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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: October 21, 2016
MAHS Docket No.: 16-012078

[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 to 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was held on September 21, 2016, in [REDACTED]. Petitioner personally appeared and testified. Petitioner submitted 11 exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Assistance Payment Supervisor [REDACTED] and Eligibility Specialist [REDACTED]. [REDACTED] and [REDACTED] testified on behalf of the Department. The Department submitted [REDACTED] exhibits which were admitted into evidence. The record was closed at the conclusion 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 August 31, 2015, Petitioner applied for SDA.
2. On April 27, 2016, the Medical Review Team denied Petitioner's application for SDA. [Dept. Exh. 11-15].
3. On August 17, 2016, Petitioner requested a hearing contesting the denial of SDA.

4. On August 24, 2016, the Department issued Petitioner a Notice of Case Action indicating his application for SDA had been denied beginning September 16, 2016 ongoing. [Dept. Exh. 2-5].
5. Petitioner is diagnosed with bilateral hearing loss, fatigue, abnormal weight loss, post right shoulder replacement, degenerative arthritis, hyperlipidemia, thrombocytosis, leukocytosis, psoriatic arthropathy, essential thrombocythemia, cervical lymphadenopathy, anemia, hypertension, paronychia, severe depression, anxiety, adjustment disorder, posttraumatic stress disorder, psoriasis, insomnia, spondylosis, chronic pain, lumbago, and cervicalgia.
6. On [REDACTED], Petitioner followed up with his hematologist regarding his diagnosis of leukocytosis and thrombocytosis. Petitioner was first seen in 2013 and was found to have mildly enlarged cervical nodes. He had a fine needle aspiration in 2012 which was non-diagnostic. He had an excisional node biopsy in August, 2013 showing no clear evidence of cancer. He was diagnosed in September, 2014 with rectal abscesses which were evaluated and drained and treated with antibiotics. He also had a flexible sigmoidoscopy at the same time and no cancer was found. Petitioner was following up based on his unexplained weight loss. The hematologist noted Petitioner continued with a skin rash and multiple joint pain. Petitioner reported the Prednisone helped with the joint pain. The hematologist opined that Petitioner's periodic neutrophilic leukocytosis and thrombocytosis was likely reactive from ongoing chronic inflammation (arthritis) and infections (psoriasis). [Dept. Exh. 365-368].
7. On [REDACTED], Petitioner was evaluated by a dermatologist for psoriasis. Petitioner reported he had a suspicious history for lymphoma, but had had negative biopsies and genetic tests. Petitioner's oncologist referred Petitioner for a dermatological consultation. The oncologist referred him in an attempt to rule out a dermatologic causes for the abnormalities. Petitioner was diagnosed with psoriasis and psoriatic rheumatology. The dermatologist opined that Petitioner's elevated white blood cells were unlikely related to the psoriasis. [Dept. Exh. 361-364].
8. On [REDACTED], Petitioner underwent an independent psychological evaluation on behalf of the Department. Petitioner was diagnosed with adjustment disorder. The psychologist opined that Petitioner struggled with ongoing medical issues that included shoulder pain, arthritis, psoriasis, bone marrow disease, back and neck pain. Petitioner's condition was further complicated by unemployment, subsequent financial hardships and social isolation. [Dept. Exh. 64-67].
9. On [REDACTED], Petitioner underwent an independent medical evaluation on behalf of the Department. The physician noted that Petitioner had multiple surgeries to his right ankle and shoulder, resulting in a diminished range of motion due to post-surgical changes to the right shoulder. Neurologically, Petitioner appeared intact other than weakness in the right shoulder due to pain. His gait was stable and he was able to do orthopedic maneuvers. His joints appeared well

controlled in regards to his psoriatic arthropathy. There were no active lesions. Petitioner reported that he had a lipoma removed over the posterior aspect of his neck and was told that he would need surgical intervention to his cervical and lumbar spine in the future. The physician noted there were no radicular symptoms during the evaluation. The physician indicated that at present, Petitioner did not need an assistive device but he was at risk for chronic sequelae from steroid use and immunosuppressant therapy. The physician opined that Petitioner did not appear to be actively declining at this point. [Dept. Exh. 58-62].

10. Petitioner is a ■-year-old man whose birthday is ■. He is ■ and weighs ■ pounds. He last worked on August 25, 2015. He has a high school education and some college.
11. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
12. Based on Petitioner being awarded Disability through the ■, with an effective date of September 23, 2015, Petitioner is requesting SDA for a closed period of August 1, 2015 through February 28, 2016.
13. 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).

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. [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 bilateral hearing loss, fatigue, abnormal weight loss, post right shoulder replacement, degenerative arthritis, hyperlipidemia, thrombocytosis, leukocytosis, psoriatic arthropathy, essential thrombocythemia, cervical lymphadenopathy, anemia, hypertension, paronychia, severe depression, anxiety, adjustment disorder, posttraumatic stress disorder, psoriasis, insomnia, spondylosis, chronic pain, lumbago, and cervicalgia.

