

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

IN THE MATTER OF:

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MAHS Reg. No.: 15-023570
Issue No.: 4009
Agency Case No.: ██████████
Hearing Date: February 11, 2016
County: Wayne-District 55
(Hamtramck)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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; and 45 CFR 205.10. After due notice, a telephone hearing was held on February 11, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by ██████████, Assistance Payment Worker.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. A copy of the report of Petitioner's mental status examination performed by HCC Evaluations on October 16, 2015, was received and marked and admitted into evidence as Exhibit C. A medical examination report, DHS-49, requested from Petitioner's primary care physician Dr. ██████████ was not received. The record closed on March 14, 2016, and the matter is now before the undersigned for a final determination based on the evidence presented.

ISSUE

Did the Department properly determine 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 October 7, 2015, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On November 24, 2015, the Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, p. 5).
3. On December 4, 2015, the Department sent Petitioner a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 3-4).
4. On December 15, 2015, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 2-4).
5. Petitioner alleged disabling impairment due to hip and back pain, Type 2 diabetes, hypertension, leg numbness, depression, and anger management issues.
6. On the date of the hearing, Petitioner was [REDACTED] years old with an [REDACTED] birth date; he is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Petitioner received a GED.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work in prison as a cook and snow shovel worker.
10. Petitioner has a pending disability claim with the Social Security Administration.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner has not engaged in SGA activity during the period for which assistance might be available. Therefore, Petitioner is not ineligible under Step 1, and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR

416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

In the present case, Petitioner alleges disabling impairment due to hip and back pain, Type 2 diabetes, hypertension, leg numbness, depression, and anger management issues. On July 8, 2015, Petitioner's primary care physician wrote a letter indicating that based on Petitioner's medical condition, he considered it "difficult for him to either procure or maintain employment commensurate to his abilities and [he] would endorse his claim for disability benefits." However, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d). Therefore, the medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below.

On October 16, 2015, a doctor examined Petitioner at the Department's request and prepared a physical exam report. Petitioner reported to the doctor that he had pain in his low back, left shoulder and left hip following a 2009 fall from a top bunk. The doctor observed that Petitioner walked using a cane in his left hand and kept his left leg essentially extended. He tended to sit on the right side in the chair, stating that this helped decrease some of the left hip pain. He could not stand on heels or toes or squat. His straight leg raise was 80 degrees on the right and 90 degrees on the left and produced local hip pain and back pain. Right grip strength was 25 kg and 17 kg on the left. The doctor noted full range of motion of the cervical spine, right shoulder and right hip, and decreased range of motion, with pain, of the lumbar spine, left shoulder and left hip as follows: (i) his lumbar spine flexion was 0 to 30 degrees (normal is 0 to 90), extension was 0 to 10 degrees (normal is 0 to 25), right lateral flexion was 0 to 15 degrees (normal is 25); (ii) his left shoulder abduction was 0 to 120 degrees (normal is 0 to 150), adduction was 0 to 20 degrees (normal is 0 to 30), internal rotation was 0 to 60 degrees (normal is 0 to 80), external rotation was 0 to 70 degrees (normal is 0 to 90), forward elevation was 0 to 120 degrees (normal is 0 to 150); (iii) his left hip abduction was 0 to 30 degrees (normal is 0 to 40), adduction was 0 to 10 degrees (normal is 0 to 20), forward flexion was 0 to 90 degrees (normal is 0 to 100), backward extension was 0 to 25 degrees (normal is 0 to 30), internal rotation was 0 to 30 degrees (normal is 0 to 40), external rotation was 0 to 40 degrees (normal is 0 to 50); and (iv) his left and right knee flexion was 0 to 145 degrees (normal is 0 to 150). The doctor concluded that Petitioner suffered from chronic lumbar pain, left shoulder pain, and chronic left hip pain due to the 2009 fall, he had a history of diabetes mellitus and hypertension, and he was

obese. He needed an ancillary aide for walking. He had sufficient strength in the upper extremities to open a jar, pick up a coin, write, button, and tie shoelaces but activities were limited to simple activities of daily living because of the restricted range of motion to the left shoulder with associated pain. The doctor noted that Petitioner could carry, push, and pull for purposes of activities of daily living but could not do such on a repetitive basis. He could sit, stand, and bend, but would need to be able to alternate as needed. (Exhibit A, pp. 91-97, 100-106.)

An October 16, 2015 lumbar spine x-ray showed intervertebral osteochondrosis at L4-5 and L5-S1 and anterior spurring (Exhibit A, p. 98).

