



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: May 27, 2016
MAHS Docket No.: 16-003421
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 April 28, 2016, from Lansing, Michigan. Petitioner and his wife personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Assistance Payment Supervisor [REDACTED] and Eligibility Specialist [REDACTED]. [REDACTED] testified as a witness on behalf of the Department. Department's Exhibit A pages 1-20, Exhibit B pages 1-6 and Exhibit C, pages 1-203 were admitted.

The record closed at the conclusion of the hearing.

ISSUE

Whether the Department properly determined 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 August 21, 2015, Petitioner applied for SDA. [Dept. Exh. A, pp 1-20].
2. On January 6, 2016, the Medical Review Team (MRT) denied Petitioner's SDA application. [Dept. Exh. C, pp 1-7].

3. On February 11, 2016, the Department sent Petitioner notice that his application was denied. [Dept. Exh. B, pp 1-6].
4. On March 15, 2016, Petitioner filed a hearing request to contest the Department's negative action.
5. On [REDACTED], Petitioner established care at the [REDACTED] [REDACTED] on referral of his neurologist, [REDACTED] [REDACTED] examined Petitioner and opined Petitioner was in moderate acute distress. [REDACTED] prescribed Nortriptyline, Tramadol, Lyrica and Orthopedic shoes. The physician indicated that Petitioner has difficulty wearing shoes because of the neuropathy. [Dept. Exh. A, pp 44-46].
6. On [REDACTED] Petitioner established care with [REDACTED]. Petitioner reported he had not seen a doctor in over 25 years. Petitioner reported a history of kidney stones, and chronic feet and bilateral ankle pain due to trauma from a motor vehicle accident in 2012. Petitioner appeared to be in no distress. During the visit, Petitioner was diagnosed with a left inguinal hernia. Petitioner also complained of unexplained weight loss of 63 pounds over the past two years and a half years. Diagnosis: Anxiety problem, bilateral foot pain, lumbar nerve root disorder, mild cognitive impairment, disease of nerves in the arms, legs, hands and feet and reflex sympathetic dystrophy of the leg. [Dept. Exh. A, pp 168-177].
7. On [REDACTED], a CT Chest without contrast for loss of weight revealed pulmonary emphysema, with subcentimeter bilateral pulmonary nodules too small to characterize, and probable intrapulmonary lymph nodes on the right. [Dept. Exh. A, p 132].
8. On [REDACTED], Petitioner underwent an annual physical examination. The chest CT showed multiple, small pulmonary nodules. Petitioner was to be scheduled for a follow-up CT scan in 6 months. The physician indicated Petitioner had been drinking Ensure since his initial visit on [REDACTED], and had gained 4 pounds. The physician noted that Petitioner's annual exam was normal except for an antalgic gait which Petitioner attributed to lower extremity pain.
9. On [REDACTED], Petitioner underwent an internal medicine examination on behalf of the Department. Petitioner alleged physical disability secondary to neuropathy of the feet and ankles. Petitioner stated that he had undergone an EMG in the past which documented neuropathy of the lower extremities. He stated that his neuropathy had been treated with steroid injections into the ankle regions and into the feet without success. Petitioner was currently prescribed Tramadol, Lyrica and Nortriptyline to manage his neuropathy symptoms. Petitioner had to use a cane to assist him with ambulation because of his neuropathy symptoms. He reported he had difficulty walking for more than one block comfortably, difficulty standing for five or ten minutes comfortably and could only sit for thirty to sixty minutes. Petitioner stated that the neuropathy caused him to have to sit to dress himself and he needed assistance getting in and out of the

shower. He reported he used a shower chair when bathing himself. The physician noted that Petitioner had moderate difficulty getting on and off the exam table, heel and toe walking and squatting. His gait was wide based and he used a cane for ambulation. Petitioner had decreased range of motion about his bilateral ankles and elevated blood pressure at the time of examination. [Dept. Exh. A, pp 186-188].

10. On [REDACTED], Petitioner underwent a psychological mental status evaluation on behalf of the Department. Petitioner reported that he was applying for disability because on [REDACTED], he was in a serious automobile accident. His feet were damaged and since then, his feet and ankles did not work because there was nerve damage. He also reported having a hernia and of being under a lot of stress. He stated he is unable to stand on his feet and ankles because they give out. Petitioner also reported that he had difficulty getting to sleep and staying asleep because of the pain. He also stated that he had lost 65 pounds in the last three years. On questioning, the Petitioner reported that he was not responsible for household chores and needed help with bathing. The psychologist noted that Petitioner's gait was unsteady and that Petitioner used a cane to help him walk. The psychologist indicated that Petitioner's motor activity was slowed and he appeared to be dependent on others for many of his basic needs. The psychologist was provided with a copy of a medical record completed by [REDACTED] dated [REDACTED] which indicated Petitioner had neuropathy of the bilateral lower extremities at his ankles and feet. Diagnosis: Major Depressive Disorder, Recurrent, Moderate Severity; Neuropathy of Ankles and Feet; Hernia. The psychologist opined that Petitioner's prognosis was poor. [Dept. Exh. A, pp 192-196].
11. On [REDACTED], Petitioner underwent a Disability Work Assessment on behalf of the Department to determine Petitioner's current level of physical capacities. The physical therapist holds board certifications in orthopedics and sports Physical Therapy and has moderate experience in the field of worker's compensation and Disability assessments. The therapist noted that Petitioner was a frail, thin looking male who used a wooden cane. Petitioner presented with a moderately large bulge in the left inguinal area that typically represents a hernia. Petitioner's low back range of motion was limited at 50% flexion and extension. Light touch sensation was impaired distal to mid shin. Proprioception tested at both ankles appeared impaired as well. Petitioner was unable to perform heel to toe walk, and was unsteady throughout the single leg stance with mini buckling at the knees noted during the testing. As a result of the two hour examination, the therapist opined that Petitioner's ability to lift, carry, stand, walk, reach, push and pull were impaired, as was his ability to handle items. The therapist noted that Petitioner was unable to demonstrate the ability to walk independently or at a sustained rate or time to be effective in a work setting. The examining physical therapist opined that Petitioner did not demonstrate the ability to work within any category based on the Dictionary of Occupational Titles definition. If Petitioner was not required to lift or perform any activity in standing, he could function in the sedentary category but

for less than an 8 hour day or 40 hour work week. The physical therapist indicated that while he was not qualified to test a person's concentration and memory, Petitioner appeared to have issues with these items that would further impact his ability to work. [Dept. Exh. A, pp 197-203].

12. Petitioner is a 54-year-old man born on [REDACTED]. He is 6'1" and weighs 209 pounds. He has a high school equivalent education. He last worked in 2011, as a cook.
13. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
14. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

A person is disabled for SDA purposes if he or she:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2014).

"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. [SDA = 90 day duration].

[As Judge] We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. 20 CFR 416.927(e).

Petitioner is diagnosed with neuropathy, history of kidney stones, chronic feet and bilateral ankle pain, a left inguinal hernia, unexplained weight loss, lumbar nerve root disorder, reflex sympathetic dystrophy, pulmonary emphysema, anxiety, major depressive disorder and mild cognitive impairment.

Petitioner credibly testified that he had difficulty walking, standing or sitting. He reported needing assistance getting in and out of the shower and dressing himself. He stated he used a shower chair and has fallen twice in the shower which is why he now uses a cane. During the hearing, it was noted that Petitioner was experiencing memory issues

as he was hesitant and slow to answer and often frustrated because he could not remember an answer to a question at which time his wife or the Department representative would assist him.

At the independent internal medicine examination the physician noted that Petitioner had to use a cane to assist him with ambulation because of his neuropathy symptoms. Petitioner also had moderate difficulty getting on and off the exam table, heel and toe walking and squatting. His gait was wide based and he used a cane for ambulation.

During the independent psychological evaluation, the Psychologist noted that Petitioner's gait was unsteady and that Petitioner used a cane to help him walk. The psychologist indicated that Petitioner's motor activity was slowed and he appeared to be dependent on others for many of his basic needs. The Psychologist opined that Petitioner's prognosis was poor.

In March 2016, Petitioner underwent a Disability Work Assessment by a board certified Physical Therapist with experience in worker's compensation and Disability assessments. As a result of the two hour examination, the Physical Therapist opined that Petitioner is unable to work due to his physical impairments. The Physical Therapist also indicated that although he was unqualified to test a person's concentration and memory, Petitioner appeared to have issues in those areas that would further impact his ability to work.

Petitioner's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

The credible testimony and medical records submitted at hearing verify Petitioner was legally disabled for ninety (90) days. As such, the Department's denial of SDA pursuant to Petitioner's August 21, 2015 SDA application cannot be upheld.

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.

DECISION AND ORDER

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 OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall process Petitioner's August 21, 2015 application, and shall award him all the benefits he may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in June, 2017, unless his Social Security Administration disability status 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.

VLA/las



Vicki Armstrong
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]