

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

IN THE MATTER OF:



MAHS Reg. No.: 15-022980
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: February 8, 2016
County: Berrien

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. After due notice, a telephone hearing was held on February 8, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], supervisor, and [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 [REDACTED], Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 2-4).
4. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action (see Exhibit 1, pp. 5-6) informing Petitioner of the denial.

5. On [REDACTED], Petitioner requested a hearing disputing the denial of SDA benefits.
6. As of the date of the administrative hearing, Petitioner was a 49-year-old male.
7. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
8. Petitioner earned an associate's degree in communication.
9. Petitioner has a history of semi-skilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on restrictions related to fibromyalgia, peripheral neuropathy, left shoulder degeneration, osteoarthritis, left eye glaucoma, and hypertension.

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).

Petitioner's hearing request noted a dispute of Family independence Program (FIP) (cash) benefits. FIP is a program available to caretakers of minor children and pregnant women. Petitioner testified a denial of SDA benefits was intended. MDHHS was not confused by Petitioner's request to dispute FIP eligibility and was prepared to defend a denial of Petitioner's SDA application denial. It is found that Petitioner intended to dispute SDA eligibility 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 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 performing current employment; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA. Accordingly, the disability analysis may proceed to the second step.

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 1, pp. 10-13) dated [REDACTED], were presented. It was noted that Petitioner's active problems included active smoker, adhesive capsulitis (left shoulder), anxiety, elevated blood pressure, degenerative lumbar disc disease, neuralgia of lower extremity, rotator cuff tendonitis, and ulnar nerve entrapment syndrome. Amitriptyline, amlodipine, ibuprofen, and Tramadol were noted as active medications.

A Medical Examination Report (Exhibit 1, pp. 7-9) dated [REDACTED], was presented. The form was completed by a family practice physician with an approximate 22 month history of treating Petitioner. Petitioner's physician listed diagnoses of fibromyalgia and osteoarthritis. An impression was given that Petitioner's condition was stable. It was noted that Petitioner can meet household needs. It was noted that Petitioner did not need an assistive device for ambulation. Physical examination findings included the following: stiff and fatigued appearance, moves slowly, and decreased right shoulder range of motion.

Physician office visit notes (Exhibit 1, pp. 32-34) dated [REDACTED], were presented. It was noted that Petitioner presented for check-ups of HTN and osteoarthritis. It was noted Petitioner reported moderate pain relief from Tramadol. A concern for continued use of Tramadol (due to its addictive nature) was noted. Impressions of fibromyalgia, lumbar DDD, and HTN were noted.

An internal medicine examination report (Exhibit 1, pp. 26-30) dated [REDACTED] was presented. The report was noted as completed by a consultative physician. Petitioner reported complaints of HTN, hip osteoarthritis, and back pain. It was noted Petitioner reported a medical history including a laminectomy and fusion (in 2003). Heel and toe walking were noted as performed without difficulty. Mild-to-moderate squatting difficulty was noted. Reduced ranges of motion were noted in Petitioner's lumbar flexion (70°- normal 90°), extension (20°- normal 25°), right and left lateral flexion (20°- normal 25°), and hip external rotation (40°- normal 50°). The examiner concluded Petitioner's HTN should be monitored. The examiner described Petitioner's decreased range in motion as mild. It was noted there was no evidence of spinal nerve root impingement. A mild right-sided limp was noted. The examiner stated that Petitioner could ambulate without use of an assistive device. It was noted Petitioner reported he had MRIs on hips and lumbar spine.

A letter from Petitioner's treating physician (Exhibit A, p. 1) dated [REDACTED], was presented. Diagnoses of cervical and lumbar osteoarthritis, cervical disc herniation, fibromyalgia, s/p left shoulder surgery with residual chronic pain, fatigue, and severe sleep apnea were noted. The diagnoses were reiterated on a treatment summary (Exhibit A, p. 3). It was noted Petitioner took chronic pain medication and has been referred to orthopedics, neurosurgery, and rheumatology for further evaluation. The physician opined Petitioner was unable to engage in any gainful employment.

After the hearing, additional documents were received. The documents were purportedly from Petitioner and submitted for the purpose of admission as exhibits. The documents were rejected because the issue of their admission was not raised during the hearing.

Petitioner testified he is restricted in walking, standing, and lifting, in part, due to neuropathy in his arms and legs, spinal arthritis, left shoulder injury, and fibromyalgia. Petitioner testified he has mostly bad days (5-6 per week). Petitioner testified he had a

spinal fusion in 2002. Petitioner testified he hurt his shoulder in 2012 when he was lifting stock for his employer. Petitioner estimated he has been to physical therapy 12-13 times, but not since 2008. Petitioner testified he is scheduled to return to physical therapy the day after the hearing.

