



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: September 26, 2016
MAHS Docket No.: 16-010794
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 September 8, 2016, from Lansing, Michigan. Petitioner appeared and testified on his own behalf. [REDACTED], Eligibility Specialist, appeared on behalf of the Department of Health and Human Services (Department).

PROCEDURAL HISTORY

The Department offered the following exhibits that were admitted into evidence: **Exhibit 1:** Request for Hearing (pages 1-2), Medical-Social Eligibility Certification (pages 3-9), Physical Residual Functional Capacity Assessment (pages 10-22), Medical Records (pages 24-383).

Petitioner did not offer any exhibits into evidence.

The record was closed at the conclusion of the hearing.

ISSUE

Did the Department properly deny Petitioner's application for Medical Assistance (MA) and State Disability Assistance (SDA) based on the finding that he was not disabled?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On January 19, 2016, Petitioner filed an application for MA and SDA benefits alleging disability.
2. On July 21, 2016, the Medical Review Team (MRT) denied Petitioner's application.
3. On or about July 21, 2016, the Department caseworker sent Petitioner notice that his application was denied.
4. On August 8, 2016, Petitioner filed a request for a hearing to contest the Department's action.
5. A telephone hearing was held on September 8, 2016.
6. During the hearing, Petitioner alleged the following disabling impairments: "heart problems due to a leaking heart valve," pacemaker insertion, hypertension, blood clots, pinched nerve and fluid in right knee.
7. At the time of the hearing, Petitioner was 45 (forty-five) years old with a birth date of [REDACTED]. Petitioner testified that he was 5 feet 9 inches tall and weighed approximately 170 (one hundred and seventy) pounds (lbs).
8. Petitioner has a high school education. Petitioner is currently unemployed and his past relevant work was as lunchroom aide in an elementary school. Petitioner also had some prior employment as a cook at a fast food restaurant. Petitioner has an unskilled work history that is transferrable to other jobs. Petitioner is not engaged in substantial gainful activity (SGA).
9. During the relevant time period, Petitioner was taking the following medications:
 - a. Warfarin.
 - b. Maxil.
 - c. Tramadol.
 - d. Coumadin.
 - e. Cardizem.
 - f. Gemfibrozil.
 - g. Maxzide.
 - h. Diltiazem.

10. During the relevant time period, the objective medical records show that Petitioner has the following medical conditions based on medically acceptable clinical and laboratory diagnostic techniques:
 - a. Petitioner had a history of mitral valve disease, heart palpitations, dizziness and near syncope (fainting spells). His heart event monitor recording showed atrial tachycardia at 152 beats per minute with sinus pauses and asystole up to 8 seconds. He was diagnosed with symptomatic sick sinus syndrome (tachycardia-bradycardia syndrome) and underwent a left upper extremity venography and pacemaker insertion on [REDACTED]. [Exh. 1, pp. 195, 229].
 - b. Follow up visit after Pacemaker insertion on [REDACTED]. [Exh. 1, p. 161].
 - c. Petitioner has been diagnosed with hypertension. [Exh. 1, pp. 229, 240].
 - d. Petitioner had a history of deep vein thrombosis (DVT) with a pulmonary embolism (PE). [Exh. 1, p. 229].
 - e. Petitioner uses a CPAP for sleep apnea. [Exh. 1, pp. 238, 256].
 - f. Petitioner is not blind but he has retinal holes and some peripheral vision loss. [Exh. 1, p. 31].
11. The objective medical records did not contain an opinion from a licensed health professional that Petitioner is disabled.
12. Petitioner has a severe medically determinable impairment or combination of impairments.
13. Petitioner's impairment or combination of impairments meets or medically equals the criteria of a listing.
14. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.
15. Based on the objective medical evidence and Petitioner's credible testimony, Petitioner can perform the following physical functions: walk, stand, sit, lift (10 lbs.), push, pull, reach, and/or carry. However, Petitioner is not able to do these activities on a sustained basis due to his heart problems with result in shortness of breath and dizziness.
16. Petitioner has the capacity to see, hear, and speak. However, Petitioner's vision (peripheral) appears to be deteriorating due to his retinal holes.

17. Petitioner does not have the residual functional capacity to do his past relevant work.
18. Petitioner is not able to adjust to other work. Petitioner does not have the residual functional capacity to perform limited sedentary employment on a sustained basis.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA program. Under SSI, 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

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. The Petitioner's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only the Petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the Petitioner has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Medical findings must allow a determination of: (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

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 there is

a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

At step one, the Administrative Law Judge must determine whether the Petitioner is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he or she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he or she is not disabled regardless of how severe his or her physical or mental impairments are and regardless of his or her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the Petitioner has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the Petitioner does not have a severe medically determinable impairment or combination of impairments, he or she is not disabled.

