RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[redacted]

Date Mailed: April 8, 2016
MAHS Docket No.: 16-001943
[redacted]

**ADMINISTRATIVE LAW JUDGE: Vicki Armstrong**

## 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 March 23, 2016 from Lansing, Michigan. Petitioner personally appeared and testified. The Department of Health and Human Services (Department) was represented by Eligibility Specialist [redacted].

## ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

## PROCEDURAL HISTORY

1. The Department submitted Exhibit A, pages 1-547 without objection. (Dept. Exh. A, pp 1-547).

2. Petitioner submitted Exhibits 1-2 with no objection. (Petitioner Exh. pp 1-2).

## 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 September 21, 2015, Petitioner applied for SDA.

2. On December 10, 2015, the Medical Review Team (MRT) denied Petitioner's SDA application finding he was capable of performing other work. (Dept. Exh. A, pp 3-9).

3. On January 6, 2016, the Department sent Petitioner notice that his SDA application was denied.

4. During the hearing, Petitioner stated he had bulging herniated discs at C6-C7, T9-T10, T10-T11, T11-T12; nerve damage at L3 with radiating pain down his legs, depression, anxiety and chronic pain.

5. On November 28, 2014, Petitioner underwent a psychiatric evaluation. The psychiatrist noted Petitioner had been dealing with depression and anxiety for 10 years. Petitioner reported occasional anxiety attacks when he missed his Klonopin or was stressed out. Petitioner stated he had been smoking marijuana since the age of 15. Petitioner reported being in Special Education classes in school for dyslexia. He dropped out of High School in the eleventh grade. Petitioner was noted to be in poor health. Petitioner presented with anxiety, stress, chronic pain, poor sleep, frustration, withdrawn, social problems, poor focus and concentration. He had a history of dyslexia, anxiety, depression, multiple medical problems, including chronic back pain, obstructive sleep apnea, obesity, fatty liver, elevated liver enzymes, colitis, hypertension, history of cocaine and alcohol misuse, history of long-term benzodiazepine and opioid use, and at the time of the evaluation he was on 18 different medications. Petitioner had applied for Social Security Disability. Diagnosis: Generalized Anxiety Disorder and Major Depressive Disorder relative to chronic back pain and numerous medical problems. (Dept. Exh. A, pp 193-200).

6. On March 10, 2015, Petitioner underwent a colonoscopy revealing a benign neoplasm of colon, anal and rectal polyp, external hemorrhoids, hemorrhage of rectum and anus and diverticulosis of the colon. (Dept. Exh. A, p 389).

7. On April 1, 2015, Petitioner was mailed the biopsy results of his colonoscopy from March 10, 2015. Biopsies from Petitioner's colonoscopy revealed some evidence of colitis in the sigmoid colon. The gastroenterologist indicated this could be related to his history of diverticulosis noted during the procedure. The other biopsies were unremarkable. (Dept. Exh. A, pp 348-351).

8. On April 1, 2015, Petitioner underwent a cervical spine MRI without contrast showing moderate degenerative changes, greatest at C6-C7 with no significant spinal stenosis. Also mild to moderate right neural foramen narrowing at C3-C4 and mild to moderate bilateral neutral foraminal narrowing slightly, greater on right at C6-C7. (Dept. Exh. A, p 524).

9. On May 6, 2015, Petitioner had an office visit at the [redacted]. The physician noted Petitioner appeared to be in mild pain. Petitioner's gait was within normal limits. There was pain with range of motion. Petitioner reported the Percocet was working well to alleviate pain. Petitioner told the physician that he had been talking with his psychiatrist and the psychiatrist had agreed to supply a letter indicating Petitioner was a candidate for chronic narcotic management for thoracic pain and he would be seen on a regular basis for signs of addiction.

Petitioner had already supplied his medical marijuana card. Petitioner was assessed with: acute sinusitis, anxiety, cervical osteoarthritis, herniated thoracic disc, generalized osteoarthritis, gastroesophageal reflux disease, hepatitis C, high cholesterol, joint pain, low back pain, lumbar radiculopathy, neck pain, pain in the thoracic spine, panic attacks and sleep apnea. (Dept. Exh. A, pp 238-240).

10. On July 29, 2015, Petitioner went to the [redacted] complaining of low back pain. The physician indicated that Petitioner asked him if he would fill out forms from his attorney once Petitioner faxed copies of his MRI. (Dept. Exh. A, pp 246-247).

