RICK SNYDER GOVERNOR

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

SHELLY EDGERTON



Date Mailed: July 11, 2016 MAHS Docket No.: 16-005859

Agency No.:

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 - 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on June 7, 2016, from Lansing, Michigan. Petitioner personally appeared and testified. Petitioner submitted Exhibits 1-10 which were admitted.

The Department of Health and Human Services (Department) was represented by Eligibility Specialist testified as a witness on behalf of the Department. Department Exhibit A, (pages 1-402) was admitted. The record was closed at the conclusion of the hearing.

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 January 14, 2016, Petitioner applied for SDA. [Dept. Exh. A, pp 1-13].
- 2. On April 6, 2016, the Medical Review Team (MRT) denied Petitioner's SDA application. [Dept. Exh. A, pp 16-20].
- 3. On April 13, 2016, the Department sent Petitioner notice that his application was denied. [Dept. Exh. A, pp 399-402].

- 4. On May 9, 2016, Petitioner filed a Request for Hearing to contest the Department's negative action.
- 5. Petitioner has a history of spinal stenosis, arthritis, hypertension, gastroesophageal reflux disease (GERD), hypercholesterolemia, chronic back pain, a traumatic brain injury (TBI), major depressive disorder with psychotic features-recurrent-severe, post-traumatic stress disorder (PTSD), and cognitive disorders due to TBI.
- 6. On October 24, 2014, Petitioner underwent an MRI of the lumbar canal for lumbar radiculopathy. Petitioner had a history of two lumbar surgeries; a laminectomy in 2001 and a fusion in 2006 with partial hardware removal after. The results of the MRI revealed residuals from a prior partial L1 vertebral compression fracture, chronic disc degeneration at L4/L5 with mild right dorsal disc protrusion and an acute disc degeneration at L5/S1 with dorsal disc protrusion in immediate contact with the right and to a lesser extent left L1 nerve roots traversing through the lateral recesses. [Petitioner Exh. 3-6].
- 7. On May 26, 2016, an MRI of Petitioner's lumbar spine showed mild compression through the superior endplate of L1 which could be due to an old healed fracture or a large Schmorl's node. There was minimal effacement of the cerebrospinal fluid (CSF) space from minimal retropulsion of boney fragments from the superior endplate. There was also a minimal posterior angulation seen at that level. There was mild L4-L5 spinal stenosis due to a combination of bulging annulus and moderate facets and ligamentous hypertrophy. A small central annular fissure was also noted. There was also a broad-based herniated nucleous pulposus seen at the L5-S1 level with mild effacement of the CSF space. [Petitioner Exh. 1-2].
- 8. On June 11, 2016, Petitioner underwent a psychiatric evaluation on behalf of the Department at Community Mental Health (CMH). Petitioner complained of a depressed mood, lack of motivation, fatigue, chronic pain and hallucinations that were mumbling and commanding in nature. Petitioner also complained of sleep disturbances, anxiety, social isolation, and that his chronic pain influenced his life in a negative way. He reported he had a poor memory due to his TBI. The psychiatrist noted Petitioner had poor hygiene and grooming. His mood was depressed and anxious. His affect was blunted. His attention and concentration were decreased. He used a cane to help with his gait. The psychiatrist opined that it did not look like Petitioner had schizophrenia at this point, but he did have psychosocial distresses, including chronic pain psychotherapy and medication management. Diagnosis: major depressive disorder with psychotic features-recurrent-severe, post-traumatic stress disorder (PTSD), and cognitive disorders due to traumatic brain injury (TBI). [Dept. Exh. B, pp 1-2].
- 9. Petitioner is a year-old man born on weighs 240 pounds. He has a high school education.
- 10. Petitioner was appealing the denial of Social Security disability at the time of the hearing.

11. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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 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).

Petitioner is diagnosed with a traumatic brain injury (TBI), major depressive disorder with psychotic features-recurrent-severe, post-traumatic stress disorder (PTSD), cognitive disorders due to the TBI, spinal stenosis, arthritis, hypertension, gastroesophageal reflux disease (GERD), hypercholesterolemia, and chronic back pain.

Listing 1.00 (musculoskeletal system) was considered in light of the objective evidence. Based on the Listing 1.04, Claimant's impairments are severe, in combination, if not singly, (20 CFR 404.15.20 (c), 416.920(c)), in that Petitioner is significantly affected in his ability to perform basic work activities (20 CFR 404.1521(b) and 416.921(b)(1)).

Listing 1.04 requires a disorder of the spine such as a herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With evidence of nerve root compression characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine) and lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

As indicated by Petitioner during his testimony, and supported by the medical evidence in the file, the MRI indicates nerve root compression, resulting in chronic back pain and the use of a cane. Accordingly, this Administrative Law Judge finds Claimant's impairments meet Listing 1.04 and concludes Petitioner is disabled for purposes of the MA program.

In addition, Petitioner was diagnosed with major depressive disorder with psychotic features-recurrent-severe, post-traumatic stress disorder (PTSD), and cognitive disorders due to traumatic brain injury (TBI) in June, 2016. The psychiatrist opined that he did not believe Petitioner had schizophrenia at this time, and added that Petitioner was in need of psychotherapy and medical management.

Petitioner's complaints and allegations concerning his impairments and limitations, when considered in light of all the 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.

The credible testimony and medical records submitted at hearing verify Petitioner was legally disabled continuously for a period of 90 days or longer. As such, the Department's denial of SDA pursuant to Petitioner's January 14, 2016 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, 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 January 14, 2016 application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
- The Department shall review Petitioner's medical condition for improvement in July, 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.

It is SO ORDERED.

Vicki Armstrong

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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