



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 3, 2017
MAHS Docket No.: 17-001202
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 [REDACTED], from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], manager,

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 (see Exhibit 1, pp. 2-14).
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED], the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit 1, pp.15-21).
4. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action informing Petitioner of the denial.

5. On [REDACTED], Petitioner requested a hearing disputing the denial of SDA benefits.
6. On [REDACTED], an administrative hearing was held.
7. During the hearing, Petitioner and MDHHS waived the right to receive a timely hearing decision.
8. During the hearing, the record was extended 30 days to allow Petitioner to submit spinal/back treatment records; an Interim Order Extending the Record was subsequently mailed to both parties.
9. On [REDACTED], Petitioner submitted additional documents (Exhibits A, pp. 1-15)
10. As of the date of the administrative hearing, Petitioner was a 46-year-old male.
11. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
12. Petitioner is limited to sedentary employment due to restrictions related too congenital right hand dysfunction and sacroiliac pain.
13. MDHHS did not establish if ample employment opportunities exist for Petitioner, given his restrictions.

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 (July 2015), 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 (January 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.

Petitioner requested a hearing to dispute the denial of a SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 86-89) dated [REDACTED], verifying Petitioner's application was denied based on a determination that Petitioner was not disabled.

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 [90 days for SDA eligibility]. 20 CFR 416.905.

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 [REDACTED].

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.

Neurosurgeon office visit notes (Exhibit A, pp. 2-5) dated [REDACTED], were presented. It was noted that Petitioner reported lumbar pain, ongoing 5-6 years, which radiated to Petitioner's right leg. Occasional leg weakness and foot numbness was noted. Petitioner reported that physical therapy did not lessen symptoms. Physical examination notes included no spasm, positive right Fortin's finger test, sacroiliac joint tenderness, and negative straight-leg-raising test. Normal muscle strength was noted. It was noted radiology from 2015 demonstrated good lordosis. Degenerative changes

were noted, though stenosis was notably absent. A plan of a referral to a sacroiliac joint specialist was noted.

An internal medicine examination report (Exhibit 1, pp. 41-45) dated [REDACTED] 6, was presented. The report was noted as completed by a consultative physician. Petitioner reported a medical history of back pain and a congenital defect of the right hand. The examining physician noted Petitioner had diminished grip strength of the right hand (41 pounds). It was noted Petitioner was capable of opening a door with his right hand. It was noted Petitioner had difficulty picking up a coin with his right hand. Reduced ranges of motion were noted in Petitioner's lumbar extension, right lateral flexion, and left lateral flexion (20°- normal 20°). Motor strength was noted to be normal. Sensory function was intact. Marked atrophy was noted in the right proximal interphalangeal joints. Moderate dexterity loss was noted in Petitioner's right hand. Lumbar spine radiology was noted to show mild facetar arthrosis at lower levels, with no abnormalities affecting sacroiliac joints. Conclusions included back pain, with no evidence of nerve root impingement.

Neurosurgeon office visit notes (Exhibit A, pp. 6-9) dated [REDACTED] were presented. It was noted that a sacroiliac joint injection resolved Petitioner's pain. Presumably, the resolution was temporary as sacroiliac fusion surgery was planned.

Neurosurgeon office visit notes (Exhibit A, pp. 10-13) dated [REDACTED], were presented. It was noted that Petitioner reported ongoing but stable sacroiliac joint pain. A plan of surgery was noted.

An Operative Report (Exhibit A, pp. 14-15) dated [REDACTED], was presented. It was noted that Petitioner underwent right-sided sacroiliac joint fusion surgery. No complications were indicated.

Petitioner testified his right hand has been diminished since birth. Petitioner explained his right fingers are misshapen and weak. Petitioner testified he is unable to perform repetitive work involving his right hand. Petitioner testified he is capable of tying shoes and carrying a gallon of milk with his right hand. Petitioner testified he is left-handed.

Petitioner testified he has tried approximately 24 steroid back injections in the past. Petitioner testified the injections help for about a week before back pain returns. Petitioner testified he has also tried physical therapy, swimming therapy, and chiropractor adjustments, none of which offered pain relief. Petitioner testified he takes morphine, trazodone and an unspecified third pain medication.

