x-rays. A recommendation of physical therapy was noted.

A Medical Examination Report (Exhibits 10-12) dated [REDACTED] was presented. The form was completed by an internal medicine physician who last treated Claimant on

██████████. Claimant's first date of examination was ██████████ (a date that hadn't come to pass). Claimant's physician listed diagnoses of chronic pain, depression, anxiety, PTSD related to a motor vehicle accident, and severe osteoarthritis. Current medications included Valium, Lisinopril, Norco, and Wellbutrin. Physical examination findings noted reduced ranges of motion and a need for a cane. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. Claimant's physician opined that Claimant was restricted as follows over an eight-hour workday, less than 2 hours of standing and/or walking, and less than 6 hours of sitting. Claimant's physician opined that Claimant was restricted from performing the following repetitive actions: bilateral arm reaching, bilateral arm pushing/pulling, operating foot/leg controls, and right side simple grasping. It was noted that stated restrictions were supported by Claimant's history of right shoulder reconstruction, bilateral hip replacement, back surgery, L4-S1 herniated disc, and spinal stenosis. It was noted that Claimant was also restricted in memory, and sustaining concentration due to PTSD, anxiety, and depression.

A mental status examination report (Exhibits 14-18; 29-33) dated ██████████ was presented. The report was noted as completed by a consultative psychologist. Claimant reported the following mental health problems: crying spells, memory loss, and emotional lability. Various physical problems were reported. It was noted that Claimant regularly attended AA meetings. Claimant reported that he gets along well with others. Claimant denied hallucinations. A diagnosis of mild intellectual disability was noted. A good prognosis was noted.

An internal medicine examination report (Exhibits 20-28) dated ██████████ was presented. The report was noted as completed by a consultative physician. Claimant reported the following problems: back pain, depression, arthritis, scoliosis, hip bone spurs, and high blood pressure. It was noted that Claimant wore a back brace and used a cane. Claimant's right leg was noted to be slightly shorter ($\frac{1}{2}$ an inch) than his left. Reduced ranges of motion were noted in Claimant's lumbar flexion (75° - 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 (e.g. sitting, standing, lifting, carrying, stooping, bending, and reaching) though most with pain. The examiner stated that clinical evidence supported a need for a cane. Supine straight-leg-raising test was noted to be limited to 50° .

Claimant testified that he was in a car accident in June 2000. Claimant testified that he underwent open heart surgery to repair a ruptured aorta immediately after the accident. Claimant testified that the accident caused a closed-head injury. Claimant testified that he spent 5 days in ICU and was hospitalized for 10 days before being discharged. Claimant testified that he thinks that he now has short-term memory loss and emotional problems because of the car accident.

Claimant reported to a consultative examiner that he fell off of a roof in 2005 which caused a right clavicle fracture. Claimant also reported that the fracture was surgically repaired that same year.

Claimant reported to a consultative examiner that he underwent back surgery in 2010 to repair a herniated disc (see Exhibit 20). Claimant testified that the surgery fused his L4-L5 and L5-S1 vertebrae. Client testified that he has 2 metal rods and 6 screws in his back. Client testified that he has continuing pinching in his lumbar. Client testified that his physician barred Claimant from seeing a chiropractor because an adjustment may loosen placed hardware.

Claimant testified that he underwent right and left hip replacement surgeries in 2013. Claimant testified that his hip pain is much reduced, but he is still weak. Claimant testified that he was able to return to work following surgery, but again had to stop after having kidney failure in the summer of 2014.

Claimant testified that he has walking, standing, sitting, lifting/carrying, and memory restrictions. Claimant's testimony was consistent with presented records.

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 problem appeared to ambulation restrictions due to hip and knee degeneration. Disability by joint degeneration is established by the following SSA listing:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

The ability to ambulate effectively is the crux of the joint deformity listing. Listing 1.00B2b defines what SSA requires for effective ambulation:

To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail.

Claimant testified that he tries to walk and bike to stay healthy. Claimant testified that he strengthens his upper body by lifting weights. Claimant testified that he goes to the gym 3 times per week as a substitute for physical therapy. Working out and biking could be perceived as activities that support a finding that Claimant is not disabled. Claimant's testimony was more indicative of someone who is making his best efforts to not be disabled. It should be noted that Claimant testimony did not suggest that he performed any of these activities easily.

Claimant testified that he has no cartilage in his hips. Claimant testified that bone spurs have replaced cartilage in his hips. Claimant testified that doctors removed some of the spurs; however, some remain. Claimant testified that he wears a back brace and uses a cane. Claimant testified that he also has bone spurs in his knees and ankles. Claimant's testimony was verified by radiology and treatment records.

Medical records established reduced ranges of motion in Claimant's hips and lumbar. Most notably, Claimant's hip motion was half of what it should be. A lumbar fusion surgery was verified. It was also verified that the length of Claimant's legs are uneven; this is suggestive of unnatural and difficult ambulation.

Claimant testified that he can only walk around the block with a cane before leg and back pain prevent further ambulation. Claimant's testimony and presented records were generally indicative of an inability to ambulate effectively. Accordingly, it is found that Claimant meets the requirements for Listing 1.02, that Claimant is a disabled individual, and 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: **6/19/2015**

Date Mailed: **6/19/2015**

CG / cl

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:

