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: June 14, 2016
MAHS Docket No.: 16-003427
[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 - 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on April 28, 2016, from Lansing, Michigan. Petitioner personally appeared and testified.

The Department of Health and Human Services (Department), Respondent, was represented by Assistance Payment Supervisor [redacted] and Eligibility Specialist [redacted] testified as a witness on behalf of the Department. Department Exhibit A, (pages 1-210) was admitted.

On April 28, 2016, the Administrative Law Judge issued an Interim Order Extending the Record for an updated psychological evaluation of Petitioner.

On May 25, 2016, the Department submitted a Psychological Medical Report of Petitioner, labeled Department Exhibit B (pages 1-7) and it was admitted.

The record was closed on admittance of Exhibit B into the record.

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. In November, 2015, Petitioner submitted a Redetermination for SDA.

2. On February 26, 2016, the Medical Review Team (MRT) denied Petitioner's SDA application. [Dept. Exh. A, pp 6-12].

3. On March 2, 2016, the Department sent Petitioner notice that his application was denied. [Dept. Exh. A, pp 4-5].

4. On March 8, 2016, Petitioner filed a Request for Hearing to contest the Department's negative action. [Dept. Exh. A, pp 2-3].

5. Petitioner reported a history of manic-depression, bipolar disorder, anti-social personality, diabetes and obstructive sleep apnea.

6. On December 11, 2014, Petitioner self-referred to behavioral health services for a medication evaluation and counseling around irritability and situational stressors. The Petitioner presented as overweight, somewhat disheveled and had a faint body odor. His affect was mostly depressed or blunted. His mood was primarily depressed and irritable. His recent and remote memory were mostly intact. His judgment was somewhat questionable at times and his insight was adequate. Diagnosis: Axis I: Bipolar disorder, most recent episode depressed; Panic disorder with agoraphobia; Axis II: Cluster A traits; Axis III: Acid reflux, overactive bladder and status post knee surgery; Axis IV: Severe: lack of formal support, temporary housing, financial stress and a significant legal history; Axis V: GAF=58/60. [Dept. Exh. A, pp 143-148].

7. On January 8, 2015, at Petitioner's request he was discharged from [redacted]. Petitioner originally sought services on December 14, 2011 after being released from [redacted]. His original diagnoses were bipolar disorder, antisocial personality disorder, history of polysubstance abuse in reported full sustained remission and cannabis use/abuse currently active. Petitioner's condition at discharge was unknown because he had not been seen since October 1, 2014. [Dept. Exh. A, pp 103-104].

8. On February 2, 2015, during a follow-up visit to [redacted], the physician indicated that Petitioner had poor CPAP compliance. The CPAP data reported a missed 25 of the past 49 nights, with an average use of 3:46 hours a night. Petitioner reported he had gone to [redacted] for over a month and had forgotten his machine. The mask fit well, and Petitioner had no concerns about the machine. Petitioner indicated he slept on his stomach and it strained his neck to wear the CPAP mask. Petitioner indicated he had dyspnea with moderate exertion, but he contributed most of his dyspnea to obesity. The physician noted

Petitioner was morbidly obese and had poor hygiene, insight and judgment. [Dept. Exh. A, pp 56-59].

9. On April 14, 2015, Petitioner met with his therapist at [redacted]. Petitioner reported that he had not taken a bath or shower in a month and half. Petitioner stated that he spent too much time in [redacted] and was now institutionalized. Petitioner said he had spoken with a disability lawyer who told him the only way he would get social security disability was if he had a gastrointestinal bypass. The therapist noted Petitioner's affect fluctuated between angry and sad. He had paranoid themes. His appetite and diet were poor and he was isolating in his room. The therapist indicated Petitioner was messy and had dirt on his arms. Petitioner was verbally aggressive and explained that that was why he stayed in his room. The therapist noted that Petitioner's attention and concentration were poor. [Dept. Exh. A, pp 136-138].

10. On October 15, 2015, Petitioner attended a follow-up appointment for his sleep apnea. The physician noted that Petitioner continued to smoke. Petitioner explained that he was not able to use the patches because they would not stay on and they turned his skin red. Petitioner's dyspnea and wheeze with moderate exertion was unchanged. A Pulmonary Function Test showed Petitioner's lung volumes had some hyperinflation and severe reduction in ERV most likely based on chest wall restriction secondary to morbid obesity. The diffusion capacity was normal. Chest x-rays were negative. Petitioner's top teeth had been pulled and he was unable to use the CPAP due to discomfort. [Dept. Exh. A, pp 64-68, 73-77].

11. On November 26, 2015, Petitioner presented for a sleep apnea follow up. The physician noted Petitioner had poor CPAP compliance. Petitioner had no concerns regarding the mask or machine. Petitioner had been approved for gastric bypass surgery. [Dept. Exh. A, pp 60-64].

12. On December 3, 2015, Petitioner met with his therapist. The therapist observed that Petitioner appeared to be in good spirits. Petitioner stated he was going out more to the stores and to some activities with friends. It was obvious to the therapist that Petitioner had lost some weight. His affect was a bit brighter and his mood was better. His memory was fair and his attention and concentration were fair, which was a noted improvement. Diagnosis: Axis I; Bipolar, depressed type; Axis II: Antisocial personality disorder; Axis III: gastroesophageal reflux disease; morbid obesity, previous knee surgery, abscessed teeth and type 2 diabetes; Axis V: Poor support, financial concerns, housing issues, physical issues, legal history, drug use in the past and pending a gastric bypass. [Dept. Exh. A, pp 127-128].

13. On May 9, 2016, Petitioner underwent a psychological evaluation. The psychologist noted that Petitioner's speech was spontaneous and circumstantial but fairly well organized. He had trouble with both short and long term memory. Petitioner was diagnosed with polysubstance use disorder, personality disorder, a specific phobia of law enforcement, persistent depressive disorder and dysthymia. The psychologist opined Petitioner's prognosis was guarded. [Dept. Exh. B].

14. Petitioner is a [redacted]-year-old man born on [redacted]. He is 5'11" and weighs 350 pounds. He has a high school equivalent education and some college.

15. Petitioner was appealing the denial of Social Security disability at the time of the hearing.

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 impariment 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).

At hearing, Petitioner listed his disabilities as manic-depression, bipolar disorder, anti-social personality, diabetes and obstructive sleep apnea. According to the medical evidence, Petitioner has been diagnosed with anxiety, bipolar disorder, depression, severe obstructive sleep apnea, gastroesophageal reflux disease (GERD), dyspnea, insomnia, and type 2 diabetes.

While there is evidence in the record that Petitioner is being treated for his bipolar disorder and obstructive sleep apnea, there is nothing in the record indicating that Petitioner is or was unable to engage in substantial gainful work activity for at least 90 continuous days.

Therefore, the Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds Petitioner not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.

VLA/db

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

[redacted]

[redacted]