

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

IN THE MATTER OF:

████████████████████
████████████████
████████████████████

MAHS Reg. No.: 15-021841
Issue No.: 4009
Agency Case No.: ██████████
Hearing Date: February 08, 2016
County: Oakland-District 2
(Madison Hts)

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, an in-person hearing was held on February 8, 2015, from Madison Heights, Michigan. Petitioner appeared and testified. He was represented by █████ █████, █████ █████ █████ Benefits Coordinator and Petitioner's authorized hearing representative (AHR). The Department was represented by ██████████, Eligibility Specialist, and ██████████, Assistance Payment Supervisor.

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 March 12, 2015, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On November 5, 2015, the Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 7-10).
3. On November 9, 2015, the Department sent Petitioner a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 5-6).

4. On November 25, 2015, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 2-4).
5. Petitioner alleged disabling impairment due to inability to use his left arm, left-sided weakness, short-term memory loss, and depression.
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 completed the [REDACTED]th grade. He can read and do basic math but has difficulty writing.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as an electrician and project manager for a security system company, a job that involved installing security equipment.
10. Petitioner's claim with the Social Security Administration was denied, and he has an appeal pending.

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). Similarly, 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).

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 complications following a 2012 stroke, specifically, an inability to use his left arm, left-sided weakness, short term memory loss and depression. The medical evidence presented at the hearing was reviewed and is summarized below.

In August 2012, Petitioner was hospitalized, complaining of left-sided weakness, left-sided facial droop, headache, dizziness, and slowed and inaccurate responses to questions. A brain MRI showed multiple areas of infarction of unknown date. A chest x-ray was negative and showed no radiographic evidence of a cardiopulmonary process. On August 8, 2012, an occupational therapist concluded that Petitioner had moderate impairment of his short-term and long-term memory, problem solving, judgment, and safety awareness, and his visual scanning was impaired. With respect to his cognition skills, he was found able to follow 3-step commands and to have minimum impairment of his judgment and impulsivity. Based on a carotid Doppler and head CT, Petitioner was diagnosed with right hemispheric ischemic stroke, possibly secondary to carotid artery dissection, possible underlying depression, and leukocytosis. (Exhibit 1, pp. 1-72.)

From August 14, 2012 to September 7, 2012, he was admitted to the hospital for rehabilitation, status post-ischemic stroke, with physical, occupational, and speech therapy. (Exhibit 1, pp. 73-121.) Notes indicate that Petitioner's left leg had improved and his perceptual deficits had improved but he still had no movement in the left upper extremity. He continued to have difficulty dressing and using his upper left extremity as a gross stabilizer. He was able to perform other activities with modified independence, using adaptive equipment or taking more time to perform. His occupational therapy discharge note found that he could follow 3-step commands, had intact short-term and long-term memory, and had moderately impaired problem solving, judgment and safety awareness. His verbal expression and reasoning was deemed 90% accurate. The discharge summary noted that Petitioner had made "great improvement" and really did not need much help at home but, because he had no support at home, he was referred to a nursing home to help him transition back home. (Exhibit 1, pp. 90-121.)

On October 13, 2015, Petitioner was examined by a doctor at the Department's request. The doctor noted that Petitioner reported occasional headaches and dizziness and cloudiness of the left eye. The doctor noted that Petitioner walked into the examination

room without a cane but stated he used a cane when he went out because of dizziness and left-sided weakness. He was able to sit in the chair. He had a little difficulty getting on the examination table because of the weakness in the left lower extremity and left upper extremity. His eyesight without glasses was 20/200 on the right and 20/50 on the left; corrected vision was 20/25 on the right and 20/20 on the left. Petitioner is left-handed. His JAMAR grip strength was 135 pounds on the right and 18 pounds on the left. The doctor noted that Petitioner had a somewhat abnormal stance and gait, slightly leaning towards the right side; a limp and unsteadiness in the extremities when walking; and difficulty squatting. There was complete weakness of the left upper extremity and minimal range of motion. The left foot was weak and had foot drop, the doctor noting that Petitioner dragged his foot when walking but did not experience pain. In his assessment of Petitioner's range of motion, the doctor noted that Petitioner had no movement in his left shoulder, elbow, wrist, hand, and fingers. He noted normal cervical spine range of motion but limitations in his lumbar spine and his right upper extremity. He also noted limitation in Petitioner's range of motion in both hips, knees and ankles, more so on the left lower extremity due to weakness. In assessing his current ability, the doctor noted that Petitioner was unable to button clothes, tie shoes, dress/undress, write without difficulty, or squat. He was able to carry, push, pull, dial, open door, make fists, and pick up coins/pencils only with his right hand. Petitioner's right reflexes were normal but his left side reflexes were decreased because of his paralysis. (Exhibit A, pp. 11-18.)

