



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 21, 2016
MAHS Docket No.: 16-012200
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on September 26, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

ISSUES

The first issue is whether Petitioner timely requested a hearing to dispute a termination of State Disability Assistance (SDA) eligibility.

The second issue is whether MDHHS properly denied Petitioner's SDA application for the reason that Petitioner is not a disabled individual.

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 was an ongoing SDA recipient.
2. On [REDACTED], MDHHS initiated termination of Petitioner's SDA eligibility, effective February 2016.
3. On [REDACTED], Petitioner reapplied for SDA benefits.

4. Petitioner's only basis for SDA benefits was as a disabled individual.
5. On an unspecified date, the Medical Review Team (MRT) determined that Petitioner was not a disabled individual based on a Disability Determination Explanation (Exhibit 2, pp. 7-30) dated [REDACTED].
6. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action informing Petitioner of the denial.
7. On [REDACTED] Petitioner requested a hearing (see Exhibit 2, pp. 2-3) to dispute the termination of SDA benefits and the denied application.
8. As of the date of the administrative hearing, Petitioner was a 52-year-old male, weighing 311 pounds.
9. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
10. Petitioner alleged disability based on restrictions related to anxiety, poor concentration, and other psychological impairments.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (July 2015), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (January 2012), p. 1. A person is disabled for SDA purposes if he/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; or
 - is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*

Petitioner requested a hearing, in part, to dispute a termination of SDA benefits. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 31-33) dated January 16,

2016. The notice verified MDHHS terminated Petitioner's SDA eligibility, effective February 2016.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (October 2015), p. 6. The request must be received in the local office within the 90 days. *Id.*

Petitioner requested a hearing on [REDACTED]. Petitioner's hearing request was submitted approximately 221 days after MDHHS mailed Petitioner written notice. Thus, presented evidence was highly suggestive that Petitioner was well past his deadline for requesting a hearing.

Petitioner testified he was unaware of the 90 day timeframe for requesting a hearing and implied the written notice contained no instruction on the 90 day timeframe. Petitioner's testimony is contradictory to the notice which states "MDHHS must receive your request for appeal within 90 days of the mailing date of this notice." The notice also specifically cited a deadline of [REDACTED], for Petitioner to request a hearing.

It is found Petitioner untimely requested a hearing to dispute a termination of SDA eligibility. The analysis will proceed to determine Petitioner's other dispute.

Petitioner requested a hearing, in part, to dispute the denial of a SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Notice of Case Action (Exhibit 2, pp. 4-5) dated [REDACTED], verifying Petitioner's application was denied based on a determination that Petitioner was not disabled.

Generally, state agencies such as MDHHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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 [90 days for SDA eligibility]. 20 CFR 416.905.

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id.*, p. 9. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute SGA. *Id.*

The person claiming a physical or mental disability has the burden 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 ability to reason and make appropriate mental adjustments, if a

mental disability is alleged. 20 CFR 413.913. 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2016 monthly income limit considered SGA for non-blind individuals is [REDACTED].

Petitioner credibly denied performing current employment; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA. Accordingly, the disability analysis may proceed to the second step.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an

individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Petitioner's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented medical documentation.

Various mental health agency treatment records (Exhibit 1, pp. 270-278, 287-334, 345-360, 382-497) from 2014 and earlier were presented. The records were not notable other than generally being consistent with the below-summarized assessment from September 2014.

A mental health agency Update Assessment (Exhibit 1, pp. 233-252) dated [REDACTED], was presented. The assessment was completed by a social worker. Petitioner reported complaints of anxiety and depression due to a lack of finances. It was noted Petitioner reported "he does not have problems as long as he is taking medication." A history of an attempted suicide in 2009 and suicidal ideation in 2010 was noted. It was noted Petitioner seemed to be gaining weight. Mental health examination assessments included the following: orientation x4, intact memory, fair judgment, alert, unremarkable thought content, normal stream of mental activity, unremarkable presentation, and depressed affect. Behavioral concerns included verbal and physical aggression. Prescribed medications included Celexa, clonazepam, Desyrel, and Geodon. As of the previous month, it was noted that Petitioner performed seasonal employment as a caddy and hockey referee. A diagnosis of schizoaffective disorder was noted. An assessment indicated Petitioner had anger problems and tended to blame others for his problems. Petitioner's GAF was 50 as of [REDACTED].

Psychiatric Progress Notes (Exhibit 1, pp. 361-362) dated [REDACTED], from a treating psychiatrist were presented. It was noted that Petitioner was working, sleeping well, and eating well.

Psychiatric Progress Notes (Exhibit 1, pp. 363-364) dated [REDACTED], from a treating psychiatrist were presented. It was noted that Petitioner lost his job due to attendance reasons and that he owes monies to the Secretary of State. It was noted Petitioner began using cocaine. Medications were continued.

Psychiatric Progress Notes (Exhibit 1, pp. 365-366) dated [REDACTED], from a treating psychiatrist were presented. It was noted that Petitioner was in drug rehab, doing well, and not in duress.

Psychiatric Progress Notes (Exhibit 1, pp. 368-371) dated [REDACTED], from a treating psychiatrist were presented. It was noted that Petitioner was kicked out of drug rehab for using. It was also noted Petitioner recently spent a month in jail.

