

**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.: 15-010989
Issue No.: 4009
Case No.: ██████████
Hearing Date: August 12, 2015
County: Oakland (2)

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 August 12, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included ██████████, specialist.

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 September 26, 2014, Claimant applied for SDA benefits.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On April 27, 2015, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 6-8).
4. On June 22, 2015, MDHHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action (Exhibits 2-5) informing Claimant of the denial.
5. On June 22, 2015, Claimant requested a hearing disputing the denial of SDA benefits.

6. As of the date of the administrative hearing, Claimant was a 44-year-old female with a height of 5'3" and approximate weight of 290 pounds.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant's completed high school and obtained an associate's degree in liberal arts.
9. Claimant has a history of unskilled employment, with no known transferrable job skills.
10. Claimant alleged disability based on restrictions related to diagnoses of lumbar spine pain, breathing problems, gastritis, and asthma.

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).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant noted special arrangements in order to participate in the hearing. Specifically, Claimant indicated that she has back problems rendering it difficult for Claimant to sit, stand, or walk for long periods. During the hearing, Claimant was advised, with MDHHS's blessing, that she may sit, stand, and/or walk as needed. Claimant responded that the accommodation was acceptable and the hearing was conducted accordingly.

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 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 a 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.

It should be noted that Claimant presented six pages of documents during the hearing. Following the hearing, MDHHS faxed 10 pages of documents. It is presumed that MDHHS approved the admission of exhibits by numbering and faxing the documents. Thus, the additional documents were admitted as exhibits despite Claimant not presenting them during the hearing.

Claimant presented various 403(b) financial documents (Exhibits A1-A6). The documents were not relevant to the disability analysis.

A handwritten medication list (Exhibit A10) was presented. The list was undated and the author of the list was not apparent. Fourteen different medications were listed.

A pulmonary function test report (Exhibits 35) dated June 17, 2014, was presented. The report included only results from before use of a bronchodilator. Claimant's best forced vital capacity (FVC) was noted to be 2.75 (86% of predicted value). Claimant's best FEV1 was noted to be 2.25 (84% of predicted value).

A physician letter (Exhibit 36) dated August 12, 2014, was presented. It was noted that Claimant underwent an upper GI endoscopy. A finding of erosive gastritis was noted.

A Medical Examination Report (Exhibits 15-17) dated December 23, 2014, was presented. The form was completed by a family practitioner with an approximate 6 month history of treating Claimant. Claimant's physician listed diagnoses of chronic right leg pain, lumbar radiculopathy, depression, and anxiety disorder. Claimant's gait was noted to be normal. Normal spine flexion and extension was noted. It was noted that Claimant was unable to toe walk. An impression was given that Claimant's condition was stable. It was noted that Claimant cannot meet household needs, though specific needs were not stated.

An MRI report of Claimant's lumbar spine (Exhibits 20) dated February 2, 2015, was presented. An impression of a small disc protrusion, mild anterolisthesis, with a chronic left-sided pars defect at L4-L5 was noted. An impression of mild levocurvature of the lower lumbar spine was noted. It was noted that L3-L4 demonstrated moderate-to-severe disc space narrowing and bilateral neural foraminal narrowing (moderate on the right and mild on the left).

A Medical Examination Report (Exhibits 18-19) dated February 26, 2015, was presented. Claimant testified that her gastroenterologist completed the form. A treatment history was not apparent. Claimant's physician listed diagnoses of GERD and a second illegible diagnosis. Physical restrictions were not noted. It was noted that Claimant cannot meet her financial needs.

A Medical Examination Report (Exhibits 12-14) dated February 26, 2015, was presented. The form was completed by an allergy physician with an approximate 18 year history of treating Claimant. Claimant's physician listed diagnoses of moderate persistent asthma, allergic rhinitis, shellfish allergy, GERD, and an illegible diagnosis. An impression was given that Claimant's condition was improving. Restrictions were not provided.

Claimant testified that she attended physical therapy a few months ago but stopped due to extreme pain. Claimant testified that she had several steroid epidurals back injections

which did little to alleviate her pain. Claimant testified that she takes Tramadol (100 mg) to relieve her pain. Claimant testified that she cannot take Ibuprofen or other NSAIDs due to gastritis complications. Claimant testified she is close to having ulcers.

Claimant testified that she does not trust her right leg strength when showering and that she has to be cautious when showering. Claimant testified that baths are difficult because she has difficulty rising. Claimant testified that she has difficulty with standing while dressing. Claimant testified she has to take sitting breaks whenever she cooks. Claimant testified that she can drive.

Claimant testified that her left leg is shorter than her right. Claimant testified that she had an insert made for her left shoe to level out the height difference. Claimant's testimony implied her leg height difference may have been a factor in causing back pain.

