

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-022983
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: February 1, 2016
County: Wayne (18)

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, an in-person hearing was held on February 1, 2016, from Taylor, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], medical contact worker.

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. 2-12).
4. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action (Exhibit 1, pp. 155-156) informing Petitioner of the denial.

5. On [REDACTED], Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 1, p. 157).
6. As of the date of the administrative hearing, Petitioner was a 46-year-old female.
7. As of the date of the administrative hearing Petitioner did not have employment amounting to substantial gainful activity.
8. Petitioner's highest education year completed was the 12th grade (via general equivalency degree).
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on restrictions related to multiple sclerosis.

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 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 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.

A request for a leave of absence (Exhibit 1, p. 111) was presented. The request was signed by a treating neurologist on [REDACTED]. It was noted Petitioner needed care when she has an exacerbation of MS symptoms (1-3 days per month).

Neurologist office visit notes (Exhibit 1, pp. 97-100) dated [REDACTED], were presented. It was noted Petitioner presented for ongoing treatment of MS, back pain, neck pain, and incontinence. Various medications were noted as continued.

Neurologist office visit notes (Exhibit 1, pp. 93-96) dated [REDACTED], were presented. It was noted Petitioner presented for ongoing treatment of MS, back pain, neck pain, and incontinence. Various medications were noted as continued.

Hospital documents (Exhibit 1, pp. 129-132) dated [REDACTED], were presented. It was noted that a brain MRI (see Exhibit 1, p. 116) was performed; an impression of mild-to moderate degree of hyper-intense T2 white matter lesions was noted.

Neurologist office visit notes (Exhibit 1, pp. 88-92) dated [REDACTED], were presented. It was noted Petitioner presented for ongoing treatment of MS, back pain, neck pain, and incontinence. Various medications were noted as continued.

Neurologist office visit notes (Exhibit 1, p. 88) dated [REDACTED], were presented. It was noted that Petitioner started on Lyrica.

Neurologist office visit notes (Exhibit 1, p. 84-87) dated [REDACTED], were presented. Ongoing treatment for back pain, neck pain, incontinence, MS, and peripheral neuropathy were noted.

Neurologist office visit notes (Exhibit 1, p. 80-83) dated [REDACTED], were presented. It was noted Petitioner reported numbness and tingling in unspecified areas. It was noted Petitioner reported moderate-to-severe incontinence, ongoing for 1 month. Ongoing complaints of lumbar and neck pain were noted. Normal muscle strength and gait were noted. Reduced lumbar motion and moderate tenderness to palpation were noted. A plan of continuing medications and IV Prednisone treatment was noted. Loperamide was started for MS.

Hospital documents (Exhibit 1, pp. 133-147) dated [REDACTED], were presented. It was noted that Petitioner presented with a complaint of chest pain, ongoing for 20 minutes. It was noted Petitioner was a smoker. A chest x-ray was noted to show no acute cardiopulmonary process. It was noted Petitioner received aspirin and troponin and her pain was controlled.

Neurologist office visit notes (Exhibit 1, p. 76-79) dated [REDACTED], were presented. Reported symptoms included recent chest pain, vision disturbance, lack of coordination, limb weakness, dizziness, and loss of balance. Petitioner reported the symptoms as moderate-to-severe and that they frequently occur. Petitioner reported symptoms are lessened by rest and worsened by stress. Neck and lumbar pain were also noted as reported; decreased lumbar motion was noted. Assessments of lumbar radiculopathy, peripheral neuropathy, MS, and cervical radiculopathy were noted.

Physician office visit notes (Exhibit 1, p. 75) dated [REDACTED], were presented. Various medications were noted as continued.

Neurologist office visit notes (Exhibit 1, pp. 71-74) dated [REDACTED], were presented. It was noted Petitioner presented for ongoing MS treatment. Physical examination findings included neck stiffness, decreased range of spinal motion, and unspecified numbness and tingling. A plan of continuing Zolof, Ibuprofen, Lisinopril,

Lisenya was noted. Zanaflex was noted as restarted. It was noted Petitioner underwent IV Prednisone treatment.

Petitioner testified she has weekly Gilenya injections and monthly steroid treatments for MS. Petitioner testified she has been treated for MS since 2008. Petitioner testified her MS symptoms include body numbness, fatigue, memory loss, swallowing difficulty, urinary incontinence, and bowel incontinence.

Petitioner testified the outer side of her left leg is numb. Petitioner testified the numbness goes down to her toes. Petitioner also testified some of her right fingers are numb. Petitioner testified MS symptoms regressed her typing from 55 to 5 words per minute.

Petitioner testified she has urinary incontinent twice per day. Petitioner testified that prescribed medication has not lessened her accidents. Petitioner also testified she has daily bowel control loss. Petitioner testified prescribed medication does not reduce her accidents, it only hardens her stool to make accidents less messy. Petitioner testified she does not wear protective undergarments because her insurance would not likely pay for the cost.

Petitioner testified she cannot walk longer than 2 minutes before her leg buckles. Petitioner testified MS affects her equilibrium. Petitioner testified she limps when she walks due to left-sided numbness. Petitioner testified she cannot use a cane because loss of sensation in her left hand would not allow her to hold a cane. Petitioner testified she has a script for a walker. Petitioner testified she is restricted to 10-15 minutes of sitting due to back pain.

Petitioner testified she has bad equilibrium when showering. Petitioner testified she fell last month. Petitioner testified she does not have the money to buy a shower chair. Petitioner testified she has to sit down to put on clothes. Petitioner testified bad equilibrium prevents her from descending her stairs. Petitioner testified she goes shopping, but uses a scooter.

Presented records verified ongoing treatment for MS. Treatment records also verified multiple MS symptoms including incontinence, body numbness, and motor function disorganization.

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.

Claimant's most prominent impairment appears to be multiple sclerosis. MS is covered by Listing 11.09 which states that disability is established by the following:

Multiple sclerosis. With:

- A. Disorganization of motor function as described in 11.04B; or
- B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or
- C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

Listing 11.04B requires "significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C). The analysis will consider if Petitioner has such motor function.

Petitioner could have better supported her argument of disability by verifying a need for a walker or physician-stated restrictions indicative of motor function disorganization. Nevertheless, presented treatment records verified repetitive complaints of incontinence, left-sided numbness, fatigue, and loss of equilibrium. The complaints were characterized as "moderate-to-severe", which is indicative of disabling symptoms. No indication of improvement in Petitioner's complaints was indicated. The evidence was sufficient to infer disorganization of motor function.

It is found that Petitioner meets the SSA listing for multiple sclerosis. Accordingly, Petitioner is disabled and it is found 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 [REDACTED];
- (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: **2/10/2016**

Date Mailed: **2/10/2016**

CG / hw

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:

