



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 26, 2016
MAHS Docket No.: 16-010032

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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 August 30, 2016, from Lansing, Michigan. Petitioner personally appeared and testified. ██████████ interpreter ██████████ assisted with translation. Petitioner submitted three exhibits which were admitted into evidence

The Department of Health and Human Services (Department) was represented by Family Independence Manager ██████████ and Eligibility Specialist ██████████. ██████████ testified on behalf of the Department and submitted ██████ exhibits which were admitted into evidence. The record was closed at the completion 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 November 16, 2015, Petitioner applied for SDA.
2. On June 9, 2016, the Medical Review Team (MRT) denied Petitioner's SDA application.
3. On July 15, 2016, the Department sent Petitioner notice that his application was denied.

4. On July 15, 2016, Petitioner filed a hearing request to contest the Department's negative action. [Dept. Exh. A, pp 2-3].
5. Petitioner has been diagnosed with fibromyalgia, major depression, generalized anxiety disorder, meningitis, transgendered, male hypogonadism, scrotal mass, pitted keratolysis, vitamin D deficiency, hepatitis B infection, chest pain, abdominal pain, infection due to entamoeba histolytica, blastocystis hominis, grade B esophagitis, hematemesis, fatty liver, insomnia, tubular adenoma of colon, mass of right testicle, bilateral bunions, and chronic pain in knees and feet post-surgery.
6. On October 9, 2015, Petitioner followed up with his podiatrist following left foot surgery. He was having mild pain to his foot. He denied nausea, vomiting, fevers, chills, calf pain, chest pain or shortness of breath. He was compliant with post-operative instructions. He was assessed status-post left foot Austin/akin bunionectomy, fifth hammertoe repair. He was nine weeks post-op and doing excellent. He was healing well and activity was prescribed as tolerated. [Dept. Exh. 96].
7. On December 7, 2015, Petitioner was evaluated by physical therapy for patellofemoral pain syndrome, resulting in decreased strength, difficulty walking, pain and swelling of left knee. Petitioner was observed to have a compensated gait secondary to wearing walking shoes status post bilateral foot surgery. [Dept. Exh. 79-81].
8. On March 29, 2016, Petitioner underwent a gastroenterology consultation. Petitioner was assessed with infrequent hematemesis with a history of grade B esophagitis – refractory to BID PPI and H2RA. A follow up appointment was scheduled to re-scope to ensure healing. [Dept. Exh. 61].
9. On April 1, 2016, Petitioner's stomach biopsy, performed on March 31, 2016, showed no significant abnormality and [REDACTED] was not identified. [Dept. Exh 62-66].
10. On April 28, 2016, Petitioner underwent a disability evaluation on behalf of the Department. The psychologist opined that Petitioner's prognosis was poor given Petitioner's social and health issues and lack of support. The psychologist suspected Petitioner had the intellectual capacity for employment, based on the evaluation. The psychologist saw Petitioner's primary limitations with respect to acquiring or sustaining employment being related to the problems he was having with depression and anxiety. Petitioner appeared sufficiently stressed that he seldom left home and only trusted a few people. The language barrier added certain complications for Petitioner as well. The psychologist believed Petitioner had the capacity for employment but was in a situation where Petitioner was going to require some assistance in order to support himself financially as well as support getting into the work field, perhaps through [REDACTED] or some other service, as the psychologist saw it as unlikely that Petitioner would be able to do so successfully alone. [Dept. Exh. pp 45-49].

11. On [REDACTED], Petitioner met with his orthopedic surgeon. The surgeon noted she has been treating Petitioner since December, 2015 for bilateral knee pain and patellofemoral pain syndrome. The surgeon indicated that Petitioner had bilateral corticosteroid injections and had difficulty with squatting, lifting, pushing, pulling, twisting and climbing. [Petitioner Exh. 3].
12. On [REDACTED], Petitioner's orthopedic surgeon restricted Petitioner from lifting, twisting, climbing, pushing or pulling more than 25 pounds. [Petitioner Exh. 2].
13. On [REDACTED], Petitioner's physician's assistant wrote that Petitioner was unable to resume work without any restrictions from August 26, 2016 to November 26, 2016. [Petitioner Exh. 1].
14. Petitioner is a [REDACTED]-year-old transgendered man born on [REDACTED]. He is [REDACTED]" and weighs [REDACTED] pounds. He is a high school graduate and last worked in 2010.
15. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
16. 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 has a history of fibromyalgia, major depression, generalized anxiety disorder, meningitis, transgendered, male hypogonadism, scrotal mass, pitted keratolysis, vitamin D deficiency, hepatitis B infection, chest pain, abdominal pain, infection due to entamoeba histolytica, blastocystis hominis, grade B esophagitis, hematemesis, fatty liver, insomnia, tubular adenoma of colon, mass of right testicle, bilateral bunions, and chronic pain in knees and feet post-surgery.

In this case, Petitioner's treating orthopedic surgeon opined that Petitioner is unable to resume work without restrictions from August 26, 2016 to November 26, 2016. Moreover, an independent psychologist opined that Petitioner's primary limitation with respect to acquiring or sustaining employment was related to the problems Petitioner was having with depression and anxiety. The psychologist opined that Petitioner's prognosis was poor given his health issues.

Petitioner's complaints and allegations concerning his impairments and limitations, when considered in light of all the 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 continuously for a period of 90 days or longer. As such, the Department's denial of SDA pursuant to Petitioner's November 6, 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

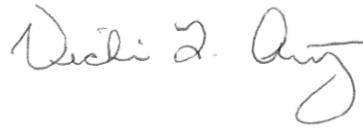
Accordingly, the Department's determination is REVERSED.

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 THE ORDER WAS ISSUED:

1. The Department shall process Petitioner's November 16, 2015 application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in October, 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.



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