11. On September 10, 2015, the thoracic MRI without contrast revealed a dextroscoliosis; Schmorl's nodes at the T9-T12 vertebral endplates, right paracentral disc herniation with annular tears at the T6-T7 level compressing the right lateral recess; right paracentral disc herniation at the T9-T10 level compressing the thecal sac and causing mild to moderate narrowing of the right lateral recess, and a posterior/left paracentral disc herniation with craniocaudal migration of disc material by approximately 20 millimeters compressing the thecal sac and causing mild narrowing of the left lateral recess. The lumbar MRI with and without weight-bearing showed a Schmorl's node at the superior endplate of S1 vertebra, disc bulges at the L2-L3 through L5-S1 levels compressing the ventral thecal sac, mild left neuroforaminal narrowing at the L3-L4 level and confirmation of the disc changes on the weight-bearing scan. The cervical spine MRI without contrast revealed straightening of the cervical lordosis and disc bulges at C2-C3 and C7-T1 indenting the ventral thecal sac. There was also a posterocentral disc protrusion type herniation compressing the ventral thecal sac at C3-C4, a disc bulge with annular tear compressing the ventral thecal sac at C5-C6 and anterior and posterior disc spur herniations compressing the thecal sac and causing mild bilateral neuroforaminal narrowing at C6-C7. (Dept. Exh. A, p 293-299, 545-546).

12. On November 3, 2015, Petitioner saw his orthopedic surgeon seeking to compare his MRI's to determine if he could get pain and suffering added to his settlement. Petitioner had had an MRI 8 months prior due to a motor vehicle accident and the most recent MRI was from September 10, 2015. Petitioner had been seeing separate physicians for his leg and shoulder pain. He reported no new symptoms. The surgeon noted Petitioner had cancelled his scheduled surgery with [redacted] and received an injection last month to which he responded well. The MRI from September 10, 2015 showed degenerative disc disease at C6-C7 with disc osteophyte complex causing mild stenosis. The lumbar spine showed degenerative changes without significant pathology. The surgeon noted that he discussed Petitioner's chronic disease with him and told him how it was not new due to the accident itself. (Dept. Exh. A, pp 270-271).

13. On March 8, 2016, Petitioner's Chiropractor submitted a letter indicating Petitioner had been under his care since June, 2014 for neck, mid back and lower back pain. In addition, Petitioner was involved in an auto accident on August 24, 2015 aggravating his condition. An x-ray report showed listing of spinous process to the

right on C2, C5 and C6. Petitioner's left hip was noted to be lower by 0.74 centimeters than the right and right obturator foramen was smaller. The MRI report of the right shoulder showed a tear of the labrum. Thoracic MRI showed left paracentral and subarticular disc extraction at T11-T12 narrowing the left lateral recess. The EMG report showed electrophysiological evidence of right L5 and S1 radiculopathy. The Chiropractor noted that Petitioner's pain scale ranges from 5-8. The Chiropractor also indicated Petitioner had been getting cervical and lumbar epidurals to help with pain management. (Petitioner Exh. 2).

14. On March 10, 2016, Petitioner's Clinical Therapist submitted a letter on Petitioner's behalf. The therapist wrote that Petitioner had been participating in mental health therapy since September, 2014. The therapist indicated that Petitioner is unable to obtain or sustain employment due to his acute moderate to severe clinical intermittent symptoms of anxiety and depression causing significant functional impairment. (Petitioner Exh. 1).

## 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 Health and Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

> Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3),

> persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:
>
> (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

A person is disabled for SDA purposes if he or she:

> •Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
>
> •Resides in a qualified Special Living Arrangement facility, or
>
> •Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
>
> •Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2014).

"Disability" is:

> . . . 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 CFR 416.905. [SDA = 90 day duration].
>
> [As Judge] We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. 20 CFR 416.927(e).

At hearing, Petitioner listed his disabilities as bulging herniated discs at C6-C7, T9-T10, T10-T11, T11-T12; nerve damage at L3 with radiating pain down to his legs, depression, anxiety and chronic pain. While there is evidence in the record that Petitioner is being treated for his depression in addition to lumbar, cervical and thoracic pain, there is nothing in the record indicating that Petitioner is or was unable to engage in substantial gainful work activity for at least 90 continuous days. The letter from Petitioner's therapist was reviewed but was not given any weight as it was not written by a recognized physician under the Social Security Laws and was not supported by the evidence in the record.

Therefore, the Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds Petitioner not disabled for purposes of the SDA benefit program.

## DECISION AND ORDER

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

VLA/db

**Vicki Armstrong**
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

[redacted]

[redacted]