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), statutory listings of medical impairments, 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. (SGA) 20 CFR 416.920(b). In this case, Petitioner is not currently working. Petitioner credibly testified that he has not worked since August, 2015 and the Department presented no contradictory evidence. Therefore, Petitioner is not disqualified for SDA at this step in the sequential evaluation process.

Second, in order to be considered disabled for purposes of SDA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last 90 days or more (or result in death) which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, medical evidence has clearly established that Petitioner has bilateral hearing loss, fatigue, abnormal weight loss, post right shoulder replacement, degenerative arthritis, hyperlipidemia, thrombocytosis, leukocytosis, psoriatic arthropathy, essential thrombocythemia, cervical lymphadenopathy, anemia, hypertension, paronychia, severe depression, anxiety, adjustment disorder, posttraumatic stress disorder, psoriasis, insomnia, spondylosis, chronic pain, lumbago, and cervicalgia.

Further, Petitioner credibly testified that he has been diagnosed with essential thrombocythemia which is a rare bone marrow disorder that can lead to cancer. Petitioner’s testimony was substantiated by the medical evidence which led doctors to the belief that Petitioner may have lymphoma based on enlarged lymph nodes and unexplained weight loss. As of the date of the hearing, Petitioner did not have cancer. Ruling any ambiguities in Petitioner’s favor, this Administrative Law Judge (ALJ) finds Petitioner’s claims have merit. Therefore, the analysis continues.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Petitioner’s impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926). This Administrative Law Judge finds that the Petitioner’s medical record does not support a finding that Petitioner’s impairment(s) is a “listed impairment” or is medically equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. The analysis continues.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner has the residual functional capacity (RFC) to perform the requirements of Petitioner’s past relevant work. 20 CFR 416.920(a) (4) (iv).

The term past relevant work means work performed (either as Petitioner actually performed it or as it is generally performed in the national economy) within the last fifteen years or fifteen years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Petitioner to learn to do the job and have been substantially gainfully employed (20 CFR 416.960(b) and 416.965). If Petitioner has the residual functional capacity to do the past relevant work, Petitioner is not disabled. 20 CFR 416.960(b)(3). If Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

Petitioner has a history of general laborer both in factories and on dairy farms. Petitioner credibly testified that he quit working in August, 2015 based on his chronic pain and low back spondylosis. He stated that based on his chronic pain and depression, he does not eat or shower, and has lost 20 pounds. Petitioner testified that he can rarely lift 10 pounds where he used to unload milk and lift 70 pounds all day long. As such, there is no past work for Petitioner to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of the sequential analysis is required.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment(s) prevents Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS*, 161 Mich. App 690, 696 (1987). Once Petitioner reaches Step 5 in the sequential review process, Petitioner has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Petitioner has the residual functional capacity for substantial gainful activity.

The medical information indicates that Petitioner suffers from bilateral hearing loss, fatigue, abnormal weight loss, post right shoulder replacement, degenerative arthritis, hyperlipidemia, thrombocytosis, leukocytosis, psoriatic arthropathy, essential thrombocythemia, cervical lymphadenopathy, anemia, hypertension, paronychia, severe depression, anxiety, adjustment disorder, posttraumatic stress disorder, psoriasis, insomnia, spondylosis, chronic pain, lumbago, and cervicalgia.

Petitioner is ■ years old, with a high school education. Petitioner's medical records are consistent with Petitioner's testimony that he has been unable to engage in even a full range of sedentary work since his application. See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

The Department has failed to provide vocational evidence which establishes that the Petitioner has the residual functional capacity for substantial gainful activity and that given Petitioner's age, education, and work experience, there are significant numbers of

jobs in the national economy which the Petitioner could perform despite Petitioner's limitations.

The medical information supports Petitioner's testimony. Due to the steroids and other medications he has been prescribed and has continued to take, he is at risk for chronic sequelae from steroid use and immunosuppressant therapy.

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 August 31, 2015 SDA application cannot be upheld.

Furthermore, Petitioner has since been found disabled by the [REDACTED] [REDACTED] with an onset date of September 23, 2015. Accordingly, this Administrative Law Judge concludes that Petitioner was disabled for purposes of the SDA program for the closed period of August 1, 2015 through February 28, 2016.

DECISION AND ORDER

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.

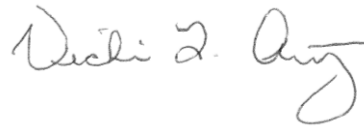
Accordingly, the Department's determination is **REVERSED**.

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 August 31, 2015 application for the closed period of August 1, 2015 through February 28, 2016, 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