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), 11.04 (central nervous system vascular accident), 12.02 (organic mental disorders), 12.04 (affective disorders) were considered. A listing under 1.02 requires the involvement of one major peripheral joint in each upper extremity. Because only Petitioner's left upper extremity is affected, his impairment does not meet the listing under 1.02. Because Petitioner did not suffer from ineffective speech or communication and did not have a significant and persistent disorganization of motor function in two extremities, he does not meet a listing under 11.04. There was no medically documented persistent memory impairment or medically documented history of a

chronic organic mental disorder of at least 2 years' duration to support a listing under 12.02. The medical evidence presented does not support the level of severity to meet or equal 12.04.

Because 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, 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 impairments. Petitioner testified that, since his 2012 stroke, he has had no use of his left arm. Because he was left-handed and now has to use his right hand to write, his handwriting has been significantly affected and is barely legible. He has regained about 80% use of his left leg but his leg continues to feel wobbly, resulting in fatigue and limiting him to walking no more than a ½ block. He has difficulty with stairs and must use a handrail. He can use only his right hand for gripping and grasping and has full strength with his right hand but his ability to lift is limited due to the fact that he could not use his left hand. His peripheral vision on the left is affected. He can usually dress himself but has difficulty washing himself, particularly his right arm. He does basic household chores but simplifies them.

Petitioner's medical record clearly supports Petitioner's testimony concerning the significant limitations in his use of his left upper extremity: the October 13, 2015 consultative exam noted decreased strength of the left hand and no range of motion of the left shoulder, elbow, wrist, hand, and fingers. The consultative exam also found that Petitioner's left lower extremity was affected, resulting in an abnormal stance and gait, a limp when walking, and difficulty squatting. His right upper and lower extremities had limitations in range of motion, though not to the extent as the left. 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 respect to the nonexertional limitations, the consultative doctor found that Petitioner had had three transient ischemic attacks since the 2012 stroke with occasional dizzy spells. Although Petitioner alleged some peripheral vision problems,

the consultative doctor found that, with correction, Petitioner's vision was 20/25 on the right and 20/20 on the left. While Petitioner alleged that he suffered from short-term memory loss, there was limited medical evidence supporting his allegations. The discharge summary from Petitioner's rehabilitation showed that Petitioner's memory was 5 of 5 (Exhibit A, p. 73). The occupational therapist also reported intact short- and long-term memory at discharge (Exhibit A, p. 87). The consultative exam report stated that Petitioner reported no memory loss (Exhibit A, p. 11). Therefore, the evidence does not support Petitioner's allegations concerning short-term memory loss. Petitioner did advise the consultative doctor that he was depressed over his condition. Based on the evidence presented, Petitioner has mild nonexertional limitations on his ability to perform basic work activities.

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 work history in the 15 years prior to the application consists of work as an electrician and project manager for a security system company, a job that involved installing security equipment. Because of the significant standing and lifting of weight between 20 and 70 pounds required in the performance of this past employment, Petitioner's past employment is properly categorized as involving heavy work. Based on the RFC analysis above, Petitioner is limited to no more than sedentary work activities. In light of Petitioner's exertional RFC, it is found that Petitioner is unable to perform past relevant work. Accordingly, 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, Petitioner was ■ years old at the time of application and ■ years old at the time of hearing and, thus, considered to be a younger individual (age ■) for purposes of Appendix 2. He completed the ■ grade. He has a history of skilled work experience, but, because of the nature of the work required heavy lifting, his skills are not transferable. As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities and has mild limitations on his mental ability to perform work activities.

In this case, the Medical-Vocational Guidelines result in a finding that Petitioner is not disabled based on exertional limitations, 201.19. Petitioner's mental RFC does not affect his ability to perform the non-exertional aspects of work-related activities.

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 **not disabled** for purposes of the SDA benefit program.

DECISION AND ORDER

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



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

Date Signed: **2/25/2016**

Date Mailed: **2/25/2016**

ACE / tlf

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]
[REDACTED]