

**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.: 15-022424
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 was represented by ██████████, Assistance Payment Worker.

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 July 17, 2015, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On November 9, 2015, the Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 8-14).
3. On November 12, 2015, the Department sent Petitioner a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 4-5).
4. On December 9, 2015, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 2-3).

5. Petitioner alleged disabling impairment due to syncope, heart disease, asthma, cataracts/glaucoma, flat feet, and depression.
6. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED] birth date; he is [REDACTED]" in height and weighs about [REDACTED] pounds.
7. Petitioner received a GED diploma.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as construction worker laborer doing roofing and tear outs, a handyman loader for the newspaper, a worker at the meat department of a grocery store, and factory 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). 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 syncope, heart disease, asthma, cataracts/glaucoma, flat feet, and depression. The medical evidence presented at the hearing was reviewed and is summarized below.

Petitioner has a history of alcohol abuse, hepatitis, alcoholic pancreatitis, macrocytic anemia, and moderate mitral regurgitation, atrial tachycardia (Exhibit A, p. 33). On December 5, 2014, Petitioner was diagnosed with suspected glaucoma of both eyes (Exhibit A, pp. 62-68).

Petitioner's record included notes from office visits with his primary care physician on December 5, 2014; December 29, 2014; January 27, 2015; May 15, 2015; July 24, 2015; August 3, 2015; and August 28, 2015 (Exhibit A, pp. 30, 61, 63-68).

On December 14, 2014, Petitioner reported shortness of breath while walking but decreased palpitations and no syncope. His bicycle stress echo was negative for ischemia but showed moderate mitral regurgitation with a very eccentric anteromedial jet. (Exhibit A, pp. 47-50.)

On January 27, 2015, Petitioner reported depression and some difficulty functioning and worsening shortness of breath but no syncope. Petitioner was found to have a relapse of depression symptoms with significant problems with sleep and started again on citalopram. The record reflects a class III assignment on the [REDACTED] (NYA) functional classification. Due to his shortness of breath and elevated left atrial pressure causing arrhythmia and ejection left ventricular ejection fraction of 55-60, it was recommended that he be considered for mitral valve repair or replacement. (Exhibit A, pp. 57-61).

The May 15, 2015 office notes show that the NYA III classification was associated with orthopnea. Petitioner continued to report shortness of breath but no syncope episodes. He also reported that functioning was somewhat difficult because of depression and indicated that citalopram was not working. His medication for depression was changed. He also complained of foot pain because of a flat foot. He was advised of appropriate foot wear and referred to podiatry. (Exhibit A, pp. 51-56.)

At the July 24, 2015 visit, Petitioner complained of ongoing shortness of breath and palpitations but denied any syncope or chest pain. He continued to present with anxious/fearful thoughts, difficulty sleeping, diminished interest to pleasure, excessive worry, fatigue, feeling of guilt, loss of appetite, and thoughts of death or suicide. He indicated fluoxetine was not working and was switched to sertraline and referred to psychiatry. He started developing callouses due to excessive strain on the soles of his

feet; a podiatrist had evaluated him for new shoes and prescribed an antifungal. (Exhibit A, pp. 36-41.) Petitioner's doctor wrote a note on Petitioner's behalf excusing him from any exertion or work because of his medical conditions and recommending that he move to a lower level apartment (Exhibit 1).

At the August 3, 2015 visit, Petitioner continued to report shortness of breath, which the doctor concluded was not likely to be from the mitral valve prolapse which was moderate and not during the entire systole. He reported no syncope. Weight was noted to decrease to [REDACTED] pounds on his [REDACTED] frame with a concern that he was undernourished. (Exhibit A, pp. 42-46).

The August 28, 2015 notes indicate that Petitioner's cardiologist recommended surveillance of the mitral valve issue. The notes referenced that Petitioner's 6 minute walk test to address his dyspnea came back normal and his pulmonary function test showed mild obstruction, with FEV1 at 85%. It was noted that Petitioner was a NYHA I-II. He was continued on metoprolol to treat his dyspnea. Concerns were raised regarding Petitioner smoking a half pack of cigarettes daily and he was counseled to quit smoking. He continued to complain of depression and foot pain. (Exhibit A, pp. 30-33).

