

**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.: 15-012171
Issue No.: 4009
Case No.: ██████████
Hearing Date: August 20, 2015
County: Macomb (12)

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 20, 2015, from Detroit, Michigan. Participants included the above-named Claimant. ██████████, Claimant's daughter, testified on behalf of 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 June 12, 2015, Claimant applied for SDA benefits.
2. Claimant's only basis to receive SDA benefits was as a disabled individual.
3. On June 24, 2015, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 7-8).
4. On June 26, 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 July 13, 2015, Claimant requested a hearing disputing the denial of SDA benefits.

6. As of the date of MDHHS denial, Claimant was 54 years old.
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 11th grade.
9. Claimant has a history of unskilled employment, with no transferrable job skills.
10. Claimant alleged disability based on restrictions related to hand pain, foot callouses, and lumbar pain.

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 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.

A radiography report of Claimant's lumbar (Exhibit 18) dated July 14, 2014, was presented. An impression of mild degeneration at L5-S1 was noted.

A radiography report of Claimant's left hand (Exhibit 19) dated July 14, 2014, was presented. An unremarkable radiograph was noted as an impression.

A radiography report of Claimant's right hand (Exhibit 20) dated July 14, 2014, was presented. An unremarkable radiograph was noted as an impression.

A chiropractor letter (Exhibit 17) dated January 2, 2015, was presented. It was noted that Claimant was to refrain from occupational duties until a reexamination on January 19, 2015. A course of physical therapy was recommended.

A Medical Examination Report (Exhibits 13-14) dated May 7, 2015, was presented. The form was completed by a treating chiropractor with an approximate 6-month history of treating Claimant. Claimant's chiropractor listed diagnoses of cervicaglia, thoracic pain and lumbago. It was noted that Claimant can ambulate without assistance. An impression was given that Claimant's condition was stable.

An internal medicine examination report (Exhibits 24-31) dated May 6, 2015, was presented. The report was noted as completed by a consultative physician. Claimant reported complaints of HTN, carpal-tunnel syndrome, persistent lumbar pain, and bilateral foot pain. Notable physical examination findings included positive Phalen's sign and decreased grip strength. It was noted that Claimant performed tandem-walk, tiptoe-walk, and heel walking without difficulty. Claimant's gait was noted to be normal. Reduced ranges of motion were noted in all lumbar and bilateral shoulder motions. Impressions of HTN, probable CTS, persistent lumbar pain as indicated by lumbar x-ray, and osteoarthritis of the feet were noted.

A Medical Examination Report (Exhibits 15-16) was presented. The form was undated though May 14, 2015, was noted to be the most recent date of examination. The form was completed by a nurse practitioner with an approximate 5 month history of treating Claimant. Diagnoses of HTN, back pain, hand pain, and tobacco abuse were noted. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. Claimant's nurse practitioner deferred to the primary care physician concerning restrictions and whether Claimant's impairments were expected to last 90 days. Physical examination findings noted lumbar tenderness and decreased hand strength.

Claimant testified she is pre-diabetic and has high blood pressure. Claimant testimony conceded that neither problem affects her ability to work.

Claimant testified that she has ongoing lumbar pain. Claimant also testified that she has hand pain and foot pain. Claimant testimony suggested her problems restrict her ability to walk, lift/carry, and hand dexterity. Claimant's testimony was credible and sufficiently consistently with presented documents.

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 joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of hand and foot pain. The listing was rejected due to a failure to establish that Claimant is unable to ambulate effectively and/or unable to perform fine and gross movements.

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.

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 performed housekeeping for a hospital. Claimant initially thought her employment did not amount to SGA. Claimant testified that her weekly hours ranged from 24-32 and her hourly wage was \$11.17. Claimant's pay and hours were indicative of income exceeding presumptive SGA limits. Thus, it must be determined whether Claimant can still perform hospital housekeeping employment. Claimant testified that her duties included cleaning rooms, laundry, making beds, emptying trash, and cleaning counters.

Claimant testified she also worked at various factories performing. Claimant testified that her factory job duties were similar, no matter the employer. Claimant testified that most of her previous factory jobs involved days of mostly standing and walking. Claimant testified that her factory job duties typically required lifting/carrying 30-40 pound items.

Claimant testified one of her factory jobs was as a sorter. Claimant estimated that half of her day was spent sitting. Claimant testified that she has pain in her hands which she thinks would prevent performance of this employment. Claimant also testified her sorting job required a lot of getting up and down which she doubts she could still do.

