



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 23, 2016
MAHS Docket No.: 16-004950
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 May 11, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED] Medical Contact Worker.

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 November 30, 2015, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On February 23, 2016, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 1-7).
3. On February 26, 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. 8-9).

4. On April 18, 2016, the Department received Petitioner's timely written request for hearing.
5. Petitioner alleged disabling impairment due to chest pain, fatigue, headaches, glaucoma, anxiety, and depression.
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].
7. Petitioner is a GED recipient.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as a utility worker, a caterer, and a temporary service worker.
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 chest pain, fatigue, headaches, glaucoma, anxiety, and depression. The medical evidence presented at the hearing was reviewed and is summarized below.

From March 10, 2015 to March 13, 2015, Petitioner was hospitalized after complaints of intermittent palpitations with some chest tightness, occasional lightheadedness, and headaches. It was noted that he had a history of non-ischemic cardiomyopathy with persistently low ejection fraction and had a dual chamber cardio converter defibrillator (ICD) implanted in 2011 when ejection fractions were in the range of 25%. A recent ICD device check revealed numerous tachy events. It was noted that his hypertension was well-controlled with Metoprolol, his a-fib was treated with the anticoagulant warfarin, and his glaucoma was treated with latanoprost eye drops. Once his condition was stabilized after treatment with sotalol, he was released. (Exhibit A, pp. 39-65, 86.)

On April 5, 2015 Petitioner went to the emergency department complaining of sharp chest pains when laying down and some shortness of breath. (Exhibit A, pp. 73-84.)

At an April 14, 2015 appointment with his primary care physician, Petitioner complained of numbness of his 5th finger and medial aspect of 4th finger, which the doctor concluded were consistent with early carpal tunnel (Exhibit A, PP. 85-86). At April 28, 2015, May 15, 2015, and June 18, 2015 appointments, Petitioner continued to complain of chest tightness at rest and shortness of breath. The doctor noted that ECG results from April 5, 2015 showed ejection fraction to be 52%, a mildly reduced left ventricle ejection fraction, with left ventricular cavity size moderately increased, and mild to moderate mitral regurgitation. (Exhibit A, pp. 85-92, 93-99, 103-107, 149-155, 173 175, 176 179.)

On September 10, 2015, Petitioner went to the emergency department complaining of headaches. A CT of the brain showed no definite acute intracranial process. (Exhibit A, pp. 108-110, 161-162.) On September 20, 2015, he returned to the emergency department complaining of severe chest pain and concerned that he was having a heart attack. He had a slightly reduced ejection fraction from the last ECG and no signs of ischemia and was discharged after he had no further episodes of chest pain (Exhibit A, pp. 110-118, 167-168.)

At his October 6, 2015 appointment Petitioner continued to complain of chest pain. The doctor noted that a September 20, 2015 pharmacology stress test was abnormal. There

was no evidence of ischemia or infarct but there was a marked left ventricular enlargement with borderline global hypokinesis and borderline left ventricular systolic function with ejection fraction of 49%. (Exhibit A, pp. 119-126.)

At his November 6, 2015 appointment, the doctor noted that Petitioner's chronic systolic heart failure was at NYHA classification II-III and referred him to cardiac rehab for conditioning (Exhibit A, pp. 127-132).

On November 25, 2015, Petitioner went to the emergency department complaining of severe pain in his lower back. A week later he reported slight improvement in range of motion but continued difficulty performing activities of daily living. The doctor concluded the back pain was due to lumbar muscle spasm and not due to nerve impingement or fracture. (Exhibit A, pp. 133-138.)

On January 4, 2016, Petitioner went to the emergency department complaining of left sided chest pain radiating up his neck associated with exertion and shortness of breath. Petitioner's condition improved and he was released. (Exhibit A, pp. 139-143, 170-172.)

