



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: April 11, 2016
MAHS Docket No.: 16-001872
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 April 4, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

ISSUES

The first issue is whether Petitioner timely requested a hearing to dispute a termination of State Disability Assistance (SDA) eligibility.

The second issue is whether MDHHS properly denied Petitioner's 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. Petitioner was an ongoing SDA benefit recipient.
2. On [REDACTED], MDHHS terminated Petitioner's SDA eligibility, effective September 2015, and mailed Petitioner a corresponding Notice of Case Action.
3. On [REDACTED], Petitioner reapplied for SDA benefits.

4. Petitioner's only basis for SDA benefits was as a disabled individual.
5. On [REDACTED], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 11-14).
6. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action informing Petitioner of the denial.
7. On [REDACTED], Petitioner requested a hearing disputing the termination of SDA benefits beginning September 2015 and the more recent application denial.
8. As of the date of the administrative hearing, Petitioner was a 51-year-old male.
9. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
10. Petitioner's highest education year completed was the 11th grade.
11. Petitioner has no past relevant employment from the last 15 years.
12. Petitioner alleged disability based on restrictions related to back pain and HIV.

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 cited a dispute of SDA eligibility. Petitioner's hearing request noted a denial of SDA, which is indicative of a denied application. Petitioner's hearing request also indicated he'd been getting SDA for 3 years, which is indicative of a termination of SDA eligibility. Petitioner's hearing request will be interpreted to have requested a hearing concerning a termination and denial of SDA eligibility.

Petitioner testimony was uncertain as to when he received SDA benefits. MDHHS testimony credibly indicated Petitioner received SDA benefits through August 2015. MDHHS testimony further indicated Petitioner's SDA eligibility stopped because Petitioner failed to attend a consultative examination as part of an overdue redetermination.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (4/2015), p. 6. The request must be received in the local office within the 90 days. *Id.*

Petitioner initially denied receiving written notice of SDA termination. MDHHS testified that written notice of the termination was mailed to Petitioner on September 9, 2015. MDHHS brought up the notice on their computer and Petitioner was able to view the notice. It was not disputed that the notice included Petitioner's accurate mailing address. After viewing the notice, Petitioner testimony relented and indicated one of Petitioner's household members may have misplaced the notice of SDA termination. It is found MDHHS sent Petitioner written notice of SDA termination on September 9, 2015.

Petitioner submitted a hearing request to MDHHS on [REDACTED]. Petitioner's hearing request submission date was untimely to dispute a MDHHS action over 4 months earlier. Accordingly, Petitioner cannot dispute a termination of SDA eligibility associated with a written notice dated [REDACTED].

It was not disputed that Petitioner reapplied for SDA benefits on [REDACTED]. It was not disputed that MDHHS denied Petitioner's application on [REDACTED]. Petitioner's hearing request dated [REDACTED], was timely to dispute the denial of SDA benefits. The analysis will proceed to determine if MDHHS properly denied Petitioner's SDA application dated [REDACTED]. It was not disputed that MDHHS denied Petitioner's application for the reason that Petitioner was found to be not disabled.

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 background information from Petitioner's testimony and a summary of presented medical documentation.

Petitioner testified he was stabbed in the back in the 1980s. Petitioner testified that he has since had back pain which prevents him from being employed.

An internal medicine examination report (Exhibit 1, pp. 15-22) dated [REDACTED], was presented. The report was noted as completed by a consultative physician. Petitioner reported complaints of bipolar disorder, back problems, HTN and HIV. Notable physical examination findings included the following: mild bronchitis secondary to smoking, normal gait and stance, good handgrip bilaterally, and intact nerves. It was noted that Petitioner had several failed attempts in completing tandem walk. Reduced ranges of motion were noted in Petitioner's lumbar flexion (75°- normal 90°), lumbar extension (20°- normal 25°), left lateral flexion (20°- normal 25°), and right lateral flexion (20°- normal 25°). Standing and walking were noted as satisfactory. It was noted without comment that Petitioner was able to perform all 23 listed work-related activities which included sitting, standing, lifting, carrying, stooping, bending, and reaching. The examiner opined that Petitioner should be able to perform pushing, pulling, and lifting without difficulties or significant limitations. The examiner stated that clinical evidence did not support the need for a cane.

Petitioner testified he has bipolar disorder. No mental health treatment documents were presented. A diagnosis of bipolar disorder was not verified. Bipolar medication was not verified. Due to the absence of evidence, it is found Petitioner does not have a severe psychological impairment.

Petitioner's hearing request indicated he had AIDS. No documents were presented verifying the diagnosis. Petitioner testified his most recent appointment with his HIV physician resulted in only good news. Petitioner seemed to not know the difference between HIV and AIDS, though he conceded that his HIV status does not restrict potential work activities.

Petitioner alleged impairments related to back pain. Petitioner's testimony of previous back injuries was credible. Multiple lumbar range of motion restrictions were verified. The evidence was marginally sufficient to infer Petitioner has some degree of lifting/carrying restrictions due to lumbar pain.

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.

It is found that Petitioner failed to establish meeting an SSA listing. Accordingly, the analysis moves to the fourth step.

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 he last worked in 1994 as a taxi driver. Petitioner testified he stopped driving a taxi because he needed \$144 to regain his license. Petitioner testified he has not had the money to reinstate his license. Petitioner's testimony was credible.

Without any employment form the last 15 years, it can only be found that Petitioner cannot return to performing employment form the last 15 years. Accordingly, the disability 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 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.

Petitioner testified he uses a cane when he goes outside. Petitioner testified he does not utilize the cane around the house. Petitioner testified he is limited to walking to the corner store and back home. Petitioner testimony conceded he has no problems sitting. Petitioner testified he has unspecified lifting/carrying restrictions.

Petitioner testified he has no difficulties with bathing, dressing, or grooming. Petitioner testified he is limited in housework. For example, Petitioner testified he cannot mow his lawn or shovel snow. Petitioner testified he is capable of sweeping for 1-2 minutes and washing out a sink and bathtub.

Petitioner failed to present any treatment documents for his back problems. It cannot be determined what treatments Petitioner has attempted. It cannot be determined what pain medications, if any, Petitioner takes. It cannot be determined how long Petitioner's

back problems have persisted. Radiology was not presented to verify the extent of any spinal deformities.

A consultative examiner found multiple range of motion restrictions, though the restrictions were relatively minor. The examiner further found no abnormalities with Petitioner's gait or stance. A need for a cane was not verified. The only physician statement concerning restrictions indicated Petitioner had no exertional restrictions. A small degree of lifting/carrying restriction may be likely, but not to the extent that light employment cannot be performed. It is found Petitioner can perform light employment.

Based on Petitioner's exertional work level (light), age (approaching advanced age), education (less than high school but literate and able to communicate in English), employment history (none), Medical-Vocational Rule 201.10 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 benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to timely dispute a termination of SDA eligibility, effective September 2015. Petitioner's hearing request is **PARTIALLY DISMISSED**.

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**.

CG/hw



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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]