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). 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 determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

At step three, the Administrative Law Judge must determine whether the Petitioner's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Petitioner's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Petitioner is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the Petitioner's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his or her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the Petitioner's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the Petitioner has the residual functional capacity to perform the requirements of his or her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Petitioner actually performed it or as it is generally performed in the national economy) within the last 15 (fifteen) years or 15 (fifteen) years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Petitioner to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Petitioner has the residual functional capacity to do his or her past relevant work, the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the Petitioner is able to do any other work considering his or her residual functional capacity, age, education, and work experience. If the Petitioner is able to do other work, he or she is not

disabled. If the Petitioner is not able to do other work and meets the duration requirements, he or she is disabled.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967. The terms are defined as follows:

Sedentary work. 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. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. 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 this 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. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 1, Petitioner is not engaged in SGA and has not worked since March, 2016. Therefore, Petitioner is not disqualified from receiving disability and the analysis proceeds to Step 2.

At Step 2, Petitioner's symptoms are evaluated to see if there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce Petitioner's pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Petitioner's symptoms to determine the extent to which they limit Petitioner's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

As summarized in the above Findings of Fact, Petitioner has presented medical evidence establishing that he does have some limitations on the ability to perform basic work activities. The medical evidence has established that the Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on the Petitioner's basic work activities. In addition, Petitioner has a medically determinable impairment that is "severe" or a combination of impairments that is or are "severe." Petitioner's impairments significantly limit his ability to perform basic work activities. The analysis proceeds to Step 2.

Petitioner has presented medical evidence that demonstrates he has some physical limitations on his ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination of impairments, that has more than a *de minimus* effect on his basic work activities. Further, the impairments have lasted continuously for 12 (twelve) months; therefore, Petitioner is not disqualified from receiving MA and SDA benefits at Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The following listings were considered in light of the objective evidence: [4.05 Cardiovascular system]. Petitioner's objective medical records demonstrate that he had arrhythmia which was associated with near syncope. These records showed that Petitioner's syncopal episodes were following pacemaker insertion. Based on the objective medical evidence, Petitioner's condition meets, or medically equals the criteria of a listing. Accordingly, the Petitioner cannot be found disabled, or not disabled, at Step 3; therefore, the Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before Step 4, the Administrative Law Judge must determine Petitioner's residual functional capacity to perform the requirements of his past relevant work. Petitioner's past relevant work was as a school aide or in the food service industry. Working as a school, as described by Petitioner at hearing, would be considered light work.

After review of the entire record, including Petitioner's testimony, this Administrative Law Judge finds that Petitioner is not able to maintain the physical demands necessary to perform even light work as defined by 20 CFR 416.967(a). The record shows that Petitioner can no longer work as a school aide, which would require him to stand on his feet or be in a position to act to protect children, if necessary. Nor would Petitioner be able to physically meet the demands associated with light work attributable to fast food service. Therefore, this Administrative Law Judge finds sufficient evidence in this record that demonstrates Petitioner is unable to perform his past relevant work. Because the record evidence shows that Petitioner is unable to do any past relevant work, the analysis proceeds to the fifth and final step.

In Step 5, an assessment of Petitioner'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). 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).

This Administrative Law Judge finds that the Department has failed to satisfy its burden of proof to show that Petitioner has the residual capacity to substantial gainful employment. Rather, Petitioner has satisfied the burden of proof to show by competent, material and substantial evidence that he has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Petitioner's exertional and non-exertional impairments render him unable to engage in a full range of sedentary work activities on a regular and continuing basis. Petitioner's testimony regarding his limitations is credible and supported by the objective medical evidence. Petitioner's assertion that his alleged impairment(s) are severe enough to reach the criteria and definition of disability are also credible. This Administrative Law Judge finds that the objective medical evidence on the record shows that Petitioner has established by objective medical evidence that he cannot perform light or even sedentary work with his impairments.

Therefore, Petitioner is disabled for purposes of the MA program.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

With regard to Petitioner's request for disability under the State Disability Assistance (SDA) program, it should be noted that the Department's Bridges Eligibility Manual (BEM) contains policy statements and instructions for caseworkers regarding the SDA program. In order to receive SDA, "a person must be disabled, caring for a disabled person or age 65 or older." BEM, 261 (7-1-2015), p 1.

A person is disabled for SDA purposes if he or she: (1) receives other specified disability-related benefits or services¹; or (2) resides in a qualified Special Living Arrangement facility; or (3) is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or (4) is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS). BEM 261, pp 1-2.

As indicated above, Petitioner meets the definition of disabled under the MA program and the evidence of record shows that Petitioner is unable to work for a period exceeding 90 (ninety) days. Petitioner is disabled for purposes of the SDA program.

DECISION AND ORDER


The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has not appropriately established on the record that it acted in compliance with Department policy when it denied Petitioner's application for MA, Retro MA and SDA.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Petitioner's application for MA, Retro MA, and SDA, 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 initiate a review Petitioner's medical condition for improvement in September, 2017, unless his pending Social Security Administration disability application 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.

CP/las



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

¹Retirement, Survivors and Disability Insurance (RSDI) due to disability/blindness, Supplemental Security Income (SSI) due to disability/blindness, Medicaid as blind/disabled based on a disability examiner or MRT determination or hearing decision, or Michigan Rehabilitation 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]

Petitioner

[REDACTED]