On October 16, 2015, a psychiatrist evaluated Petitioner at the Department's request and prepared a psychiatric evaluation. The psychiatrist noted that Petitioner walked with a cane due to back pain. He also noted that Petitioner was guarded, suspicious, and paranoid and had problems with memory and concentration. Petitioner reported having been referred to anger management classes and currently participating in a violence prevention program. Based on his evaluation of Petitioner, the psychiatrist diagnosed Petitioner with mood disorder secondary to general medical condition and impulse control disorder with anti-personality traits and concluded that Petitioner was able to understand, retain, and follow instructions and, due to his mood lability with paranoia and limitations due to his physical condition, he was restricted to work that involved brief superficial interactions with people. (Exhibit C.)

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), 4.04 (ischemic heart disease), 9.00 (endocrine disorders), 11.14 (peripheral neuropathies), 12.04 (affective disorders), 12.06 (anxiety-related disorders) were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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. 20 CFR 416.967(b). 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). 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). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions 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 (i.e., unable to 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). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner testified he managed his diabetes with diet but he had numbness in his legs and feet and pain in his back and hip that enabled him to walk only short distances using his cane. He could stand only a few minutes before his leg went numb and noted that he wore diabetic socks. His ability to sit depended on his ability to position himself and the type of cushion on the seat. He could use his hands to grip and grasp but could not lift 20 pounds. He lived with his mother and cared for his own personal hygiene and was able to dress himself. His mother did the household chores, and his ability to assist her was limited because he could not stand long or carry anything heavy. He drove for short periods and did some shopping with his mother. He further testified that he was depressed and had difficulty controlling his behavior, noting that he had been required to take anger management classes and therapy as a condition of his parole.

An October 16, 2015 lumbar spine x-ray showed intervertebral osteochondrosis at L4-5 and L5-S1 and anterior spurring. The consulting doctor who examined Petitioner on October 16, 2015 noted, consistent with Petitioner's testimony concerning pain following his 2009 fall, that Petitioner had decreased range of motion of the lumbar spine, left shoulder and left hip. The doctor observed that Petitioner walked using a cane in his left hand and kept his left leg essentially extended. He concluded that Petitioner needed an assistance ambulatory device. He also concluded that Petitioner had sufficient strength in the upper extremities to open a jar, pick up a coin, write, button, and tie shoelaces and he could carry, push, and pull for purposes of activities of daily living but could not do such on a repetitive basis. Similarly, he could sit, stand, and bend, but would need to be able to alternate as needed. With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a), with the opportunity to alternate to standing. See SSR 96-9p.

The medical evidence also included the report from the October 15, 2015 psychiatric evaluation which diagnosed Petitioner with mood disorder secondary to general medical condition and impulse control disorder with anti-personality traits and concluded that he was able to understand, retain, and follow instructions but, due to his mood lability with paranoia and limitations due to his physical condition, he was restricted to work that involved brief superficial interactions with people. Based on the medical record presented, as well as Petitioner's testimony, Petitioner's mental RFC limits him to simple, unskilled labor with brief, superficial interactions with people.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's past employment history is limited to work he performed while imprisoned. Past work is relevant only if it was SGA. 20 CFR 416.965(a); SSR 82-62. Gainful employment is work activity done for pay or profit, whether or not a profit is realized. 20 CFR 416.972. Generally, in evaluating work activity for SGA purposes, a primary consideration is the earnings derived from the work activity. 20 CFR 416.974.

Because Petitioner's prison work was for minimal wages, it is not SGA. Accordingly, Petitioner does not have past relevant work. Because an assessment cannot be made regarding whether Petitioner is able or unable to perform past relevant work, Petitioner cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Petitioner's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work. At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 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). However, 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). When a person has a combination of exertional and

nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, at the time of application and hearing, Petitioner was ■ years old and, thus, considered to be a younger individual (■■■■■■■■■■) for purposes of Appendix 2. He received a GED. While he has no past relevant work experience, he performed unskilled work while imprisoned. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities, provided he has the opportunity to alternate to standing.

In this case, the Medical-Vocational Guidelines result in a finding that Petitioner is not disabled based on exertional limitations. However, Petitioner also has nonexertional limitations. His mental RFC limits him to simple, unskilled work. Additionally, his impulse control disorder with anti-personality traits results in mood lability with paranoia, requiring that he have only brief, superficial interactions with other people. The Department has failed to present evidence of significant numbers of jobs in the national economy involving unskilled labor and brief, superficial interactions with other people. In the absence of evidence of jobs that Petitioner could perform despite his nonexertional limitations, the Department has failed to establish that, based on his RFC, age, education and work experience, Petitioner can adjust to other work. Therefore, Petitioner is disabled at Step 5.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner **disabled** for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reregister and process Petitioner's October 7, 2015 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;

2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;
3. Review Petitioner's continued eligibility in September 2016.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/01/2016**

Date Mailed: **4/01/2016**

ACE / ttf

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 party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]