For purposes of this decision, Claimant's testimony that she cannot perform previous employment will be accepted. Accordingly, the analysis will 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 light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

Physician statements of Claimant restrictions were not presented. Statements of restriction from a chiropractor were presented.

On a Medical Examination report dated May 7, 2015, Claimant's chiropractor opined that Claimant was restricted to occasional lifting/carrying of less than 10 pounds, never 10 pounds or more. Claimant's chiropractor opined that Claimant was restricted as follows over an eight-hour workday, standing and/or walking of at least 2 hours and less than 6 hours of sitting. Claimant's chiropractor opined that Claimant was restricted from performing the following hand/arm repetitive actions: bilateral simple grasping, bilateral reaching, bilateral pushing/pulling, and bilateral fine manipulating. The basis of stated restrictions was an unspecified attached report. It was noted that restrictions were expected to last more than 90 days. The provided restrictions were highly indicative of an inability to perform light employment.

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*. The analysis must consider whether the statements of Claimant's chiropractor are controlling.

SSR 06-03p provides guidance on what SSA accepts as “acceptable medical sources”. Licensed physicians and licensed or certified psychologists are acceptable medical sources. Nurse practitioners and social workers are not “acceptable medical sources”. SSR 06-03p goes on to state why the distinction between medical sources and non-medical sources is important.

First, we need evidence from “acceptable medical sources” to establish the existence of a medically determinable impairment. Second, only “acceptable medical sources” can give us medical opinions. Third, only “acceptable medical sources” can be considered treating sources, as defined in 20 CFR 404.1502 and 416.902, whose medical opinions may be entitled to controlling weight.

Claimant’s chiropractor is not an acceptable medical source. The statements may have been given more weight had they been particularly consistent with presented treatment documents. Zero lumbar treatment documents were presented.

Persuasive radiological reports could substitute for treatment documents as a justification of restrictions. An x-ray report indicating mild disk degeneration of the lumbar was not compelling evidence of restrictions that would preclude the walking, lifting/carrying, or sitting of light employment.

Decreased grip strength and a positive Phalen’s test (an indicator of CTS) was verified within a consultative examination report. An impression of CTS was also indicated. This evidence could be construed to justify hand and/or arm restrictions.

A nurse practitioner and a consultative physician noted hand abnormalities. No physician treatment documents were presented. Statement by the nurse practitioner are not compelling evidence of restriction due to non-physician status. A consultative examining physician is an acceptable medical source, though the examiner is not a treating source.

Presented negative x-rays was even less compelling evidence of hand restrictions as no abnormalities were found in Claimant’s hands. It should also be noted that Claimant’s testified that she was examined by a physician and that CTS was ruled out as a diagnosis. Claimant’s testimony does not preclude the possibility of some other diagnosis, however, such a conclusion is purely speculative. Presented evidence did not justify a finding of any restrictions to Claimant’s hand dexterity other than a restriction from performing heavy lifting.

Claimant also complained of foot pain. Claimant testimony suggested that a portion of her foot pain was likely caused by callouses. Claimant testified that her feet are doing better since a podiatrist gave a foot scraping in June 2015. A speculative diagnosis of osteoarthritis from a consultative examiner was noted, but follow-up treatment

documents were not. Again, findings of restrictions are hampered by a lack of physician treatment records.


Claimant's daughter testified that her mom shows pain when walking. Claimant's daughter testified that her mother's right grip is not strong and she has witnessed her mother drop items. Claimant's daughter also testified that she helps her mother shop, get out of the bathtub, and tie shoes. Claimant's daughter's testimony was credible but not well supported by presented medical documents.

Based on the presented evidence, it is found that Claimant can perform, at minimum, light employment. The finding of light employment will be considered based on Claimant's age from her date of application to the MDHHS date of denial.

Based on Claimant's exertional work level (light), age (closely approaching advanced age), education (limited but literate and capable of communicating in English), employment history (unskilled), Medical-Vocational Rule 202.10 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that MDHHS properly found Claimant to be not disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Claimant's SDA benefit application dated June 12, 2015, based on a determination that Claimant is not disabled. The actions taken by MDHHS are **AFFIRMED**.


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

Date Signed: **8/26/2015**

Date Mailed: **8/26/2015**

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]
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