

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

IN THE MATTER OF:



MAHS Reg. No.: 15-021790
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: January 13, 2016
County: Wayne (76)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on January 13, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner 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 April 15, 2015, Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On August 25, 2015, the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibits 1, pp. 6, 8-13).
4. On August 26, 2015, MDHHS denied Petitioner's application for SDA benefits and mailed a Medical Program Eligibility Notice (Exhibit 1, p. 4) informing Petitioner of the denial.

5. On November 24, 2015, Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 1, p. 2, 5).
6. As of the date of the administrative hearing, Petitioner was a 55-year-old male.
7. Petitioner has not earned substantial gainful activity since before the first month of benefits sought.
8. Petitioner alleged disability based on restrictions related to psoriasis and psoriatic arthritis.

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 Petitioner. Accordingly, Petitioner may not be considered for SDA eligibility without undergoing a medical review process (see BAM 815) which determines whether Petitioner 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. SDA differs in that a 90 day period is required to establish 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. The 2016 monthly income limit considered SGA for non-blind individuals is \$1,130.00.

Petitioner credibly denied currently performing employment; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner 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 durational 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 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 petitioners 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 requirements are 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 Petitioner's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented medical documentation.

Physician office visit notes (Exhibit A, pp. 5-8) dated July 8, 2014, were presented. Petitioner reported ongoing pain from psoriasis and arthritis. An exacerbating factor was inactivity. A relieving factor was heat and sunlight. It was noted Petitioner had lesions and rashes over more than 90% of his body. Mildly reduced ranges of motion were noted throughout Petitioner's spine, shoulders, and hips.

A Medical Examination Report (Exhibit 1, pp. 25-27) dated March 25, 2015, was presented. The form was completed by an internal medicine physician with an approximate 1 year history of treating Petitioner. Current medications included Tramadol and Methotrexate. Petitioner's physician listed diagnoses of psoriasis and psoriatic arthritis. An impression was given that Petitioner's condition was deteriorating. Shoulder tenderness was a noted physical examination finding. It was noted Petitioner could not complete unspecified household needs. Petitioner was noted to have various restrictions expected to last longer than 90 days. Petitioner's physician opined that Petitioner was restricted to less than 2 hours of standing and/or walking over an eight-hour workday. Petitioner was restricted to occasional lifting/carrying of less than 10 pounds, never 20 pounds or more. Petitioner's physician opined that Petitioner was restricted from performing repetitive pushing/pulling with both hands and arms. In response to a question asking for the stated basis for restrictions, Petitioner's physician did not respond though it was elsewhere noted that Petitioner had "very extensive" redness of skin "all over body."

A Medical Needs- PATH form (Exhibit 1, pp. 23-24) dated March 25, 2015, was presented. The form was completed by Petitioner's physician. Diagnoses of psoriasis and arthritis were listed. It was stated Petitioner was unable to work at any job, including Petitioner's usual occupation. Petitioner's physician stated Petitioner had limitations expected to last longer than 90 days. Petitioner was restricted to occasional lifting/carrying of 10 pounds, never 20 pounds or more. Petitioner's physician opined that Petitioner could sit about 6 hours in an 8 hour workday. Standing and walking restrictions were not listed. It was noted that Petitioner needed assistance with meal preparation, shopping, laundry, and housework.

A Medical Needs form (Exhibit A, p. 1) dated March 25, 2015, was presented. The form was completed by Petitioner's physician. It was noted Petitioner needed assistance with the following daily activities: bathing, grooming, dressing, taking medications, meal preparation, laundry, and housekeeping. It was noted that Petitioner was unable to work at any job, including Petitioner's usual occupation, on a "permanent" basis.

Physician office visit notes (Exhibit A, pp. 2-4) dated May 6, 2015, presented for ongoing treatment of "severe psoriasis" and "significant psoriatic arthritis." Physical examination findings noted bilateral wrist pain and swelling. Active medications included Ibuprofen, Methotrexate and Tramadol.

