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

RICK SNYDER
GOVERNOR

MIKE ZIMMER
DIRECTOR

[redacted]

Date Mailed: April 12, 2016
MAHS Docket No.: 15-025168
[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 and Petitioner's Case Worker, [redacted], 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 1-756 without objection. (Dept. Exh. A, pp 1-756).

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

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. On April 13, 2015, Petitioner applied for SDA. (Hearing Summary).

2. On, June 25, 2015, the Medical Review Team (MRT) denied Petitioner's SDA application finding he was capable of performing other work. The Department issued Petitioner a Notice of Case Action informing him that his SDA application was denied. (Hearing Summary).

3. On August 21, 2015, Petitioner submitted a timely hearing request contesting the Department's negative action. (MAHS Reg# 15-015066).

4. A hearing was scheduled for October 15, 2015. Petitioner failed to appear.

5. On October 16, 2015, an Order of Dismissal was issued dismissing Petitioner's hearing request. (See MAHS Reg# 15-015066).

6. On October 29, 2015, Petitioner submitted a hearing request contesting the Department's negative action.

7. During the hearing, Petitioner stated he had lumbar arthritis and stenosis, left arm surgery leaving him with only 60% use of his arm, type II diabetes, high blood pressure, neuropathy, depression, anxiety and paranoia.

8. On April 4, 2013, Petitioner underwent a psychiatric evaluation by the [redacted]. Petitioner was diagnosed with Post-traumatic stress disorder, Bipolar Disorder, Learning Disability and a Personality Disorder. (Dept. Exh. A, pp 421-427).

9. On August 7, 2014, Petitioner underwent a psychological evaluation on behalf of the Department. The psychologist noted that throughout the evaluation, Petitioner was cooperative and attentive. Results of the mental status examination revealed abnormalities in concentration, general knowledge, memory, judgment, abstract reasoning, and calculation tasks. The psychologist opined that Petitioner's ability to relate and interact with others, including coworkers and supervisors, was impaired. Petitioner was anxious throughout the interview. The psychologist opined that Petitioner's depression and distress could affect his interpersonal relationships in the workplace, especially during flare-ups. Petitioner's ability to understand, recall and complete tasks and expectations appeared to be slightly impaired. He was able to perform simple tasks with no major limitations. He struggled with tasks, even those that have multiple steps and increased complexity. His ability to maintain concentration did seem somewhat impaired especially during flare-ups. The psychologist opined that as a result of Petitioner's emotional state, Petitioner may often be distracted and his effectiveness and performance would likely be limited and slowed. His ability to withstand the normal stressors associated with a workplace setting was somewhat impaired. Diagnosis: Bipolar disorder, moderate, most recent episode Depressed. Prognosis was poor. (Dept. Exh. A, pp 413-417).

10. On January 11, 2015, a CT of the abdomen and pelvis showed no evidence of an acute intra-abdominal or intrapelvic process. It was essentially a stable CT of the abdomen and pelvis. A CT of the chest/abdomen and pelvis with contrast revealed no acute traumatic injury to the chest, abdomen or pelvis. There was no evidence of a lumbar spine fracture. There was a left-sided L5-S1 pars defect without spondylolisthesis. There were degenerative changes at the lumbar spine and diffuse fatty liver infiltration and monspecific small bilateral adrenal nodules were

visualized. There was gallbladder thickening and possibly a small amount of pericholecystic fluid. He also had a mildly enlarged prostate and urinary bladder distension. X-rays of Petitioner's left shoulder showed no acute osseous abnormality. The chest x-ray revealed no acute cardiopulmonary abnormality. (Dept. Exh. A, pp 179, 181-184).

11. On January 12, 2015, an ultrasound of Petitioner's abdomen revealed mildly contracted thick walled gallbladder without gallstones. Underlying acalculous cholecystitis was not excluded. He had hepatic steatosis. There was no evidence of right hydronephrosis. (Dept. Exh. A, p 180).

12. On January 14, 2015, Petitioner underwent a cardiology consultation. Petitioner had a history of hypertension, diabetes, hyperlipidemia and transient ischemic attack and was admitted through the emergency department. The physician noted that Petitioner was also admitted two weeks ago with similar complaints and when a Lexiscan Stress test was found to be negative, he was discharged. The physician opined that given the recurrence of chest pain and multiple cardiac risk factors, underlying coronary artery disease could not reliably be excluded. The physician indicated that Petitioner's recent stress test could be falsely negative. Petitioner was recommended for a left heart catheterization. On January 15, 2015, Petitioner underwent a left heart catheterization. Findings were normal and he was discharged. (Dept. Exh. A, pp 173-176).

