



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: December 9, 2016
MAHS Docket No.: 16-014129
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 [REDACTED] from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

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 506-page medical packet reviewed by the Medical Review Team (MRT)/Disability Determination Services (DDS), as referenced in Exhibit A, was received and marked into evidence as Exhibit B. The record closed on [REDACTED], 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 [REDACTED], Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On [REDACTED], the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 5-22).
3. On [REDACTED], the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 3-4).
4. On [REDACTED], the Department received Petitioner's timely written request for hearing (Exhibit A, p. 2).
5. Petitioner alleged disabling impairment due to spinal fusion surgery, multiple myeloma, and treatment for multiple myeloma.
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, having lost [REDACTED] pounds since [REDACTED].
7. Petitioner is a high school graduate with two years of college experience.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as a production worker/hi-lo driver and carpenter.

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 was not working during the period for which assistance might be available. Because 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.

The medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below.

Notes from Petitioner's office visits with hematology/oncology show that Petitioner was diagnosed with multiple melanoma following a [REDACTED] hospital admission for rib and back pain and [REDACTED]-pound weight loss over a four-month period. At that time, a bone survey showed numerous lytic lesions, and a spine MRI showed acute compression fractures at T5, T7-T8. His calcium was elevated at 12, his creatinine was at 9.0, and hemoglobin was at 10.2. A [REDACTED], BMA/BX (bone marrow aspirate/biopsy) showed 60-65% cellular marrow with 65% involved with plasma cells. Petitioner underwent a kyphoplasty on T4-T8 on [REDACTED]. He was discharged to a rehabilitation facility where he resided from [REDACTED], [REDACTED], and underwent physical and occupational therapy. During his stay, he underwent a psychiatric evaluation and was diagnosed with mood disorder on [REDACTED]. He underwent radiation followed by four cycles of chemotherapy treatment. During his treatment, he was also diagnosed with acute kidney failure and anemia and hospitalized from [REDACTED]. He initially wore a back brace, which was then intermittently used with a cane. Petitioner's [REDACTED], imaging showed renal cysts, pericardial effusion, and diffusely infiltrated bones concerning for metastatic disease versus multiple myeloma. His primary diagnosis following treatment was "multiple myeloma not having achieved remission." (Exhibit B, pp. 88-111, 125-136, 144-150, 189-211, 212-214, 215-318-371, 382.)

On [REDACTED], Petitioner was referred by his treating oncologist to an oncologist specialist for consideration of a stem-cell transplant. Notes from the [REDACTED], office visit show improved pain, calcium normal, and as of [REDACTED], free kappa light chain at 1.61, free lambda light chain at 1.11, and a kappa/lambda ratio of 1.45. Petitioner weighed 131 pounds. The doctor recommended a stem-cell transplant. (Exhibit B, pp. 78-84.)

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.

Based on the medical evidence presented in this case, listing [REDACTED] (multiple myeloma) was considered. A listing under [REDACTED] is met when there is a diagnosis of multiple myeloma (confirmed by appropriate serum or urine protein electrophoresis and bone marrow findings) and either (A) failure to respond or progressive disease following initial anticancer therapy or (B) with bone marrow or stem cell transplantation (in which case the disability is considered to continue for at least 12 months from the date of transplantation).

In this case, Petitioner was diagnosed with multiple myeloma during his [REDACTED] hospitalization based on diagnostic testing. He underwent treatment consisting of a kyphoplasty on his thoracic spine, radiation treatment, and four rounds of chemotherapy. Despite these efforts, his diagnosis following treatment was "multiple myeloma not having achieved remission." His [REDACTED], imaging showed pericardial effusion and diffusely infiltrated bones concerning for metastatic disease versus multiple myeloma. Further, an oncologist specialist referral recommended that Petitioner undergo a stem cell transplant. This evidence is sufficient to establish that Petitioner underwent anticancer therapy to treat his multiple myeloma but he had failed to respond to treatment. Therefore, the medical evidence established that Petitioner met a listing under [REDACTED]

Because the medical evidence shows that Petitioner's multiple myeloma meets or is equal in severity to the criteria in Appendix 1 of the Guidelines to be considered as disabled, Petitioner **is disabled** and no further analysis is required.

DECISION AND ORDER

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 **disabled** for purposes of the SDA benefit program.

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 THE ORDER WAS ISSUED:

1. Reregister and process Petitioner's [REDACTED], SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;
3. Review Petitioner's continued eligibility in [REDACTED].



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]

Petitioner

[REDACTED]

Via Email

[REDACTED]