



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 13, 2016
MAHS Docket No.: 16-002353

[REDACTED]
[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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on March 31, 2016 in Flint, Michigan. Petitioner personally appeared and testified. The Department of Health and Human Services (Department) was represented by Hearing Facilitator [REDACTED]

ISSUE

Whether the Department properly determined 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 13, 2015, Petitioner applied for SDA.
2. On January 27, 2016, the Medical Review Team (MRT) denied Petitioner's SDA application. (Dept. Exh. A, pp 369-375).
3. On January 29, 2016, the Department sent Petitioner notice that his application was denied. (Dept. Exh. A, pp 4-5).
4. On February 24, 2016, Petitioner filed a hearing request to contest the Department's negative action. (Dept. Exh. A, pp 2-3).

5. On May 28, 2015, Petitioner had an initial consultation with pain management. The physician noted Petitioner was uncomfortable rising from the seated position. Petitioner's gait was antalgic and he favored his right leg. He had paravertebral muscle spasms and tenderness in the lower lumbar area, right sacroiliac joint tenderness and right sciatic notch tenderness. Straight leg raising tested positive on the right for radicular leg pain. Petitioner was diagnosed with right lumbar radiculitis secondary to L4-L5 and L5-S1 disc bulging superimposed on degenerative disc disease and spondylosis, right greater than left sacroiliitis. Petitioner was scheduled for ultrasound guided caudal epidural steroid injections. (Dept. Exh. A, pp 35-36).
6. On November 10, 2015, Petitioner underwent an Independent Medical Evaluation on behalf of the Department. Petitioner reported a history of asthma since childhood and he was able to remain stable using Ventolin several times a week. He also reported a history of low back pain where he injured his back while at work. He stated he had had several physical therapy sessions and steroid and cortisone injections without much relief. The back pain radiated to his right lower leg. Petitioner reported he can sit for 30 minutes before he had to get up and walk around. He was also limited with what activities he could do at home, and he had difficulty with frequent bending and stooping. The physician observed Petitioner had difficulty getting up from the chair because of the pain. His straight leg test was positive in both the lying and sitting positions. Petitioner's gait was slow and he appeared to have difficulty due to the pain. He was unable to walk on heel or toes. (Dept. Exh. A, pp 170-171).
7. On December 7, 2015, Petitioner returned to pain management with low back pain radiating into his right buttock and right posterior thigh. The physician indicated that he had been treating Petitioner since May, 2015 and the epidural injections had not helped. The physician noted that despite returning to physical therapy and the increase in pain medications, Petitioner's back pain had failed to respond to treatment and his pain was constant. Petitioner reported that the pain interfered with daily tasks as well as his sleep. The physician noted that Petitioner's gait was slightly antalgic and he favored his right leg. There were paravertebral muscle spasms and tenderness at the lumbosacral junction and right sacroiliac joint tenderness. Range of motion of both hips was restricted. Petitioner's lumbar spine MRI revealed mild to moderate degenerative spondylosis most pronounced in the lower lumbar spine from L3-L4 through L5-S1. There was also moderate neuroforaminal stenosis bilaterally at L4-L5 and moderate to severe neuroforaminal stenosis bilaterally at L5-S1. (Petitioner Exh. 25-26, 202-203).
8. On December 28, 2015, x-rays of Petitioner's hips revealed moderate bilateral sacroiliitis. (Petitioner Ex. 29).
9. On December 29, 2015, Petitioner was discharged from Physical Therapy. On physical examination, the lumbar spine active forward and backward was decreased by 75% and the lumbar spine active left and right side bending was decreased by 50% and reported as painful at range. The lumbar spine active left

and right rotation was decreased by 75%. The straight leg test was positive on the left suggesting S1 radiculopathy. Petitioner was able to ambulate independently with an antalgic gait/limp. (Petitioner Exh. 33-34).