Presented evidence sufficiently established Petitioner has ailments which impair his ability to sit, stand, lift/carry, and ambulate. Presented records also established impairments have lasted since the date of SDA application.

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.

A listing for spinal disorders (Listing 1.04) was considered based on Petitioner's lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for sleep apnea (Listing 3.10) was considered. The listing was rejected due to a failure to meet the requirements of Listings 3.09 or 12.02.

A listing for peripheral neuropathies (Listing 11.14) was factored based on a documented diagnosis. The listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

A listing for inflammatory arthritis (Listing 14.09) was considered based on a diagnosis for osteoarthritis. The presented medical records were insufficient to establish that Petitioner has an inability to ambulate effectively, perform fine and gross movements, or suffers inflammation or deformities with a diagnosis of ankylosing spondylitis or other spondyloarthropathies, or suffers repeated manifestations of inflammatory arthritis.

It is found that Petitioner failed to establish meeting or equaling a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner'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 Petitioner 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.

Petitioner testified his past employment includes work as a store manager, casino player representative, service desk manager, and head cashier. Petitioner testified he is unable to perform past employment due to his various medical problems. For purposes of this decision, Petitioner's testimony will be accepted. Accordingly, 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.

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 non-exertional. 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 (e.g. 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 Petitioner's age, education and employment history a determination of disability is dependent on Petitioner'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.

Petitioner testified his standing is restricted to 15-20 minutes due to lumbar pain. Petitioner testified he can only sit for 20 minutes before he needs to either stand or lie down. Petitioner testified he typically has to lie down 3-4 times per day to sleep and rest his back. Petitioner testified he often sleeps for only 2-3 hour periods due to pain.

Petitioner testified he has difficulty with dressing (e.g. pulling up pants). Petitioner testified all activities involving bending are difficult. Petitioner testified he does

housework, but only in spurts. Petitioner testified he does his laundry, but may need assistance with carrying his clothes. Petitioner testified he can drive and has no problems with bathing/showering. Petitioner testified he shops, but tries to make multiple trips for shorter durations.

Generally, Petitioner's testimony was indicative of an inability to perform sedentary employment. Petitioner's testimony will be evaluated against presented medical documents.

Physician statements of restrictions were provided. SSR 96-2p states that if a treating source's medical opinion is well-supported and not inconsistent with the other substantial evidence in the case record, it must be given controlling weight (i.e. it must be adopted). 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*.

On a Medical Examination Report dated [REDACTED], Petitioner's physician stated Petitioner had various limitation(s) expected to last 90 days. The physician opined that Petitioner 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. Petitioner was restricted to occasional lifting/carrying of 20 pounds, never 25 pounds or more.

The basis for physician stated restrictions was decreased range of motion and an illegible statement. The only decrease in range of motion specified by Petitioner's physician was in Petitioner's right shoulder. The restriction is inexplicable as only a diagnosis of left shoulder capsulitis was apparent. An unspecified decrease in shoulder range of motion is not indicative of restrictions that would restrict Petitioner's walking to less than 2 hours and his sitting to less than 6 hours per workday.

A consultative examiner noted additional range of motion restrictions in Petitioner's hips and lumbar. The restrictions were described as "mild" (see Exhibit 1, p. 28) and did not require use of a walking-assistance device. Petitioner's right-sided limp was also described as mild. Petitioner certainly has exertional restrictions though a mild limp with mild range of motion restrictions is not indicative of an inability to perform sedentary employment.

Petitioner could have bolstered his case with radiology reports. Petitioner reported to the consultative physician that he underwent a lumbar spine MRI. Petitioner testified the radiology demonstrated the flattening of a spinal canal. Radiology records were not presented.

Petitioner testified he was treated for fibromyalgia by a neurologist. Neurologist treatment records were not presented. Without such treatment records, it is difficult to infer that body pain restricts Petitioner from performing sedentary employment.

A diagnosis for sleep apnea was noted; sleep study records were not presented. A diagnosis of osteoarthritis was stated; radiology and/or bone density testing was not presented. An absence of objective medical evidence was a common theme for Petitioner's claim of disability. Based on presented evidence, it is found Petitioner can perform sedentary employment.

Based on Petitioner's exertional work level (sedentary), age (younger individual aged 45-49), education (more than high school), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 201.21 is found to apply. This rule dictates a finding that Petitioner is not disabled. Accordingly, it is found that MDHHS properly found Petitioner to be not disabled for purposes of SDA eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's SDA benefit application dated [REDACTED], based on a determination that Petitioner 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: **FEBRUARY 22, 2016**

Date Mailed: **FEBRUARY 22, 2016**

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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:

