



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: October 7, 2016
MAHS Docket No.: 16-011356
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 September 8, 2016, from Lansing, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearing Facilitator. Department Exhibit 1, pages 1-354 was admitted. Petitioner Exhibit A, pages 1-109 was admitted.

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. Petitioner applied for SDA on April 22, 2016.
2. The Medical Review Team denied the application on June 20, 2016.
3. Petitioner filed a request for hearing on August 1, 2016, regarding the SDA denial.
4. A telephone hearing was held on September 8, 2016.

5. Petitioner is 6' 0" tall and weighs 285 pounds having fluctuated approximately 50 pounds.
6. Petitioner is 40 years of age.
7. Petitioner's impairments have been medically diagnosed as degenerative disc disease, cholelithiasis, right knee injury, seizures, peptic ulcers, anxiety, depression and posttraumatic stress disorder.
8. Petitioner has the following symptoms: pain, fatigue, panic attacks, previous suicide attempts, memory problems, panic attacks, and insomnia.
9. Petitioner completed high school and some college.
10. Petitioner is able to read, write, and perform basic math skills.
11. Petitioner is not working. Petitioner last worked in February 2013 as a logistic supervisor. Petitioner previously worked as a collections call center worker.
12. Petitioner lives at a shelter.
13. Petitioner testified that he cannot perform some household chores.
14. Petitioner takes the following prescribed medications:
 - a. Depakote
 - b. Dilantin
 - c. Vimpat
 - d. Celexa
 - e. Omeprazole
 - f. Flexeril
 - g. Norco
 - h. Ativan
 - i. Zofran
 - j. Hydroxyzine
 - k. Baclofen
15. Petitioner testified to the following physical limitations:
 - i. Sitting: 20 minutes
 - ii. Standing: 15 minutes
 - iii. Walking: 500 feet
 - iv. Bend/stoop: difficulty
 - v. Lifting: 15-20 lbs.
 - vi. Grip/grasp: no limitations

16. Petitioner testified to experiencing pain, at a high level of 8, on an everyday basis with some pain, always present, at a low level of 4.
17. Petitioner testified at hearing that had 7 seizures within the last year but none in the last 4 months.
18. An MRI of Petitioner's lumbar spine completed on [REDACTED], showed minor disc bulging at L1-L2, L5-L6, L6-S1. The MRI report states under IMPRESSIONS: "1. There are six lumbar vertebral segments. 2. Mild multilevel degenerative disc disease and facet arthropathy. There is no disc herniation, central canal stenosis, or nerve root impingement." (Petitioner Ex. 1, p.1-3)
19. Petitioner testified that he could grocery shop, carry grocery bags and prepare simple meals.
20. Petitioner testified that he could mow grass with an electric mower for 20-30 minutes.

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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA-P program. Under SSI, disability is defined as:

...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.

Federal regulations require that the Department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is, or is not, disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, the Petitioner is not working. Therefore, the Petitioner is not disqualified at this step in the evaluation.

The second step to be determined in considering whether the Petitioner is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe, which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering, simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers, and usual work situations; and
6. Dealing with changes in a routine work setting. 20 CFR 416.921(b).

In this case, the Petitioner's medical evidence of record supports a finding that Petitioner has significant physical and mental limitations upon Petitioner's ability to perform basic work activities such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that the

Petitioner has an impairment (or combination of impairments) that has more than a minimal effect on the Petitioner's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysis, the trier of fact must determine if the Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Petitioner's medical record does not support a finding that the Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 11.02, 1.04 and 12.04 were considered.

The person claiming a physical, or mental, disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. A conclusory statement by a physician, or mental health professional, that an individual is disabled, or blind, is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.927.

The fourth step of the analysis to be considered is whether the Petitioner has the ability to perform work previously performed by the Petitioner within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Petitioner from doing past relevant work. In the present case, the Petitioner's past employment was as a logistics supervisor. Working as a logistics supervisor, as described by Petitioner at hearing, would be considered light work. The Petitioner's impairments would not prevent him from doing past relevant work. Petitioner's testimony regarding his physical limitations was not supported by substantial medical evidence. Petitioner failed to present substantial medical evidence that she has an ongoing psychological impairment that is significantly limiting. Petitioner was not receiving mental health treatment at the time of hearing. Petitioner's seizures appear to be controlled as he has not had a seizure for 4 months.

If Petitioner were not able to perform his previous job at the light exertional level, clearly he would be able to perform a sedentary job and his appeal would be denied at step 5 under grid rule 201.18.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is NOT medically disabled for the purposes of SDA eligibility.

Accordingly, the Department's decision is hereby **AFFIRMED**.

AM/las



Aaron McClintic

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

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]