



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 2, 2018
MAHS Docket No.: 18-001662
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; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on April 5, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], supervisor.

ISSUE

The issue is whether MDHHS properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program.

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 June 12, 2017, Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On December 7, 2017, the Disability Determination Service (DDS) determined that Petitioner was not a disabled individual. Exhibit A, p. 9.
4. On December 12, 2017, MDHHS denied Petitioner's application for SDA benefits. Exhibit A, pp. 68-71.
5. As of December 12, 2017, Petitioner has no medically documented severe impairments.

6. On February 9, 2018, Petitioner requested a hearing disputing the denial of SDA benefits.
7. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
8. As of the date of the administrative hearing, Petitioner was a ■-year-old female.

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 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 dated December 12, 2017, stating that Petitioner's application was denied based on a determination that Petitioner was not disabled.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (April 2017), p. 5. 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 (April 2017), p. 1. A person is disabled for SDA purposes if he or she meets any of the following criteria:

- Receives other specified disability-related benefits or services....
- Resides in a qualified Special Living Arrangement (SLA) facility.
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS)...

Id., pp. 1-2.

When the person does not meet one of the [above] criteria, [MDHHS is to] follow the instructions in BAM 815, Medical Determination and Disability Determination Service (DDS), Steps for Medical Determination Applications. *Id.*, p. 4. The DDS will gather and review the medical evidence and either certify or deny the disability claim based on the medical evidence. *Id.* The review of medical evidence is primarily outlined by federal law.

Petitioner alleged being unable to work for at least 90 days. Petitioner alleged no other basis for SDA eligibility.

Generally, state agencies must use the same definition of disability as used for Supplemental Security Income (SSI) (see 42 C.F.R. § 435.540(a)). [Federal] law defines disability as the inability to do any substantial gainful activity 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 C.F.R. § 416.905(a). MDHHS adopted a functionally identical definition of disability (see BEM 260 (July 2015), p. 10). The same definition applies to SDA, though SDA eligibility factors only a 90-day period of disability. The remainder of the analysis considers the specific disability evaluation set forth by federal SSI regulations.

In general, you have to prove... that you are blind or disabled. 20 C.F.R. § 416.912(a). You must inform us about or submit all evidence known... that relates to whether or not you are blind or disabled. *Id.* Evidence includes, but is not limited to, objective medical evidence (e.g., medical signs and laboratory findings), evidence from other medical sources (e.g., medical history and opinions), and non-medical statements about symptoms (e.g., testimony) (see *Id.*).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled (see 20 C.F.R. § 416.920). If there is no finding of disability or lack of disability at each step, the process moves to the next step (see *Id.*)

The first step in the process considers a person's current work activity (see 20 C.F.R. § 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 2017 monthly income limit considered SGA for non-blind individuals is \$1,170.00.

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.*

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.

At the second step, we consider the medical severity of your impairment(s). 20 C.F.R. §416.920 (a)(4)(ii). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in §416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. *Id.*

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, SSR 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).

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. 20 C.F.R. § 416.920 (5)(c). We will not consider your age, education, and work experience. *Id.* The second step analysis will begin with a summary of presented medical documentation and Petitioner's testimony.

Petitioner testified she has a "massive" rotator cuff tear in her right shoulder. Petitioner testified the tear was discovered after an MRI in February 2018. Petitioner testified she's had shoulder problems since 2006, but her pain has worsened over the years. Petitioner testified she began seeing doctors in 2012-2013 for shoulder pain. Petitioner testified that physical therapy in 2015 helped, but she later regressed.

Petitioner testified she has arthritis in her left thumb which requires her to wear a brace. Petitioner testified she had surgery in 2006 on her left hand and in 2004 on her right hand. Petitioner testified the surgeries helped, but she still has a reduced grip.

Petitioner testified she does not use a cane or walker. Petitioner testified she has difficulty ascending stairs when her arm is needed to hold on to the railing. Petitioner testified she is limited to walking a half mile due to shoulder pain. Petitioner testified she is limited to standing for 15 minutes due to shoulder pain.

Petitioner testified she has difficulty bathing and tries to rely on her left arm. Petitioner testified that dressing is also painful and that she sometimes needs help putting on her tops. Petitioner testified she cannot do housework due to impairments and that it is completed by her boyfriend. Petitioner testified she is unable to carry laundry baskets or remove clothes from a laundry machine without pain. Petitioner testified she is limited to driving for 5-10 minutes, at maximum.

On [REDACTED], Petitioner went to an emergency room and complained of a left foot pain level of 10/10. Physical examination assessments included mid-foot and 5th metatarsal tenderness with otherwise normal neurovascular motor function. An x-ray of

Petitioner's left foot was unremarkable. A final impression of a stress fracture was noted. Petitioner was prescribed hydrocodone-acetaminophen. (Exhibit A, pp. 42-50.)

On [REDACTED], Petitioner was treated for a skin lesion under her right breast. The lesion was excised. (Exhibit A, pp. 52-53.)

Hospital lab results dated [REDACTED], were presented. Treatments and complaints were not apparent. (Exhibit A, pp. 54-62.)

Hospital lab results dated [REDACTED], were presented. Episodes of sinus tachycardia during use of a 48-hour Holter monitor was noted. (Exhibit A, pp. 63-67.)

Presented medical documents through March 2017 verified no impairment related to Petitioner's stated impairments of CTS or a rotator cuff tear. Two documents were presented which related to Petitioner's stated impairments.

On [REDACTED], Petitioner underwent a consultative examination as part of her claim of disability with Social Security Administration (SSA). Petitioner reported right shoulder pain which radiated down her arm. Petitioner reported that chiropractor appointments and physical therapy resulted in minimal improvement. Petitioner reported that the pain is especially worse with repetitive right arm movements. Physical examination assessments included the following: full range of shoulder motion, full range of cervical spine motion, no difficulty with squatting, no difficulty with heel and toe motion, full use of hands, no evidence of joint swelling, and 5/5 motor strength. A complaint of pain was noted with right shoulder motion. (Exhibit A, pp. 37-41.a.)

Petitioner presented a letter dated [REDACTED], from a physician assistant from a treating orthopedic center. Petitioner was treated for a "massive" rotator cuff tear that day. Petitioner was restricted from overhead use of her right arm and lifting more than five pounds. An unspecified surgery was scheduled; the surgery was noted to limit Petitioner to lifting more than 20 pounds with a lifetime duration. (Exhibit 1, p. 1.)

The objective physical examination assessments from Petitioner's consultative examination failed to verify any basis for severe impairments. Full arm strength, full cervical spine motion, full right shoulder motion and full use of hands, in particular, were highly indicative of an absence of severe impairments.


The letter from a treating physician assistant verified severe impairments, but only as of February 2018. Notably, the statement that Petitioner was treated that day implied no treatments before February 2018. Thus, Petitioner's one verified treatment relating to alleged impairments occurred more than two months after MDHHS denied Petitioner's application. The letter may be persuasive evidence of impairment for a future disability application, but it provided little insight as to whether MDHHS properly denied Petitioner's SDA application dated June 12, 2017.

Based on the evidence, Petitioner failed to establish a severe impairment. Thus, it is found that MDHHS properly denied Petitioner's SDA application dated June 12, 2017, Petitioner is encouraged to reapply for SDA benefits if her impairments from February 2018 continue.

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 June 12, 2017, based on a determination that Petitioner is not disabled. The actions taken by MDHHS are **AFFIRMED**.

CG/



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]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
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