



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 12, 2016
MAHS Docket No.: 16-006657
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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 June 15, 2016, from Lansing, Michigan. The Petitioner, [REDACTED], appeared and testified with his roommate and friend, [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistance Payments Supervisor, [REDACTED].

PROCEDURAL HISTORY

The record closed at the end of the hearing. The following exhibits were offered and admitted into evidence:

Department: A---March 24, 2016, Medical Review Team (MRT) denial.
B---April 26, 2016, Notice of Case Action.
C---Medical Packet.

Petitioner: 1---Three pages of additional medical evidence brought to the hearing.

ISSUE

Whether the Department properly determined that the 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 5, 2015, the Petitioner applied for SDA.
2. On March 24, 2016, the MRT denied the Petitioner's SDA application.
3. On April 26, 2016, the Department sent the Petitioner notice that his application was denied.
4. On May 10, 2016, the Petitioner filed a hearing request to contest the Department's negative action.
5. The Petitioner is a [REDACTED]-year-old man born on [REDACTED]. He is 5'7" and weighs 242 pounds. He has an 11th grade education. He last worked in 2014, as an over-the road trucker.
6. The Petitioner suffers from a back problems, diabetes, previous pulmonary embolism in his right lung in 2015, seizures, obesity, hypertension, arthritis, asthma, COPD, hip pain, recurrent pneumonia, chronic pain, peripheral neuropathy, vasculitis/cellulitis and edema of the left leg. The Petitioner has also had MRSA in his left leg and also suffers from migraine headaches.
7. The Petitioner has also been diagnosed with tussive syncope which is a condition that causes the Petitioner to have a sudden and unexpected loss of consciousness due to coughing.
8. The Petitioner was appealing the denial of Social Security disability at the time of the hearing.
9. The Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.
10. The Petitioner has significant limitations with standing, walking, sitting, squatting, bending and lifting.

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).

The Petitioner suffers from a back problems, diabetes, previous pulmonary embolism in his right lung in 2015, seizures, obesity, hypertension, arthritis, asthma, COPD, hip pain, recurrent pneumonia, chronic pain, peripheral neuropathy, vasculitis/cellulitis and edema of the left leg. The Petitioner has also had MRSA in his left leg and also suffers from migraine headaches. Lastly, the Petitioner has been diagnosed with tussive syncope which is a condition that causes the Petitioner to have a sudden and unexpected loss of consciousness due to coughing. The Petitioner's treating physician indicates that the Petitioner has repeated spells of tussive syncope throughout the day which causes him to faint or near faint.

The objective, medical evidence contains an X-ray of the Petitioner's right hip. It revealed joint space narrowing bilaterally, right greater than left and osteophyte formation with a likely cam and pincer lesion of the right hip. A MRI of the Petitioner's hip showed change consistent with femoroacetabular impingement syndrome, right greater than left. A MRI of the Petitioner's spine indicates that he has a mild, chronic spinal curvature with chronic loss of disc space height with superior endplate concavity to the T-12 vertebra at the 11-12 level which is chronic and unchanged.

In July of 2014, the Petitioner spent two days in the hospital for acute exacerbation of COPD with hypoxic respiratory failure secondary to the COPD. In May of 2015, the Petitioner spent two days in the hospital for an acute pulmonary embolism, COPD exacerbation, acute respiratory failure secondary to COPD and cellulitis of the left lower extremity. At this time, the Petitioner had a BMI of 40.

The objective, medical evidence in the record also contains a pulmonary function report. It shows that the Petitioner has an FEV1 of 1.6-2.0 before bronchodilators and an FEV1 of between 2.1 and 2.4 after bronchodilator. The Petitioner testified that he can only walk 50-100 feet before he is out of breath and he must push a cart to walk. The Petitioner testified that his lung function is down to 26%. The Petitioner testified that he will be having hip surgery this fall.

The credible testimony and medical records submitted at hearing verify the Petitioner was legally disabled for ninety (90) days. As such, the Department's denial of SDA pursuant to Petitioner's October 5, 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 the 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 the Petitioner's October 5, 2015 SDA 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.
2. The Department shall review the 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 the Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

It is SO ORDERED.



SH/nr

Susanne E. Harris
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]

Petitioner

[REDACTED]

Counsel for Petitioner

[REDACTED]