10. On January 6, 2016, Petitioner met with his primary care physician to review his x-rays. The x-rays showed inflammation of the sacroiliac joints. The physician noted that Petitioner still had pain in his lower back which radiated down to both legs, more on the right than the left. Petitioner stated he could only stand or sit for 30-45 minutes before he needed to change position. Straight leg raises were positive bilaterally, right sooner than left. Petitioner was diagnosed with lumbago, neuroforaminal stenosis, and bilateral sacroiliitis. (Petitioner Ex. 24).
11. On January 7, 2016, Petitioner was scheduled for a consultation with a neurosurgeon for his low back pain. The neurosurgeon observed Petitioner ambulated with a mild right sided limp. A review of Petitioner's lumbar spine MRI from December 7, 2015 showed mild to moderate degenerative spondylosis most pronounced from L3-L4 and L5-S1. There was also moderate neural foraminal stenosis bilaterally at L4-L5 and moderate to severe neural foraminal stenosis at L5-S1. The neurosurgeon opined that at this time, Petitioner was not a candidate for surgery. (Petitioner's Exh. 8-10).
12. On January 28, 2016, Petitioner's lumbar CT without contrast showed a slight 1 mm retrolisthesis at L4-L5. Also intervertebral disc desiccation and vacuum phenomenon at L3-L4, L4-L5 and L5-S1. There were also multilevel diffuse disc bulges and likely mild to moderate canal narrowing at L4-L5 with moderate bilateral neural foraminal stenosis. X-rays of the lumbar spine revealed moderate degenerative changes at L3-L4, L4-L5 and L5-S1 with a suggestion of minimal dynamic subluxation at L4-L5. (Petitioner Exh. 11-13).
13. On February 23, 2016, Petitioner was evaluated by a physician specializing in pain management. Petitioner had localized tenderness over the posterior superior iliac spine, which reproduced his pain. He had restricted sacroiliac mobility bilaterally. Patrick testing was positive for sacroiliac and groin pain bilaterally. The sacral thrust test was positive bilaterally. He was diagnosed with chronic low back pain, most likely secondary to sacroiliac mediated pain based on his transient response to intra-articular injections. The physician noted that since Petitioner had received the maximum number of steroid injections in the spine, he recommended proceeding with diagnostic sacroiliac joint injections bilaterally, using anesthetic only. (Petitioner Exh. 16-18).
14. Petitioner is a [REDACTED]-year-old man born on [REDACTED]. He is 6'3" and weighs 235 pounds. He has a high school education. He last worked in August, 2014, as an underground technician for a cable company.
15. Petitioner was appealing the denial of Social Security disability at the time of the hearing.

16. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.
17. Petitioner's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

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 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).

Petitioner is diagnosed with asthma, lumbago, neuroforaminal stenosis, and bilateral sacroiliitis. He has mild to moderate canal narrowing at L4-L5, right lumbar radiculitis secondary to L4-L5 and L5-S1 disc bulging superimposed on degenerative disc disease and spondylosis, right greater than left sacroiliitis, and moderate to severe neuroforaminal stenosis bilaterally at L5-S1. Straight-leg-raising tested positive on the right for radicular leg pain.

Petitioner's physicians noted that Petitioner's gait was antalgic and he walked with a right sided limp and appeared to be in pain while sitting and had difficulty rising from a seated position. This was consistent with Petitioner's testimony and the Administrative Law Judge's observations during the in-person hearing.

The credible testimony and medical records submitted at hearing verify Petitioner was legally disabled for ninety (90) days. As such, the Department's denial of SDA pursuant to Petitioner's October 13, 2015 SDA application cannot be upheld.

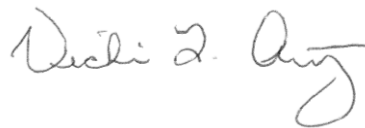
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE 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. The Department shall process Petitioner's October 13, 2015 application, and shall award him all the benefits he may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in April, 2017, unless his Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.



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]

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