An internal medicine examination report (Exhibit 1, pp. 28-35) dated May 29, 2015, was presented. The report was noted as completed by a consultative physician. Petitioner reported complaints of arthritis and psoriasis, ongoing since 2004. Petitioner reported pain in his hands and shoulders. It was noted Petitioner had lesions on his trunk, arms, and legs. Tandem walk, toe walk, and heel walk were noted as slowly performed. An impression of psoriasis and arthritis was noted. Reduced ranges of motion were noted in Petitioner's bilateral hip forward flexion (50°- normal 100°), left shoulder abduction (140°- normal 150°), and left shoulder forward elevation (140°- normal 150°). It was noted that Petitioner was able to perform all 23 listed work-related activities which included sitting, standing, lifting, carrying, stooping, bending, and reaching, though most were performed with pain.

Physician office visit notes (Exhibit 1, pp. 15-17) dated August 5, 2015, were presented. It was noted that Petitioner reported ongoing pain (8/10 overall) in left shoulder bilateral hands, bilateral knees, and bilateral forefeet. Physical examination findings noted pain and swelling in Petitioner's hands and knees.

A radiology report of Petitioner's left hand (Exhibit A, pp. 9-10) dated August 6, 2015, was presented. An impression of moderate osteoarthritis to the distal interphalangeal joint of the first digit was noted.

A radiology report of Petitioner's right hand (Exhibit A, pp. 11-12) dated August 6, 2015, was presented. An impression of erosive changes to the distal interphalangeal joint of the first digit was noted.

A radiology report of Petitioner's right knee (Exhibit A, pp. 13-14) dated August 6, 2015, was presented. An impression of early quadriceps tendinopathy changes was noted.

Presented documentation verified Petitioner has ongoing problems with psoriasis and psoriatic arthritis. Presented documentation sufficiently verified a treatment history to justify an inference that Petitioner has restrictions to ambulation, lifting/carrying, and use of both hands; these restrictions were also noted by Petitioner's internal medicine physician.

It is found that Petitioner established significant impairment to basic work activities for a period longer than 90 days. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

The third step of the sequential analysis requires determining whether the Petitioner's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a petitioner's impairments are listed and deemed to meet the durational requirement, then the petitioner is deemed disabled. If the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

Petitioner's primary impairment was psoriasis. The related SSA listing reads that disability is established by the following:

8.05 Dermatitis (for example, psoriasis, dyshidrosis, atopic dermatitis, exfoliative dermatitis, allergic contact dermatitis), with extensive skin lesions that persist for at least 3 months despite continuing treatment as prescribed.

Petitioner testified he has persistent skin lesions. Generally, medical records were consistent with Petitioner's testimony.

It is understood that "severe" psoriasis affects 10% of a person's body. Psoriasis affects 90% of Petitioner's body. The pervasiveness of Petitioner's psoriasis is highly indicative of a disabling condition.

It is also notable that skin lesions were verified by Petitioner's treating physician and a consultative physician. A confirmation of lesions from multiple physicians increases the credibility of the statements by Petitioner's physician.

It was not disputed that Petitioner's psoriasis was so bad that it caused arthritic pain. Psoriatic arthritis and related restrictions in motion were regularly indicated within

Petitioner's treatment records. Overall, the evidence was highly persuasive that Petitioner meets SSA listing requirements.

The one obstacle to a disability finding was a statement that Petitioner may not have been treatment compliant. On August 5, 2015, Petitioner's physician questioned if Petitioner was complying with treatment. The questioning of Petitioner's compliance appeared to be related to not attending an MRI appointment rather than not taking requiring medication. Failing to attend a radiology appointment is not a highly persuasive indicator of noncompliance. It is also notable that the same physician noted multiple exertional restrictions and stated a need for household assistance. It is found presented evidence established Petitioner was materially compliant with treatment.

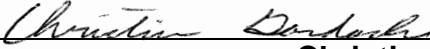
It is found that Petitioner meets the SSA listing for 8.05. Accordingly, Petitioner is disabled and it is found that MDHHS improperly denied Petitioner's SDA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly denied Petitioner's application for SDA benefits. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's SDA benefit application dated April 15, 2015;
- (2) evaluate Petitioner's eligibility subject to the finding that Petitioner 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 Petitioner 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: **1/22/2016**

Date Mailed: **1/22/2016**

CG/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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