Claimant testified her left hand was diagnosed with tendonitis. Claimant testified that her right hand has carpal-tunnel syndrome. Claimant testified she had previous corrective surgeries on each of her hands. Claimant also testified that repetitive motion restrictions affect her ability to type.

Presented medical evidence sufficiently established a history of back pain which adversely affects Claimant's ability to stand, sit, lift/carry, and ambulate. 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.

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 which causes either motor loss accompanied by sensory or reflex loss, spinal arachnoiditis, or stenosis resulting in the inability to ambulate effectively (as defined by SSA).

A listing for chronic pulmonary insufficiency (Listing 3.02) was considered based on Claimant's complaints of dyspnea. The listing was rejected due to Claimant's pulmonary function failing to meet listing restrictions.

A listing for affective disorder (Listing 12.04) was considered based on diagnoses of depression. This listing was 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.

A listing for anxiety-related disorders (Listing 12.06) was considered based on Claimant's treating physician's diagnosis of an anxiety disorder. This listing was 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 had a complete inability to function outside of the home.

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 she previously worked as a point of sale associate. Claimant testified that her primary job duty was updating store price signs for weekly sales. Claimant testified that she also performed other duties (e.g. meat wrapping) depending on the store's needs. Claimant testified that she also has work history as a senior dietary aide.

Claimant testified that her past jobs required her to stand for extended periods. Claimant testified that she is unable to perform the standing and/or walking required of her past employment. Claimant's testimony was consistent with presented medical documents. It is found that Claimant is unable to perform past 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. The definitions for each are listed below.

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 nonexertional. 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 (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) 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 sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Physician statements of restrictions were provided. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*.

Physician-stated restrictions were provided on a Medical Examination Report dated December 23, 2014. Mental and physical restrictions were stated.

Claimant's physician cited Claimant's flat affect and decreased motivation as support for stated mental restrictions. Claimant's physician stated that Claimant as restricted in memory, social interaction, and sustaining concentration. The degree of Claimant's restrictions was not detailed. For example, it is not known if Claimant's concentration would only prevent the performance of very complicated employment (e.g. teaching, physician, accounting...), or the performance of simple and repetitive employment.

Psychological counseling or psychiatric records were not presented. Other evidence of mental disorders (e.g. psychiatric records, therapy documents...) was not presented. A flat affect and apparently decreased motivation, by themselves, are insufficient to infer mental restrictions that would significantly erode Claimant's sedentary employment opportunities.

In response to a question asking for the basis for physical basis restrictions, Claimant's physician cited a positive right-sided straight-leg-raising test and back pain with flexion as support for stated restrictions. Generally, the basis for restrictions is consistent with back pain which could limit a person's activities. The analysis will proceed to determine if presented evidence justified the physician-stated restrictions.

Claimant's physician opined that Claimant was restricted to less than 6 hours of sitting per 8 hour workday. The restriction was consistent with Claimant testimony that she is limited to 5 minute periods of sitting before her legs go numb.

Claimant's physician opined that Claimant was restricted to less than 2 hours of standing and/or walking. The restriction was consistent with Claimant testimony that she is limited to 5 minutes of standing due to pain.

Claimant's physician stated that Claimant was restricted to occasional lifting/carrying of 10-20 pounds, never 25 pounds or more. Generally, the restriction is less than would be expected for someone limited to less than 2 hours of standing due to lumbar problems. The credibility of the restriction is of little importance because it does not affect Claimant's ability to perform sedentary employment.

Claimant's physician opined that Claimant was restricted from performing repetitive bilateral grasping and bilateral fine manipulation. The restriction was somewhat perplexing as evidence of hand dysfunction was not listed as a diagnosis. Evidence to support hand restrictions was not provided. Claimant's alleged treatment history (e.g. surgeries on each hand) was not documented. It is found that repetitive hand restrictions were unsupported, and therefore, will not be accepted.

Oddly, the same physician citing restrictions also noted that Claimant's gait was normal. Generally, a normal gait is not consistent with an inability to stand and/or walk two hours in an 8 hour workday.

The most compelling evidence of restriction came from radiology which verified a disc protrusion (L4-L5), chronic right-sided pedicle fracture, mild-moderate spondylosis (most prominent at L3-L4) with moderate-to-severe disc space narrowing. Though no significant stenosis was found, sufficient problems were documented to justify acceptance of the restrictions provided by Claimant's physician.

An inability to sit, stand, and/or walk for a combined 8 hours is highly indicative of an inability to perform any type of employment. It is found that Claimant is unable to perform the combined sitting, standing and/or walking required of sedentary employment. Accordingly it is found that Claimant is disabled 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 perform the following actions:

- (1) reinstate Claimant's SDA benefit application dated September 26, 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: **8/31/2015**

Date Mailed: **8/31/2015**

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]
[REDACTED]
[REDACTED]
[REDACTED]