Petitioner testified he recently realized surgery was a better option than PT. Petitioner testified he is scheduled for surgery on [REDACTED], for surgical fusion of sacroiliac joints. Petitioner's testimony was corroborated by presented documents.

Presented documents sufficiently verified degrees of right hand and lumbar dysfunction. The problems would reasonably restrict Petitioner's hand dexterity, carrying/lifting,

ambulation, sitting, and standing. Petitioner's treatment history was consistent with restrictions that have lasted at least 90 days and at least since Petitioner's date of SDA application. 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 joint dysfunction (Listing 1.02) was considered based on Petitioner's right hand problems. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively or that Petitioner is unable to perform fine and gross movements with both hands.

A listing for spinal disorders (Listing 1.04) was considered based on Petitioner's treatment history. 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 (or equaling) 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 his only previous employment was as a semi-truck driver. Petitioner testified his duties did not involve lifting, only driving. Petitioner testified he could not sit long enough to perform his past employment.

Petitioner's testimony that he is unable to perform past employment was credible and consistent with presented records concerning lumbar treatment. It is found that Petitioner cannot perform past employment and that 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 he does not require the use of a cane or walker. Petitioner testimony estimated he is "probably" able to walk 2 blocks before needing to rest his back. Petitioner testified he can sit in a chair for 20-30 minutes, though he can sit longer in a recliner; Petitioner could not state how many hours out of an 8 hour workday he could sit. Petitioner testified a former doctor restricted his lifting/carrying to 20 pounds.

Petitioner testified back pain does not inhibit his ability to dress, bathe, and groom himself. Petitioner testified vacuuming is difficult due to repetitive movement. Petitioner testified he can shop for short periods, but requires a scooter for longer shopping trips. Petitioner testified he can drive, but for a maximum of 30-45 minutes.

Petitioner's testimony was indicative that he may be unable to perform the sitting and/or standing/walking required of sedentary employment. The analysis will proceed to determine whether Petitioner's statements were verified by presented evidence.

Physician statements of Petitioner restrictions were not presented. Assessment from a non-physician were presented.

A Physical Residual Functional Capacity Assessment (Exhibit 1, pp. 32-39) dated [REDACTED], was presented. The assessment was signed by a "single decision-maker" as part of Petitioner's SSA claim of disability. Stated restrictions included occasional lifting of 50 pounds, frequent ability to lift/carry 25 pounds (with a 5 pound

restriction on upper right extremity), standing or sitting about 6 hours in an 8 hour workday, and limited reaching, fingering, and gross manipulation of the right hand/upper extremity. It was stated Petitioner was “overall” capable of a medium exertional level. The stated basis for assessments were uncited medical records.

Assessments made by a non-physician are not compelling evidence of Petitioner’s abilities. The analysis will proceed to consider Petitioner’s abilities given his treatment history.

Petitioner’s need for sacroiliac surgery was sufficient evidence that Petitioner would be unable to perform any employment involving more than 4 hours of standing per 8 hours. Thus, Petitioner would be limited to sedentary employment.

Generally, sedentary employment requires a large degree of hand usage. Common sedentary jobs rely on writing, typing, and/or assembly. During the hearing, Petitioner was asked about the possibility of performing sedentary employment involving typing. Petitioner testified that typing is impossible with his right hand. Petitioner testified he is unaware of his typing speed. It is presumed that Petitioner’s right hand dysfunction would preclude viable candidacy for most sedentary jobs.

It is possible that ample sedentary employment opportunities exist for Petitioner, given hand restrictions. Petitioner’s restrictions are significant enough that it cannot be presumed that such employment is amply available. The burden to establish the existence of available employment rests with MDHHS. MDHHS presented no evidence of employment available to Petitioner. Without such evidence, it must be found that Petitioner is incapable of performing sedentary employment.

Given presented evidence, it is found that Petitioner is not capable of performing any exertional level of employment. Thus, 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 begin to 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**.

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]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]