Psychiatric Progress Notes (Exhibit 1, pp. 372-374) dated [REDACTED] 2015, from a treating psychiatrist were presented. It was noted that Petitioner was working 35 hours per week for a fast food restaurant. Petitioner denied drug or alcohol abuse since May 2015.

A Treatment Plan Meeting (Review of Progress) (Exhibit 1, pp. 335-343) dated [REDACTED], was presented. The plan was completed by a social worker. Reported Petitioner goals included: being more positive, losing weight, finding a residence, and obtaining SSI.

An annual biopsychosocial assessment (Exhibit 1, pp. 253-269) dated [REDACTED], [REDACTED] was presented. The assessment was noted as performed by a social worker. It was noted Petitioner was employed and trying not to financially rely on his parents. It was noted Petitioner is stable when he takes his medications. Petitioner's employment appeared to be 40 hours per week (see Exhibit 1, p. 256). An ongoing diagnosis of schizoaffective disorder was indicated. It was also noted Petitioner might do well in individual therapy, though Petitioner denied a need for therapy. Recommendations included time and money management, therapy, psychiatric evaluation, and continuing medication reviews.

Psychiatric Progress Notes (Exhibit 1, pp. 375-378) dated [REDACTED], from a treating psychiatrist were presented. It was noted that Petitioner reported no hallucinations, paranoia, fears, or suicidal ideation.

Psychiatric Progress Notes (Exhibit 1, pp. 379-382) dated [REDACTED], from a treating psychiatrist were presented. It was noted that Petitioner lost a job for unspecified reasons. It was noted Petitioner was in-and-out of jail. It was noted Petitioner lost "some of the weight" after weighing 342 pounds.

A Medication Log Summary (Exhibit 1, p. 344) dated [REDACTED], was presented. It was noted Petitioner's medications included Celexa, clonazepam, Desyrel, and Geodon.

A letter from Petitioner (Exhibit A, pp. 1-3) dated [REDACTED], was presented. Petitioner's letter stated he has underwent numerous moves and incarcerations over the last few months. Petitioner indicated "employability is marginal" due to lack of recent work history, lack of current references, bad credit rating, age, and weight gain.

Petitioner alleged he is disabled, in part due to physical problems. Petitioner testified he weighs 311 pounds, and that his obesity, in part, restricts his employment.

Petitioner testimony conceded he was not being treated for any physical and/or exertional restrictions. Petitioner testified he last saw his primary care physician in 2015 for an acute skin infection. Treatment for physical and/or exertional restriction was not presented. Obesity, by itself, is not evidence of severe restrictions. It is found Petitioner failed to establish severe exertional restrictions.

Petitioner alleged disability, in part, due to psychological restrictions. A diagnosis of schizoaffective disorder was established. Little evidence of related restrictions was established.

Testimony from Petitioner and his father implied Petitioner is not as sharp as he used to be. The testimony implied that Petitioner's diagnosis and/or prescribed medication may reduce Petitioner's cognitive function and/or alertness. Though it was verified Petitioner takes a handful of psychological medications, no complaints of alertness or lack of cognitive bluntness were documented in presented medical records.

Petitioner alleged disability, in part, due to poor judgment. Presented records verified that Petitioner lost multiple jobs in the two years before the hearing. A variety of jail visits was documented. Presented documentation was unclear about the reasons for the incarcerations, though Petitioner and his father testified they were for Petitioner's alleged failure in attending court dates related to tickets and/or, using drugs. The history, by itself, is not compelling evidence of an impaired judgement.

Presented evidence of a psychological impairment was minimal. Though a serious diagnosis was verified, Petitioner appears to be functioning well, as he has not been hospitalized since 2010. No complaints related to schizoaffective disorder were apparent.

Also notable was the relative stability of Petitioner's medications. Petitioner was prescribed the exact same medications and dosages in March 2015 (see Exhibit 1, p. 363) as he was in April 2016 (see Exhibit 1, p. 344). The stability in medications is indicative of a stable psyche.

Petitioner alleged disability, in part, due to anxiety. A complaint or evidence of anxiety was not apparent in medical records.

Most of Petitioner's complaints appeared to be unrelated to psychological impairments. Petitioner complained of a weight gain, the public transportation system, and a need to stop relying on his parents. The complaints are irrelevant to an analysis of whether a severe impairment limits Petitioner's ability to perform basic work activities. Petitioner and his father conceded Petitioner could work if given the opportunity (though Petitioner later recanted).

The most compelling evidence of whether an impairment existed came from Petitioner's social worker. In an assessment, Petitioner was stated to blame others for his problems,

while his family tended to make excuses for Petitioner. The assessment was not indicative of a severe impairment.

A severe impairment could be inferred from a low functioning level (i.e. a low GAF). A GAF since 2013 was not verified.

Overall, little evidence of restrictions was verified. Even based on a de minimus standard, presented evidence failed to establish that Petitioner has a severe impairment. Accordingly, Petitioner is not disabled and it is found that MDHHS properly denied Petitioner's SDA application.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner untimely requested a hearing to dispute a termination of SDA benefits, effective February 2016. Petitioner's hearing request is **PARTIALLY DISMISSED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's SDA benefit application dated [REDACTED], based on a determination that Petitioner is not disabled. The actions taken by MDHHS are **AFFIRMED**.

CG/hw



Christian Gardocki

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]