13. On January 2, 2015, Petitioner followed up with his primary care physician regarding his back pain. It was noted that Petitioner had walked out of the office during the last visit because he was not happy with not being prescribed Norco. Petitioner had now decided to have the MRI done. Petitioner appeared alert, active and in no apparent distress. Petitioner denied anxiety, depression and paranoia. The physician indicated that Petitioner's gait and station were normal and he could undergo exercise testing and/or participate in an exercise program. He had tenderness on palpitation of the mid thoracic spine and the lumbar spine along with the paravertebral musculature. Straight leg raise was negative bilaterally. His mood and affect reflected no depression, anxiety or agitation. He had a flat affect. Petitioner was referred for an MRI. After Petitioner left, the physician found medical records of Petitioner's hospitalization on her desk. The treating physician noted that Petitioner had not mentioned that he was recently admitted and he had lied about the Fenofibrate being prescribed at TTI. (Dept. Exh. A, pp 213-218).

14. On January 29, 2015, Petitioner reported to the emergency department complaining of back pain and dizziness. Petitioner was hypertensive during triage. Petitioner had pain with straight leg raises and paraspinal tenderness. He had the beginnings of a migraine headache. The emergency department physician called Petitioner's treating physician to follow-up on why Petitioner was not on stronger pain medications. Petitioner's treating physician indicated Petitioner was on a "no narcotic list." Petitioner denied this was true. Petitioner was diagnosed with acute on chronic back pain. (Dept. Exh. A, pp 29-39).

15. On February 12, 2015, Petitioner's lumbar spine MRI revealed severe bilateral L4-L5 facet hypertrophic changes, right greater than left with moderate right neural foramina stenosis which may cause right L5 radicular symptoms. Also, there was a mild deformity of the lower part of the L5 and upper S1 with the suggestion of left laminectomy. There was no spinal stenosis and no herniated pulposus noted. Petitioner's thoracic MRI without contrast showed moderate diffuse degenerative change of the thoracic spine without fracture and a small right paracentral T5-T6 herniated nucleus pulposus seen with minimal effacement of the CSF space. (Dept. Exh. A, pp 177-178).

16. On March 17, 2015, Petitioner underwent a medication review at the [redacted]w [redacted]. Petitioner was diagnosed with amphetamine induced mood disorder, intermittent explosive disorder and a learning disorder. Depression and anxiety were no longer active. Petitioner was stable. Petitioner had qualified for housing and was hopeful to be moving out soon. He stated his medications were helpful and he was still bothered by some neuropathy. He was calm and cooperative. His speech was normal in rate and tone. His thought process was linear and coherent. His mood was anxious and his affect was blunted. (Dept Exh. A, pp 120-122).

17. On March 31, 2015, Petitioner presented to the emergency department complaining of low back pain and a migraine. The examining physician noted Petitioner ambulated with a cane. Petitioner had normal range of motion and no meningeal signs. He did not appear to be in acute distress. He was given an injection of Morphine and Decadron. He was sent home with prednisone and Norco for pain management. He was diagnosed with acute exacerbation of chronic back pain. (Dept. Exh. A, pp 40-50).

18. On April 29, 2015, Petitioner underwent a diabetic eye exam. Petitioner had had diabetes for over 20 years. He stated his diabetes was poorly controlled and his primary care physician had referred him to the exam because he had had bleeding in his left eye. Impression: Diabetic retinopathy, background: OU, asymptomatic, no leakage and no laser indicated. Peripheral retinal degeneration, unspecified: OD. Cataract, nuclear sclerotic: OU, asymptomatic. (Dept. Exh. A, pp 14-16).

19. On April 30, 2015, Petitioner underwent a CT of the cervical spine. There was no evidence of fracture or subluxation. A CT of the head or brain without contrast also showed no acute process. (Dept. Exh. A, pp 75-76).

20. On May 4, 2015, Petitioner presented to the emergency department complaining of back pain. He denied any recent trauma, numbness, tingling, incontinence or weakness of extremities. His range of motion was normal. He had paraspinal tenderness and a normal gait. Petitioner was given Dilaudid, Zogran and Valium with improvement of his pain. He was discharged home with Norco and Flexeril. Diagnosis: Acute exacerbation of chronic low back pain. (Dept. Exh. A, pp 84-91).

21. On January 15, 2016, Petitioner had outpatient surgery for a left ulnar nerve decompression performed at the cubital tunnel for his left ulnar neuropathy. (Petitioner Exh. 1-2).

22. Petitioner is a [redacted] year-old man born on [redacted]. Petitioner is 6'0'' and weighs 217 pounds. Petitioner completed the 11th grade and has had no substantial gainful employment for the past 15 years.

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 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 impairment 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 arthritis and stenosis of the lumbar spine, left arm surgery leaving him with 60% use of his arm, type II diabetes, high blood pressure, neuropathy, depression, anxiety and paranoia. According to the latest records from Community Mental Health, Petitioner's mental health is stable. Petitioner did present evidence that he had the left ulnar nerve decompression. However, there was no evidence from Petitioner's physician that he had limited use of his left arm as a result of the surgery. While there was some evidence in the record that Petitioner is being treated for back 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.

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]