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GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: May 4, 2016  
MAHS Docket No.: 16-002775

[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; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on April 21, 2016, from Lansing, Michigan. Petitioner personally appeared and testified. Petitioner submitted Exhibits 1-2 which were admitted.

The Department of Health and Human Services (Department) was represented by Family Independence Manager [REDACTED]. [REDACTED] testified as a witness on behalf of the Department. Department Exhibit A, pages 1-181 was admitted.

The record closed at the conclusion of the hearing.

**ISSUE**

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

**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 August 19, 2015 Petitioner applied for MA and SDA. (Dept. Exh. A, 2-10).
2. On February 8, 2016, the Medical Review Team denied Petitioner's application. (Dept. Exh. A, 12-18).

3. On February 19, 2016, the Department issued a Health Care Coverage Determination Notice informing Petitioner that his MA and SDA application had been denied effective September 16, 2015 ongoing. (Dept. Exh. A, 175-178).
4. On February 29, 2016, Petitioner submitted a Request for Hearing contesting the denial of SDA. (Dept. Exh. A, 179-180).
5. On June 5, 2015, Petitioner's lumbar MRI found postsurgical changes present at L3-L4 on the left. There was also a central disc protrusion causing mild narrowing of the central spinal canal at L4-L5 without definite nerve root compression. (Dept. Exh. A, p 75).
6. On August 15, 2015, Petitioner saw his orthopedic surgeon's physician assistant regarding left arm and neck pain. The physician assistant noted that from a cervical spine standpoint, Petitioner had continued to have preoperatively, as well as postoperatively, persistent left-sided occipital region pain into his left parietal region. He also had numbness in the left upper extremity predominantly in the left hand. The physician assistant indicated that Petitioner had long-standing back pain which was status post an L3-L4 left-sided hemilaminotomy discectomy many years ago for radiculopathy. Diagnosis: Arthrodesis, lumbago, lumbosacral radiculopathy, and greater occipital neuralgia. He was referred for EMG studies reference his left hand pain. He was also referred for a nerve root block. The physician assistant indicated that if the pain injection was diagnostic/definitive for the L5 nerve and pain persisted or returned despite other non-operative measures, then decompression would be considered. (Dept. Exh. A, 54-57).
7. On September 1, 2015, Petitioner met with his gastroenterologist for the results of his nonalcoholic steatohepatitis evaluation. The physician opined Petitioner was doing remarkably well from a liver standpoint without any signs or symptoms of progression into cirrhosis, albeit with previous stage III fibrosis per liver biopsy in 2011. (Dept. Exh. A, 52-53).
8. On December 29, 2015, Petitioner underwent a Mental Status Evaluation on behalf of the Department. Petitioner was diagnosed with mild to moderate dysthymia and anxiety about his deteriorating medical condition and chronic pain. Petitioner stated he had back surgery in 2005 to repair a herniated disc. He then had neck surgery on June 13, 2013 where they fused three cervical vertebrae. And on December 2, 2014, he had another neck surgery. Since the surgeries, Petitioner complained of constant headaches. During the evaluation, the psychologist noted that Petitioner was often frustrated and anxious and frequently reacted to the pain he was feeling by wincing and adjusting his position and sometimes standing up to move around. The psychologist noted Petitioner described depression and anxiety, which did not appear severe. The psychologist opined that the anxiety was more prominent than the depression and it was in reaction to his chronic pain and his inability to work to support himself. The psychologist added that Petitioner's prognosis was guarded with respect to the anxiety which was due to Petitioner's chronic pain. (Dept. Exh. A, 41-46).

9. Petitioner had applied for Social Security benefits at the time of the hearing.
10. Petitioner is a ■■■-year-old man born on ■■■■■■■■■■. He is 5'10" and weighs 220 pounds. He has a high school education and used to have a commercial driver's license which he gave up due to his back problems.
11. Petitioner last worked as a bus driver and was terminated in January, 2015, after his last neck surgery.
12. Petitioner alleges disability due to a herniated disc at L4-L5 pushing on the nerve causing his knees to give out, constant headaches, diabetes, obstructive sleep apnea, diabetes, high blood pressure, anxiety and depression.

