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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

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 20, 2016
MAHS Docket No.: 16-003432
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 April 27, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

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 September 28, 2015, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On March 1, 2016, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 5-11).
3. On March 3, 2016, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 50-51).

4. On March 14, 2016, the Department received Petitioner's timely written request for hearing. A signed copy of the hearing request was received by the Michigan Administrative Hearing System on April 4, 2016. (Exhibit A, pp. 2A-3.)
5. Petitioner alleged disabling impairment due to type I diabetes and motor and sensory neuropathy.
6. On the date of the hearing, Petitioner was ■ years old with an ■ birth date; he is ■" in height and weighs about ■ pounds.
7. Petitioner is a high school graduate and has an associate degree.
8. At the time of application, Petitioner was not employed.
9. Petitioner has no employment history.
10. Petitioner has a pending disability claim with the Social Security Administration (Exhibit B).

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.

In the present case, Petitioner alleges disabling impairment due to type I diabetes and motor and sensory neuropathy. The medical evidence presented at the hearing was reviewed and is summarized below.

On August 13, 2015, one of Petitioner's doctors completed a medical source statement concerning his diabetes mellitus indicating that Petitioner suffered from diabetes with neuropathy, possibly Parkinson's disease. The doctor noted that Petitioner had shaking of both extremities, greater on the right than the left with prolonged sitting, and decreased balance. The doctor indicated that Petitioner's symptoms were severe enough to interfere with the attention and concentration needed to perform even simple tasks 25% or more of the time and he was incapable of even low stress work. He found that Petitioner could rarely lift less than 10 pounds and never lift more. He also identified limitations to Petitioner's use of his hands, fingers, and arms. He indicated Petitioner had limitations both sitting and standing. (Exhibit A, pp. 14-17; Exhibit 1.)

On January 12, 2016, one of Petitioner's doctors completed a medical source statement concerning his peripheral neuropathy. The doctor indicated that Petitioner had moderate to severe neuropathy in his feet, hands, and legs and leg restlessness that would limit his ability to sit and to stand/walk to less than 2 hours in an 8-hour working day. He noted that Petitioner was required to use a cane or other hand-held assistive device. He concluded that Petitioner could frequently lift up to 10 pounds, occasionally lift 10 pounds, and rarely lift 20 pounds. The doctor indicated that Petitioner's symptoms were severe enough to interfere with his attention and concentration to perform even simple work tasks 5% of a typical workday. He opined that Petitioner's condition would produce good and bad days and result in him being absent from work about 2 days a month. (Exhibit 1.)

On February 8, 2016 Petitioner was examined by an independent medical examiner at the Department's request. Although the doctor indicated that Petitioner reported a 10 year history of diabetes and being on insulin for the past 10 years, Petitioner testified that he had in fact been a diabetic since he was 10 years old. The doctor noted that Petitioner had never seen on endocrinologist. He reported neuropathy of his hands and feet for the past 3 years. The doctor observed that Petitioner had a 4-pronged cane for balance and support which he reported using since 2015; the doctor noted that he did not use the cane during the exam but needed it to reduce pain and for balance. Petitioner also reported a history of lack of concentration and/or memory problems. The

doctor noted that Petitioner was able to get on and off the exam table slowly, could slowly tandem, heel, and toe walk, could squat to 70% of the distance and recover and bend to 80% of the distance. The doctor observed that Petitioner had slightly tremulous movements, but not tremors, in his legs, and he had a straight leg raise of 0 to 50° while lying and 0 to 90° while sitting. The doctor also observed that petitioner had restrictions in the flexion of his lumbar spine from 0 to 80° (normal is 0 to 90°) and the forward flexion of his right and left hips from 0 to 50° (normal is 0 to 100°). His JAMAR grip strength was 10 pounds on the right, 12 pounds on the left. The doctor concluded that based on his history and exam, Petitioner has a history of insulin-dependent diabetes and needed ongoing management of his diabetes, including his blood sugar, on a consistent basis, and a history of neuropathy in his hands, legs, and feet, with a need to use a cane for support and for his chronic neuropathic pain. The doctor recommended a mental health evaluation. (Exhibit A, pp. 18-26.)

