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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



Date Mailed: October 7, 2016
MAHS Docket No.: 16-010596
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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. The Petitioner was represented by his power of attorney [REDACTED]. Petitioner also testified on his own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED] Hearing Facilitator. Department Exhibit 1 pages 1-575 were admitted and reviewed.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. Petitioner applied for SDA on January 27, 2016.
2. The Medical Review Team denied the application on July 14, 2016.
3. Petitioner filed a request for hearing on July 27, 2016, regarding the SDA denial.
4. A telephone hearing was held on September 8, 2016.

5. Petitioner is 5' 4" tall and weighs 185 pounds.
6. Petitioner is 54 years of age.
7. Petitioner's impairments have been medically diagnosed as cerebral amyloid angioplasty, degeneration of spine, kidney disease and hypertension.
8. Petitioner has the following symptoms: syncope, pain, fatigue, headaches, memory and concentration problems.
9. Petitioner completed high school and some college.
10. Petitioner is able to read, write, and perform basic math skills.
11. Petitioner is not working. Petitioner last worked in December 2015 as a chef. Petitioner previously worked as a restaurant manager and corporate trainer.
12. Petitioner lives with his mother in law.
13. Petitioner testified that he cannot perform some household chores.
14. Petitioner takes the following prescribed medications:
 - a. Hydralazine
 - b. Amlodipine
 - c. Nortriptyline
 - d. Famotidine
 - e. Cyclobenzaprine
 - f. Clonidine
 - g. Atorvastatin
 - h. Breo ellipta
 - i. chlorpheniramine
15. Petitioner testified to the following physical limitations:
 - i. Sitting: 60 minute
 - ii. Standing: 15-20 minutes
 - iii. Walking: 6 blocks
 - iv. Bend/stoop: difficulty
 - v. Lifting: 50lbs.
 - vi. Grip/grasp: no limitations
16. In a psychological evaluation dated [REDACTED], the examining psychologist stated the following: "He appears to have mild to moderate limitations in his capacity to understand, retain and follow simple instructions and to perform and complete simple tasks. He may have more significant difficulty carrying out

complex tasks. He appears to have marked limitations in his capability to interact appropriately and effectively with coworkers and supervisors, adapt to change in the work setting, and to perform work duties reliably and consistently. It is suspected that [REDACTED] deficits would result in marked limitations in his capacity to do work related activities.” Petitioner’s prognosis was found to be “Poor”. (Dept. Ex. 1, p.155-158)

17. A Consultative Physical Examination completed on [REDACTED], states the following under CONCLUSION: “In summary, this patient is a 53-year-old male who presents to our clinic with a history of cerebral amyloid angiopathy. He also has a recent diagnosis of asthma. He is hypertensive with poor control at this time and his medications are being adjusted. His physical examination is very benign and within normal limits.” (Dept. Ex. 1, pp.160-163)
18. A Neuropsychology Note dated [REDACTED], states the following: “The pt does not have functional memory abilities, & likely has a permanent and total disability secondary to several brain behavior changes, such as multiple areas of CVA, multiple TBIs, encephalopathy with AKI, CKD, etc. The brain behavior & performance changes represent the heralding of dementia. He also cannot “pass” an Intelligence Scale Comprehension Test, & is not able to provide informed consent.”(Dept. Ex. 1, p.55)
19. An MRI of Petitioner’s lumbar spine from [REDACTED], showed the following under Impression: “Minimal degenerative disc disease and spondylosis at the level of L5/S1 causing mild neural foraminal narrowing. There is no evidence for nerve root impingement or central canal stenosis.”

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 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.

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-P 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.

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is, or is not, disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Petitioner is not working. Therefore, the Petitioner is not disqualified at this step in the evaluation.

The second step to be determined in considering whether the Petitioner is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe, which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In this case, the Petitioner's medical evidence of record supports a finding that Petitioner has significant physical and mental limitations upon Petitioner's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that the Petitioner has an impairment (or combination of impairments) that has more than a minimal effect on the Petitioner's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysis, the trier of fact must determine if the Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Petitioner's medical record does not support a finding that the Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 1.04, 11.04, 12.04 and 12.06 were considered.

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 such as clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. A conclusory statement by a physician, or mental health professional, that an individual is disabled, or blind, is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.927.

The fourth step of the analysis to be considered is whether the Petitioner has the ability to perform work previously performed by the Petitioner within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Petitioner from doing past relevant work. In the present case, the Petitioner's past employment was as a restaurant manager and chef. Working as a restaurant manager and chef, as described by Petitioner at hearing, would be considered medium work. The Petitioner's impairments would prevent him from doing past relevant work. This Administrative Law Judge will continue through step 5.

In the final step of the analysis, the trier of fact must determine if the Petitioner's impairment(s) prevent the Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner's:

1. residual functional capacity defined simply as "what can you still do despite your limitations? 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and

3. the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

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.

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).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Petitioner makes it to the final step of the analysis, the Petitioner has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984).

Moving forward, the burden of proof rests with the State to prove by substantial evidence that the Petitioner has the residual function capacity for substantial gainful activity. After careful review of Petitioner's extensive medical record, and the Administrative Law Judge's personal interaction with Petitioner at the hearing, this

Administrative Law Judge finds that Petitioner's exertional and non-exertional impairments render Petitioner unable to engage in a full range of, even sedentary, work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The Department has failed to provide vocational evidence which establishes that Petitioner has the residual functional capacity for substantial gainful activity and, that given Petitioner's age, education, and work experience, there are significant numbers of jobs in the national economy which the Petitioner could perform despite Petitioner's limitations.

Accordingly, this Administrative Law Judge concludes that Petitioner is disabled for purposes of the SDA program as of January 2016. Petitioner's testimony regarding his limitations and ability to sit, stand, walk, lift, and carry is credible and supported by substantial medical evidence. Also, Petitioner has psychological impairments that are substantially limiting. Specifically, Petitioner has neurological deficits as confirmed by the Neuropsychology Note provided in the record at Dept. Ex. 1, p.55.

Therefore, Petitioner is found to be disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is medically disabled as of January 27, 2016.

Accordingly, the Department's decision is hereby **REVERSED** and the Department is ORDERED to:

1. Initiate a review of the application for SDA dated January 27, 2016, if not done previously, to determine Petitioner's non-medical eligibility.
2. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for October 2017.

AM/las



Aaron McClintic

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]

Petitioner

[REDACTED]