### **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 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.

Disability is defined as 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(a). The person claiming a physical or mental disability has the burden to establish it 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner has not worked since August, 2015. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a petitioner's age, education, or work experience, the impairment would not affect the petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleges disability due to a herniated disc at L4-L5 pushing on the nerve causing his knees to give out, constant headaches, diabetes, obstructive sleep apnea, diabetes, high blood pressure, anxiety and depression. As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Petitioner has presented some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on the Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner is not disqualified from receipt of MA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Petitioner has alleged physical disabling impairments due to a herniated disc at L4-L5 pushing on the nerve causing his knees to give out, constant headaches, diabetes, obstructive sleep apnea, diabetes, and high blood pressure.

Listing 1.00 (musculoskeletal system) was considered in light of the objective evidence. Petitioner testified that he had a herniated disc at L4-L5 pushing on the nerve causing

his knees to give out. However, the latest MRI dated June 5, 2015, indicates that there was a central disc protrusion causing mild narrowing of the central spinal canal at L4-L5 *without definite nerve root compression*. (Emphasis added). Based on the foregoing, it is found that Petitioner's impairment(s) do not meet the intent and severity requirement of a listed impairment; therefore, Petitioner cannot be found disabled at Step 3. Accordingly, the Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Petitioner in the past. 20 CFR 416.920(f). Petitioner's past work history is that of a bus driver. Petitioner testified that he has a driver's license and is able to drive short distances, but because he cannot feel his feet and he has fallen eight times since November, 2015 due to his knees giving out, he let his CDL lapse. Giving Petitioner the benefit of the doubt, Petitioner would likely be unable to perform the duties associated with his past work. Likewise, Petitioner's past work skills as a bus driver will not transfer to other occupations. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity 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). At the time of hearing, the Petitioner was [REDACTED] years old and was, thus, considered to be approaching advanced age for MA purposes. Petitioner has a high school education. Disability is found if an individual is unable to adjust to other work. *Id.*

At this point in the analysis, the burden shifts from the Petitioner to the Department to present proof that the Petitioner has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, 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).

In this case, the medical evidence reveals that Petitioner suffers from diabetes, hypertension, dyslipidemia, obstructive sleep apnea, obesity, gastroesophageal reflux disease, chronic low back and neck pain, hepatic steatosis, arthrodesis, lumbosacral radiculopathy, lumbago, C4-C5 cervical spondylosis, depression, anxiety and greater occipital neuralgia.

Petitioner testified that he can walk a quarter of a mile, stand and sit for 20-30 minutes and carry 10-15 pounds. Petitioner stated that he can cook simple meals like TV dinners, grocery shop a couple of days a week because he cannot walk around the store that long and do the dishes.

Petitioner submitted two work restrictions from the orthopedist's physician assistant. The last is dated April 20, 2016, which reads, Petitioner is "totally incapacitated from employment until follow up appointment." However, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927. In this case it was not a conclusory statement by a physician, but by a physician's assistant. Further, the statement was not supported by medical evidence establishing a disability.

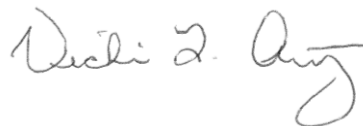
Therefore, in light of the foregoing, it is found that Petitioner maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least light work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.13, it is found that Petitioner is not disabled for purposes of the MA and SDA programs at Step 5.

The Department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance (SDA) program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 1. Because Petitioner does not meet the definition of disabled under the MA program and because the evidence of record does not establish that Petitioner is unable to work for a period exceeding 90 days, Petitioner does not meet the disability criteria for State Disability Assistance (SDA) benefits.

### **DECISION AND ORDER**

Accordingly, the Department's determination is AFFIRMED.

**It is SO ORDERED.**



VLA/db

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**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

**DHHS**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner**

[REDACTED]  
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