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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

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Date Mailed: September 8, 2016
MAHS Docket No.: 16-008500
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 July 28, 2016, from Detroit, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by ██████████, Hearing Facilitator.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. The medical documents referenced by the Social Security Administration on page 40 of Exhibit A and by the Disability Determination Services/Medical Review Team on page 48 of Exhibit A were received and marked into evidence as Exhibit C. The record closed, and the matter is now before the undersigned for a final determination based on the evidence presented.

ISSUE

Did the Department properly determine 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 February 18, 2016, Petitioner submitted an application seeking cash assistance on the basis of a disability (Exhibit A, pp. 5-16).

2. On May 11, 2016, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 46-52).
3. On May 20, 2016, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 53-55).
4. On June 16, 2016, the Department received Petitioner's timely written request for hearing.
5. Petitioner alleged disabling impairment due to osteoarthritis of the back and right foot, carpal tunnel syndrome (CTS) of both wrists, two heart stents, and high blood pressure (HBP).
6. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED] birth date; he is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Petitioner is a high school graduate with trade school certification in refrigeration.
8. At the time of application, Petitioner was employed as a fast food worker.
9. Petitioner has an employment history of work as fast food crew worker; factor worker; and press operator.
10. On [REDACTED], the Social Security Administration (SSA) denied Petitioner's SSA application for disability benefits, and Petitioner appealed this decision (Exhibit A, pp. 40-45; Exhibit B).

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.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must

have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, 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).

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner testified that he last worked in [REDACTED] but that his hours were cut and he was often sent home early because he was unable to maintain the standards required in the workplace. Because the evidence indicates that Petitioner was not engaged in SGA, he is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or

mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

In the present case, Petitioner alleges disabling impairment due to osteoarthritis of the back and right foot, CTS of both wrists, two heart stents, and HBP. The medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below.

On [REDACTED], Petitioner went to the emergency department complaining of chest pain radiating to the neck and left upper arm with nausea and shortness of breath (Exhibit C, pp. 56-60.). Chest x-rays showed no active pulmonary disease (Exhibit C, pp. 84.) A [REDACTED] exercise myocardial perfusion imaging showed moderate areas of mild to moderate ischemia in the mid and basal inferior wall and a small area of mild ischemia in the apex; diffuse hypokinesis of the cardiac walls; and low left ventricular ejection fraction of 47%. (Exhibit C, pp. 47-49). A cardiac catheterization was performed September 16, 2014 (Exhibit C, pp. 82-83).

On [REDACTED], Petitioner went to the emergency department. Chest x-rays showed no definite acute cardiopulmonary disease. An electrocardiogram showed estimated ejection fraction of 55-60%, mildly increased ventricular septum thickness, mild mitral and tricuspid valve regurgitation, and pleural effusion but no wall motion abnormalities. (Exhibit C, pp. 61-63, 79-81.) An [REDACTED] nuclear medicine myocardial perfusion imaging report showed (i) findings consistent with dilated cardiomyopathy, (ii) no ischemic defect or fixed infarction, and (iii) ejection fraction of 47% (Exhibit C, p. 52).

A [REDACTED] abdomen x-ray showed no radiographic evidence of acute cardiopulmonary process (Exhibit C, p. 55.)

On [REDACTED], Petitioner went to the emergency department complaining of chest pain. A chest x-ray showed no active disease. (Exhibit C, pp. 64-78.)

The Disability Determination Explanation references a [REDACTED] lumbar spine MRI that is not included in the medical record presented from DDS/MRT. The Disability Determination Explanation indicates that the MRI showed a small circumferential disc bulge at L5-S1 that abuts the bilateral existing L5 nerve roots along with facet joint degenerative changes and mild bilateral foramina narrowing. There was no spinal stenosis. (Exhibit C, p. 95.)

From [REDACTED] to [REDACTED], Petitioner visited his cardiologist. Notes from these visits show that Petitioner was asymptomatic, with no complaints of chest pain (other than complaints of occasional chest pain at the [REDACTED] visit), tightness, pressure or shortness of breath, dyspnea on exertion, or lower extremity edema. Petitioner's HTN was identified as stable with medication at the [REDACTED] visit. (Exhibit C, pp. 33-46.) In a [REDACTED] consultation with his cardiologist, the cardiologist's office notes indicate that Petitioner denied any chest pain, dyspnea on exertion, or edema of the lower extremities. The doctor noted that a recent stress test showed no ischemia. The doctor concluded that based on his stable condition, no further medical prescription changes were needed. (Exhibit C, pp. 20-22.)

In [REDACTED], Petitioner went to the podiatrist complaining of chronic itching skin with blister formation between the toes and painful lesions of the right foot causing pain on ambulation. The doctor removed all diseased nail plate debris of the infected nail beds with good relief obtained as evidenced by pain free ambulation. (Exhibit C, pp. 86-89.)

At a [REDACTED] office visit with his family doctor, the doctor's examination revealed lumbar spine tenderness with severity described as moderate but the doctor indicated that Petitioner was being treated by a pain management doctor for his back pain. The doctor also noted decreased breath sounds. (Exhibit A, pp. 34-37; Exhibit C, pp. 8-11.) Petitioner's blood pressure was noted as better controlled at the [REDACTED] visit. (Exhibit C, p. 16-19.)

