



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]

Date Mailed: September 29, 2016
MAHS Docket No.: 16-010335

[REDACTED]
[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 September 14, 2016, from Lansing, Michigan. Petitioner personally appeared and testified. Petitioner submitted six exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Assistance Payment Supervisor [REDACTED] [REDACTED] testified on behalf of the Department. The Department submitted 643 pages 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 October 1, 2015, Petitioner applied for SDA. [Dept. Exh. 4-16].
2. On June 9, 2016, the Medical Review Team denied Petitioner's SDA application. [Dept. Exh. A, pp 28-42].
3. On June 13, 2016, the Department sent Petitioner notice that his application was denied.

4. On July 13, 2016, Petitioner filed a Request for Hearing to contest the Department's negative action.
5. Petitioner has a history of a broken clavicle and scapula, end stage degenerative joint disease left shoulder, epilepsy, seizures, obstructive sleep apnea, osteoarthritis, hypertension, eczema, schizoaffective disorder, adjustment disorder with depressed mood, borderline personality disorder, posttraumatic stress disorder and panic attacks.
6. On April 7, 2015, Petitioner was transported from the jail to the emergency department after he had a tonic-clonic seizure at their facility with foaming at the mouth. He also had tongue biting. He woke up to sternal rub and was postictal for a period. Petitioner was doing well and they were in the process of discharging him when Petitioner had another seizure. He was loaded with IV Keppra and observed for a period of time until he was clinically stable and able to be transferred back to the jail. [Dept. Exh. 88-91].
7. On May 17, 2015, Petitioner presented to the emergency department from [REDACTED] after having a seizure that morning. Petitioner had a known history of epilepsy with grand mal seizures. He had minor and tongue trauma from the seizure. Petitioner had not been compliant with antiepileptic medications due to the side effects of dizziness and weakness. Petitioner was prescribed medication to counter the side effects. Diagnoses: Grand mal seizure, history of epilepsy, chronic left shoulder pain and normotensive blood pressures not requiring medical treatment. [Dept. Exh. 82-85].
8. On October 30, 2015, Petitioner presented to the emergency department with a known seizure disorder. Petitioner reported his last seizure was a couple of days ago and he typically had a seizure a couple of times a week. He had urinary incontinence with his seizure the day of this emergency department visit. [Dept. Exh. 78-79].
9. Petitioner was also seen in the emergency department for seizures in March, 2015; October, 2015; twice in November, 2015 and then a week before this hearing in September, 2016. [Dept. Exh. 92-93; 98-101; 103-105; 114-117; Petitioner Exh. 1-6].
10. On December 1, 2015, Petitioner underwent an initial psychiatric evaluation with his current psychiatrist. Petitioner reported being embarrassed to leave the house because he had seizures where he would bite his tongue and urinate and defecate on himself. Petitioner's mood was anxious and irritable, his affect flat. His speech was hypervolubile and his thought process was circumstantial and tangential. His judgment was impaired and he was unable to make reasonable decisions. [Dept. Exh. 182-188].

11. On February 8, 2016, Petitioner followed up with his psychiatrist for a medication review. The psychiatrist indicated Petitioner was diagnosed with epilepsy, posttraumatic stress disorder, major depressive disorder and some symptoms of borderline personality disorder (mood instability, inability to control his anger, unstable interpersonal relationships, unstable sense of self, recurrent suicidal ideations and chronic feelings of emptiness). The psychiatrist indicated per her conversation with Petitioner's neurologist, that the neurologist was struggling with trying to control Petitioner's seizures and did not want the psychiatrist to prescribe any additional medications that might lower Petitioner's seizure threshold. The psychiatrist opined that Petitioner's mood was irritable, his affect was flat. He mostly blamed others for his problems and had difficulty acknowledging presence of substance abuse problems. His judgment was impaired and he had an inability to make reasonable decisions. [Dept. Exh. 56-60].
12. On April 19, 2016, Petitioner underwent an independent psychological evaluation on behalf of the Department. Petitioner was diagnosed with posttraumatic stress disorder, major depressive disorder and an unspecified personality disorder. The psychologist indicated his prognosis was fair to good with continued participation in mental health treatment strongly advised. In regard to Petitioner's mental status, the psychologist opined that Petitioner's current symptom severity would compromise his capacity for employment at this time. [Dept. Exh. 46-50].
13. Petitioner is a ■-year-old man born on ■■■■■■■■■■. He is 5'11" and weighs 270 pounds. He has a high school education. He last worked in 2009.
14. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
15. 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 a history of a broken clavicle and scapula, end stage degenerative joint disease - left shoulder, epilepsy, seizures, obstructive sleep apnea, osteoarthritis, hypertension, eczema, schizoaffective disorder, adjustment disorder with depressed mood, borderline personality disorder, posttraumatic stress disorder and panic attacks.

In this case, Petitioner has had a known seizure disorder since the age of 8. His seizures continue to break through. In addition, Petitioner has well documented mental health issues through his own psychiatrist. The Independent Mental Health psychologist opined that Petitioner's current symptom severity would compromise his capacity for employment at this time.

Therefore, 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 October 1, 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, finds Petitioner disabled for purposes of the SDA benefit program.

DECISION AND ORDER

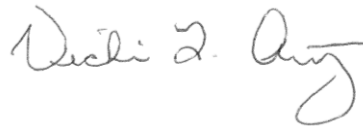
Accordingly, the Department's determination is **REVERSED**.

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 October 1, 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

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