On February 8, 2016, Petitioner was evaluated by a licensed psychologist at the Department's request. The psychologist observed that Petitioner presented as being in adequate, overt contact with reality, with no evidence of an overt thought disorder. He answered questions in a logical, goal-directed fashion, without loose, circumstantial or tangential associations. He denied hearing or seeing things, suicidal thoughts, feelings, or attempts; or having magical or unusual powers. The psychologist diagnosed Petitioner with depression, secondary to his general medical condition, and his prognosis was fair. He concluded that Petitioner was capable of managing his own benefit funds. The doctor concluded that Petitioner demonstrated strength in concentration, immediate memory, capacity to pay attention, and short-term memory. He concluded that Petitioner was capable of engaging in work type activities of a moderate degree of complexity and would be able to remember and execute several step procedure on a sustained basis with adequate capacity for work-related judgment and decision-making. (Exhibit A, pp. 27-31.)

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, listings 9.00 (endocrine disorders), 11.14 (peripheral neuropathies), and 12.04 (affective disorders), were

considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 20 CFR 416.967(a). 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 involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to

nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).

In this case, Petitioner alleges exertional limitations due to his medical condition. He testified that he used a cane prescribed by his doctor and could walk no more than a block and a-half before being struck with foot pain. He could stand up to 20 minutes and sit up to 10 minutes but then his legs and feet would begin to shake and he would experience pain. He had pain and numbness in his hands resulting in the loss of grip and testified he could not even lift a gallon of milk. He testified that his ability to write was affected. He lived with his parents and could care for his personal hygiene and dressing himself. He did limited chores and shopping.

Petitioner's doctors concluded that Petitioner suffered from peripheral neuropathy in the feet, hands and legs and fatigue and was limited to sitting or standing/walking less than 2 hours in an 8 hour work day. The doctor who completed the peripheral neuropathy medical source statement opined that Petitioner was capable of low stress work and that due to his symptoms his attention and concentration would interfere with even simple work tasks 5% of the time. He also indicated that Petitioner was capable of frequently lifting less than 10 pounds and occasionally lifting 10 pounds. The doctor who completed the diabetes mellitus medical source statement identified greater limitations. The independent medical examiner concluded that Petitioner needed ongoing management of his insulin-dependent diabetes and he needed to use his 4 pronged cane for balance and pain control. In examining Petitioner, the doctor noted tremulous movements in his legs, decreased flexion of his lumbar spine and forward flexion of his right and left hips, and reduced grip strength.

With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a), provided he has the opportunity to alternate to standing. SSR 83-12.

Although the licensed psychologist who evaluated Petitioner at the Department's request concluded that Petitioner suffered from depression, secondary to his general condition, he concluded that Petitioner had no limitations in his concentration, immediate memory, capacity to pay attention, and short-term memory; he was capable of engaging in work type activities of moderate degree of complexity; and he would be

able to remember and execute several step procedure on a sustained basis. Petitioner denied any limitations due to mental impairments. Based on the medical record presented, as well as Petitioner's testimony, Petitioner has no limitations on his mental ability to perform basic work activities.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner has no past relevant work history. Because Petitioner cannot be found disabled, or not disabled, at Step 4, the assessment continues to Step 5.

Step 5

At Step 5, an assessment of Petitioner's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

In this case, Petitioner was [REDACTED] years old at the time of application and [REDACTED] years old at the time of hearing, and, thus, considered to be a younger individual ([REDACTED]) for purposes of Appendix 2. He is a high school graduate with an associate degree and no work experience.

As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities, provided he has the opportunity to alternate to standing. As noted in SSR 83-12, while there are some jobs in the national economy, typically professional and managerial ones, in which a person can sit or stand with the degree of choice, unskilled types of jobs are particularly structured so that a person cannot ordinarily sit or stand at will. In this case, the Department has failed to present evidence of significant numbers of jobs in the national economy which Petitioner could perform despite his limitations and in light of his unskilled work history. Therefore, the Department has failed to establish that, based on his RFC and age, education, and work experience, Petitioner can adjust to other work. Therefore, Petitioner is disabled at Step 5.

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 BEGIN DOING 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. Reregister and process Petitioner's September 28, 2015 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 November 2016.

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

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[REDACTED]

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