In an undated letter, Petitioner's pain management doctor referred Petitioner back to work on [REDACTED] with the following restrictions: he recommended four hours work day, no more than 60 minutes continuous standing/walking in a four-hour period; no more than 60 minutes continuous sitting in a 3 to 5 hour period; no lifting greater than 10 pounds occasionally. There were no restrictions for repetitive simple grasping, pushing/pulling, fine manipulation, or operating foot controls. A list of appointments showed Petitioner had started seeing the doctor April 2015 and had received back, CTS, ankle, and knee injections. (Exhibit A, pp. 38-39; Exhibit C, pp. 8-.)

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner

suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

In this case, listings 1.02 (major dysfunction of a joint), 1.04 (spine disorders), 4.02 (chronic heart failure), and 4.04 (ischemic heart disease) were considered. There was no inability to ambulate effectively, as defined in 1.00B2b, to support a listing under 1.02. There was no evidence of compromise of a nerve root or spinal cord to support a listing under 1.04. Petitioner's exercise stress test results and the absence of three or more separate episodes of acute congestive heart failure within a consecutive 12-month period preclude meeting a listing under 4.02. Petitioner's exercise stress test results, the angiographic evidence, and the absence of three separate ischemic episodes within a 12-month period preclude meeting a listing under 4.04. Because the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).

In this case, Petitioner testified that he could walk no further than three blocks, sit no longer than 45 minutes, stand no more than 45 minutes, and lift no more than 10 pounds. He complained that his hands cramped and shook after 10 minutes, affecting his writing and keeping him from doing work involving the use of his hands. He lived

with others but took care of his personal hygiene and dressing. He did indoor chores slowly, sometimes sitting while doing the chores. He used a scooter to shop, sometimes with a friend's help. He used the bus for transportation. He complained that his medication was not effective in controlling his lower back pain.

With respect to his heart condition, an [REDACTED] nuclear medicine myocardial perfusion imaging report showed findings consistent with dilated cardiomyopathy, no ischemic defect or fixed infarction, and ejection fraction of 47%. The Disability Determination Explanation references a [REDACTED] lumbar spine MRI that showed a small circumferential disc bulge at L5-S1 that abuts the bilateral existing L5 nerve roots along with facet joint degenerative changes and mild bilateral foramina narrowing. Therefore, Petitioner has medically determinable impairments that supporting his complaints of back pain and fatigue. SSR 16-3p. However, although Petitioner alleged that he suffered from carpal tunnel syndrome, there is no medical evidence supporting his testimony in the file presented. Therefore, there is no medically determinable impairment supporting Petitioner's allegations of wrist pain and hand cramping and shaking.

Petitioner's cardiologist indicated most recently that Petitioner was asymptomatic, his recent stress test showed no ischemia, and he was in stable condition. His HTN is shown as controlled with medication. After treating Petitioner's foot pain, the podiatrist noted that treatment was successful as evidenced by Petitioner's pain free ambulation. Petitioner's pain management doctor referred Petitioner back to work on [REDACTED] with the following restrictions: he recommended a four-hour work day; no more than 60 minutes continuous standing/walking in a four-hour period; no more than 60 minutes continuous sitting in a 3 to 5 hour period; no lifting greater than 10 pounds occasionally. There were no restrictions for repetitive simple grasping, pushing/pulling, fine manipulation, or operating foot controls. Therefore, the evidence presented does not support the extent of the pain, persistence, and limiting effect alleged by Petitioner. SSR 16-3p. With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a) and has no limitations on the use of his hands and feet for repetitive motions.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Steps Four and Five

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920.

If an individual is incapable of performing past relevant employment, Step 5 requires an assessment of Petitioner's RFC and age, education, and work experience to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability; if the individual is unable to adjust to other work, then there is a disability. When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 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).

Petitioner's work history in the 15 years prior to the application consists of work as a fast food crew worker; factory worker involving logistics; an assembly worker at a job involving hand assembling, and press operator. Petitioner's work at fast food restaurants, at the factory involving logistics, and at a press all required substantial standing and lifting. Petitioner, whose exertional RFC limits him to performing sedentary work, is incapable of performing this prior work. However, he testified that his past work on an assembly line involving small hand work was substantially a sitting job and involved lifting less than 10 pounds. Petitioner retains the exertional RFC to perform this past relevant work. Because Petitioner is able to perform past relevant work, he is not disabled at Step 4.

Even if the analysis proceeds to Step 5, it is also found that Petitioner is also not disabled at Step 5. Petitioner, who was ■ years old at the time of application and ■ years old at the time of hearing, is considered to be a younger individual (age 18-44) for purposes of Appendix 2. He is a high school graduate with an unskilled work history. Based on his age, education, non-transferable work skills, and exertional RFC limiting him to sedentary work, the Medical-Vocational Guidelines, 201.27, result in a finding that Petitioner is not disabled.

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 **not disabled** for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.



ACE/tlf

Alice C. Elkin
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]
[REDACTED]
[REDACTED]
[REDACTED]

Via Electronic Mail:

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