A [REDACTED] after-visit summary referencing a February 3, 2016 date of visit stated a diagnosis of bipolar I disorder, most recent episode mixed, severe with psychosis (Exhibit 1).

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 and Petitioner's allegations, listings 2.02 (loss of central visual acuity), 2.03 (contraction of the visual fields in the better eye), 2.04 (loss of visual efficiency), 4.02 (chronic heart failure), 4.04 (ischemic heart disease), 4.05 (recurrent arrhythmias), 12.04 (affective 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 that he used a cane and could walk only a block before experiencing breathing problems. He could sit up to 30 minutes before needing to stand and then could stand up to 15 minutes before needing to sit. He could lift up to 30 pounds on a continuous basis. He had some problems with using his hands for gripping and grasping due to pain from a 2014 incident. He lived alone and could care for his own personal hygiene and dressing himself. He did his household chores, including washing dishes, sweeping, and laundry, although he was concerned of falling because of a syncope episode. He did not drive but could shop as long as he did not have to push too much weight.

The medical evidence in this case showed that Petitioner was diagnosed with tachycardia. Petitioner's bicycle stress echo was negative for ischemia. Petitioner's 6-minute walk test came back normal and his pulmonary function test showed mild obstruction with FEV1 at 85%. Although Petitioner complained of ongoing shortness of breath and palpitations, he denied any syncope episodes or chest pain in any of the office visits between December 2014 and August 2015. There was evidence of moderate mitral regurgitation and repair/replacement was considered, but the August 28, 2015 office notes show that Petitioner's cardiologist recommended continuing surveillance. Although initial office visit notes indicate a NYA III classification, the August 28, 2015 office notes show that the classification was downgraded to I or II. Although there is medical evidence that Petitioner was diagnosed with suspected glaucoma in both eyes in December 2014, he did not testify as to any limitations concerning his eyesight. There was evidence that he was experiencing foot pain, but his podiatrist had evaluated him for new shoes.

The medical evidence shows that Petitioner has some exertional limitations due to his impairments; but based on the evidence presented, as well as Petitioner's testimony that he can perform household chores and shop and lift up to 30 pounds regularly, 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 light work as defined by 20 CFR 416.967(b).

Petitioner also testified that he was experiencing some depression and anxiety and had gone to therapy sessions at the [REDACTED] on three occasions. He testified that he tended to isolate but that he enjoyed helping people, particularly the children in his neighborhood. The office visits show that Petitioner was being treated by his primary care doctor for depression. There was evidence from [REDACTED] [REDACTED] of a bipolar disorder diagnosis for Petitioner. Based on the medical record presented, as well as Petitioner's testimony, it is found that Petitioner has mild limitations on his mental 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 a construction worker laborer doing roofing and tear outs, a handyman, a loader for the newspaper, a worker at the meat department of a grocery store, and factory worker. All Petitioner's prior jobs required substantial standing and lifting between 30 and 70 pounds. Therefore, they are properly classified as involving medium work. Based on the RFC analysis above, Petitioner is limited to no more than light 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, at the time of application and at hearing, Petitioner was 53 years old and, thus, considered to closely approaching advanced age (age 50-54) for purposes of Appendix 2. He received a GED and has a history of unskilled, and thus nontransferable, work experience. As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform light work activities and has mild limitations on his mental ability to perform work activities.

In this case, the Medical-Vocational Guidelines, 202.13, result in a finding that Petitioner is not disabled based on exertional limitations. Petitioner's mental RFC does not preclude him from being able to perform the non-exertional aspects of work-related activities, especially those involving unskilled labor.

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: **3/4/2016**

Date Mailed: **3/4/2016**

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]
[REDACTED]