



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: April 11, 2016
MAHS Docket No.: 16-000822
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

PROCEDURAL HISTORY

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 March 15, 2016 from Lansing, Michigan. The Petitioner, [REDACTED] [REDACTED] appeared and testified with his sister and Authorized Hearing Representative (AHR), [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistance Payments Supervisor, [REDACTED] [REDACTED].

After the hearing, the record was extended for 30 days to afford the Petitioner an opportunity to submit psychological evidence which is not contained in the record.

The following exhibits were offered and admitted into evidence:

Department: A--January 25, 2016, Notice of Case action.
B--January 19, 2016, Medical Review Team (MRT) denial and medical packet.
C--March 31, 2016, Psychological Report and March 22, 2016, Mental Residual Functional Capacity Assessment completed by the Department's psychologist.

Petitioner: 1--Records from West Michigan Community Mental Health System.

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 upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On August 25, 2015, the Petitioner applied for SDA.
2. On January 25, 2016, the Medical Review Team denied the Petitioner's request.
3. On February 3, 2016, the Petitioner submitted to the Department a request for hearing.
4. The Petitioner is now [REDACTED] years old.
5. The Petitioner completed education through high school and has difficulty with reading comprehension and basic math.
6. The Petitioner has no recent employment experience last worked in the year 2000 as house painter/carpenter.
7. The Petitioner's limitations have lasted for 12 months or more.
8. The Petitioner suffers from hyperlipidemia, flexure contracture of the right elbow secondary to remote surgery, history of polysubstance abuse, borderline personality disorder, bipolar disorder, anxiety, ADHD, borderline IQ and depression.
9. The Petitioner has significant limitations on comprehension, concentration, memory and interacting with others.

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of 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.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

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 exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income 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.

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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of 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; 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 is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

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

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of his past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner has the residual functional capacity to do his past relevant work, then 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 step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, the Petitioner has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, the Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine the Petitioner's residual functional capacity to do relevant work.

In the present case, the Petitioner has been diagnosed with hyperlipidemia, flexure contracture of the right elbow secondary to remote surgery, history of polysubstance abuse, borderline personality disorder, bipolar disorder, anxiety, ADHD, borderline IQ and depression. The Petitioner has a number of symptoms and limitations, as cited above, as a result of these conditions. The Petitioner's treating psychiatrist noted that the Petitioner has poor insight and judgment, was a poor historian and has a rambling thought process. The Petitioner is unable to control his emotions and his impulsivity has resulted in negative consequences. His relationships with others are unstable. The Petitioner was given a diagnosis for Borderline Personality Disorder with symptoms including frantic attempts to avoid abandonment, impulsivity, affective instability, chronic feelings of emptiness and pattern of unstable relationships. The Petitioner was assigned a GAF of 50.

This Administrative Law Judge also ordered that the Petitioner have cognitive testing completed by the Department's psychologist. The Petitioner has a full scale IQ score of 79 placing his level of functioning as borderline. The Department psychologist reports that the score of the obtained are felt to be an accurate assessment of the Petitioner's current level of functioning and IQ potential. Lastly, physically, the Petitioner suffers from hyperlipidemia and flexure contracture of the right elbow secondary to remote surgery.

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 remote past employment was house painter/carpenter. This required the Petitioner to be physically active, lifting and reaching and interacting with others. The Petitioner's impairments prevent the Petitioner from being able to perform the duties for such a position. This Administrative Law Judge finds, based on the medical evidence and objective, physical, and psychological findings, that the Petitioner is not capable of the physical or mental activities required to perform any such position. 20 CFR 416.920(e).

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 F2d 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 SGA.

After careful review of the Petitioner's medical record and the Administrative Law Judge's personal consideration of the Petitioner's testimony at the hearing, this Administrative Law Judge finds that the Petitioner's exertional and non-exertional impairments render the Petitioner unable to engage in a full range of 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 record supports a finding that the Petitioner does not have the residual functional capacity for SGA. The Department has failed to provide vocational evidence which establishes that, given the Petitioner's age, education, and work experience, there are significant numbers of jobs in the national economy which the Petitioner could perform despite the Petitioner's limitations. Accordingly, this Administrative Law Judge concludes that the 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 Petitioner is medically disabled as of August, 2015.

Accordingly, the Department's decision is hereby **REVERSED** and the Department is **ORDERED** to initiate a review of the application dated August 25, 2015, if not done previously, to determine Petitioner's non-medical eligibility. The Department shall inform the Petitioner of the determination in writing. A review of this case shall be set for January, 2017.



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]

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]