



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 26, 2016
MAHS Docket No.: 16-006755
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 22, 2016, from Lansing, Michigan. The Petitioner, [REDACTED], appeared and testified. The Department of Health and Human Services (Department) was represented by Assistance Payments Supervisor, [REDACTED] and Family Independence Specialist, [REDACTED].

At the conclusion of the hearing, this Administrative Law Judge issued an Interim Order Extending the Record for 30 days to afford the Petitioner an opportunity to submit a Medical Examination Report form completed by [REDACTED]. That report was received July 20, 2016 at which time the record closed. The following exhibits were offered and admitted into evidence:

Department: A--May 12, 2016, Notice of Case Action.
B--May 9, 2016, Medical Review Team (MRT) denial.
C--Medical Packet.
D--March 3, 2016, Assistance Application.

Petitioner: 1-- July 11, 2016, Medical Examination Report form completed by Dr. Maureen Mead.

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 March 3, 2016, the Petitioner applied for SDA.
2. On May 9, 2016, the MRT denied the Petitioner's SDA application.
3. On May 12, 2016, the Department sent the Petitioner notice that his application was denied.
4. On May 20, 2016, the Petitioner filed a hearing request to contest the Department's negative action.
5. The Petitioner suffers from alcohol dependence in early remission, cannabis dependence, chronic nausea, history of colon cancer, right hip impingement, arthritis, low back pain and sciatica, major depressive disorder and anxiety.
6. In February, 2010 the Petitioner was diagnosed with aggressive colon cancer. He had 65% of his colon removed. The Petitioner credibly testified that his bowel movements are extremely urgent and without warning. This resulted in chronic internal and external hemorrhoids. The Petitioner testified that he must defecate six to seven times between 8 AM and 12 PM. The Petitioner must clean splatter every time from the toilet bowl. The Petitioner has neuropathy in his feet from the chemotherapy treatment for his cancer.
7. The Petitioner's treating physician indicates that the Petitioner's right hip impingement results in an antalgic gait. The Petitioner has moderate to severe limitation in trunk active range of motion. He has positive hip scour and FABER tests in his hips with limited range of motion and gluteus media strength. He has a right unilaterally flexed sacrum. He has significant tenderness to palpitation in the bilateral PSIS areas. He sits with the posterior pelvic tilt. He has decreased gluteus maximus activation bilaterally. He has decreased left great toe extension strength.
8. A CT scan of the Petitioner's abdomen and pelvis revealed calcifications in the spleen were present compatible with prior granulomatous disease, unchanged from the previous study of October 5, 2013.
9. A July 31, 2015, MRI of the Petitioner's right hip revealed cam morphology predisposing to femoral acetabular impingement and mild arthritis super laterally.
10. An April 16, 2015, MRI of the Petitioner's lumbar spine revealed degenerative changes with disc space narrowing at L4-L5.
11. The objective, psychiatric evidence in the record indicates that the Petitioner's GAF scores range from 40 to 43. The Petitioner had his antidepressant medication increased in April, 2015.

12. The Petitioner is a ■-year-old man born on ■. He is 5'9" and weighs 150 pounds. He has a 12th grade education, but no high school diploma. He last worked in 2014, as a trucker.
13. The Petitioner was appealing the denial of Social Security disability at the time of the hearing.
14. The 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 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 alcohol dependence in early remission, cannabis dependence, chronic nausea, history of colon cancer, right hip impingement, arthritis, low back pain and sciatica, major depressive disorder and anxiety. The Petitioner's treating physician noted that Petitioner's gait was antalgic due to his hip impingement. Also, the Petitioner's treating physician indicated that the Petitioner sat with the posterior, pelvic tilt. The Petitioner's treating physician indicates that the Petitioner cannot use his hands and arms for reaching or pushing and pulling. The Petitioner cannot use his feet and legs to operate put and leg controls. The Petitioner is to never lift more than 25 pounds.

The 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.

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 March 3, 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, 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 March 3, 2016 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 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]