In notes from Petitioner's April 5, 2016 office visit with his cardiologist, the cardiologist noted that Petitioner had a past medical history significant for hypertension, hyperlipidemia, congestive heart failure (CHF) status post March 2011 implantable cardioverter defibrillator (ICD), atrial fibrillation (A-fib) status post cardioversion, morbid obesity, recurrent clots on OAC (oral anticoagulants), and COPD (chronic obstructive pulmonary disease). His blood pressure was 122/82 mm/Hg and his weight was 271 pounds, giving him a body mass index (BMI) of 33.9. Petitioner reported chest pain, and the doctor concluded that he was symptomatic consistent with NYHA (New York Heart Association) class III. Given his risk factors and clinical presentation, he was referred for an echocardiogram to exclude disease progression. (Exhibit 1, pp. 4-6.) An April 21, 2016 stress test was performed. While the stress ECG showed no evidence of ischemia, overall conclusions for the nuclear imaging showed an abnormal study with scan evidence of ischemia and ejection fraction of 46%. (Exhibit 1, pp. 7-8.)

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 2.02 (loss of central visual acuity), 2.03 (contraction of the visual fields in the better eye), 2.04 (loss of visual efficiency), 3.02 (chronic pulmonary insufficiency), 4.02 (chronic heart failure), 4.05 (recurrent arrhythmias), 12.04 (affective disorders), and 12.06 (anxiety-related 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). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(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 the light 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 both exertional and nonexertional limitations due to his medical condition. Petitioner testified that he could walk no more than two blocks before experiencing chest pain, stand no more than a couple of minutes before feeling dizzy, and, because of the defibrillator in his chest, lift not more than 10 pounds with his right hand and 15 pounds with his left hand. He had no problems sitting other than his knees occasionally tightening. He lived alone. He used grab bars in his bathroom and wore jogging pants in order to simplify his dress routine. He did simple cooking, cleaning, and laundry but was limited by his fatigue, chest pain, and shortness of breath. He shopped with assistance.

Petitioner's medical record show a medical history significant for hypertension, hyperlipidemia, congestive heart failure with a cardioverter defibrillator implanted in 2011, A-fib, and recurrent blood clots treated with oral anticoagulants. While the April 21, 2016 stress test ECGs showed no evidence of ischemia, the nuclear imaging scan was abnormal and showed evidence of ischemia and mildly decreased left ventricular systolic function, with an ejection fraction of 46%. Petitioner's cardiologist had classified Petitioner at NYHA class II-III in November 2015 but, at the April 5, 2016 appointment concluded that Petitioner was symptomatic and had placed him in the NYHA class III category, which applies when the patient experiences marked limitation of physical activity (comfortable at rest, but less than ordinary activity causes fatigue, palpitation, or dyspnea), and the objective evidence shows moderately severe cardiovascular disease. http://www.heart.org/HEARTORG/Conditions/HeartFailure/AboutHeartFailure/Classes-of-Heart-Failure_UCM_306328_Article.jsp#.Vzoje032a70.

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, at best, light work as defined by 20 CFR 416.967(b).

Petitioner also alleges nonexertional limitations due to his mental condition and glaucoma. 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 and due to vision problems. 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 testified that he experienced depression that resulted in him withdrawing from interactions with others. He admitted that he had only started going to therapy within a month of the hearing. The medical record presented does not show that Petitioner had raised any concerns regarding his mental condition with his doctor. Petitioner also alleged limitations due to his glaucoma. At the hearing, however, he admitted that, following eye surgery, his vision was not affected and the only ongoing concern was that his eye drops made his eyes tear. Based on the medical record presented, as well as Petitioner's testimony, Petitioner does not have any limitations due to his glaucoma and he has, at most, mild 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's work history in the 15 years prior to the application consists of work as a utility worker, caterer, and a temporary services worker where he worked loading and unloading trucks. Each of Petitioner's prior employment required standing most of the

day. He regularly lifted up to 50 pounds as a utility worker, up to 75 pounds as a caterer, and up to 100 pounds as a temporary services worker. Therefore, his prior employment required heavy or very heavy exertion.

Based on the RFC analysis above, Petitioner's exertional RFC limits him to no more than light work activities. As such, Petitioner is incapable of performing past relevant work. Because Petitioner is unable to perform past relevant work, Petitioner cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In 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). However, if the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was ■ years old at the time of application and at the time of hearing, and, thus, considered to be advanced age (■■■■■■■■■■) for purposes of Appendix 2. He is a GED recipient with a history of unskilled work experience.

As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform light work activities and has mild limitations on his mental ability to perform work activities. In this case, the Medical-Vocational Guidelines, 202.04, result in a disability finding based on Petitioner's exertional limitations.

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 November 30, 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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