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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]  
Date Mailed: January 23, 2017  
MAHS Docket No.: 16-012240  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Gary Heisler

### **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 27, 2016, at the Department's [REDACTED] office in Michigan. Petitioner appeared and testified. The Department was represented by Hearing Facilitator [REDACTED]

Did the Department of Human Services properly determine that Petitioner is not disabled and deny Petitioner's March 14, 2016 State Disability Assistance (SDA) application?

### **FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Petitioner was born on [REDACTED]. Petitioner is [REDACTED] feet [REDACTED] inches tall and weighs approximately [REDACTED] pounds. Petitioner's formal education consists of [REDACTED] years of school.
2. Petitioner reports relevant work history in [REDACTED]. Petitioner reports last working in [REDACTED].
3. On September 25, 2015, the Social Security Administration determined that Petitioner was not disabled. The Social Security Administration considered

- Petitioner's medical evidence up to and including a consultative medical examination conducted on September 16, 2015.
4. On March 14, 2016, Petitioner applied for State Disability Assistance (SDA). Petitioner asserts disability based on heart disease, a previous heart attack and a previous stroke.
  5. On June 2, 2016, the Department of Human Services Medical Review Team determined that Petitioner was not disabled in accordance with the standards for State Disability Assistance (SDA).
  6. On June 6, 2015, Petitioner was sent a Notice of Case Action (DHHS-1605) which stated his State Disability Assistance (SDA) application was denied.
  7. On August 31, 2016, Petitioner submitted a request for hearing.

### **CONCLUSIONS OF LAW**

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same standards with one minor difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

## **STEP 1**

At this step a determination is made on whether Petitioner is engaging in substantial gainful activity (20 CFR 416.920(b)). If you are performing activities for pay or profit, we will use 20 CFR 416.971 through 416.975 to evaluate the activities to determine if they are substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Based on the evidence in the record and Petitioner's testimony, Petitioner has not received earnings as an employee since the date of application. Therefore, Petitioner is not engaged in substantial gainful activity. Petitioner is not found ineligible and the analysis proceeds to step two.

## **STEP 2**

At the second step it is determined whether you have a severe physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement (20CFR 416.920). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include:

Physical functions such as 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

Dealing with changes in a routine work setting.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (20 CFR 416.921).

In addition to the limiting effect of the impairments they must also meet the durational requirements of 90 days for State Disability Assistance (SDA). If we determine that your impairments are not severe, you are not disabled.

Petitioner asserts disability based on stroke and heart attack. What follows is a synopsis of all relevant evidence in the record from medical sources presented in reverse chronological order.

The record was held open in order to obtain additional medical evidence regarding the [REDACTED] ICD placement. No follow up medical examination describing the effect of the ICD on Petitioner was submitted.

There is an [REDACTED] post-operative report following placement of a dual-chamber pacemaker-defibrillator. There were no complications or unusual conditions encountered during the placement. Petitioner was discharged in stable condition. Petitioner's Exhibit 1 pages 46-48.

There is an [REDACTED], left heart catheterization report from [REDACTED]. The Doctor found: left main artery was normal size and free of any occlusive discasc; left anterior descending artery was normal size and free of flow limiting lesion; left circumflex artery was normal size and free of flow limiting lesion; right coronary artery was a small non-dominant vessel free of occlusive disease; left ventricle was dilated with severe left ventricular systolic dysfunction consistent with estimated ejection fraction of 25% to 30% with severe global hypokinesis. The Doctor assessed Petitioner as having nonischemic dilated cardiomyopathy. The Doctor recommended Petitioner be evaluated for biventricular ICD. Petitioner's Exhibit 1 pages 30 & 31.

There is a [REDACTED], Persantine Stress Test report from [REDACTED]. The Doctor found: no arrhythmias during stress; no conduction delays; normal perfusion during stress and at rest; left ventricle was severely dilated; the imaging demonstrated global hypokinesis. Department's Exhibit A page 100.

There is a [REDACTED], cardiovascular consultation examination by [REDACTED]. The Doctor recorded Petitioner's verbal history of a previous myocardial infarction and stroke as well as recurrent episodes of atypical chest pain and exertional shortness of breath. Upon examination the Doctor found no remarkable conditions but did recommend updated medical testing and imaging with follow up. Department's Exhibit A page 102 – 104.

There is a [REDACTED] nerve conduction study report from [REDACTED]. The Doctor found that Petitioner had: 5/5 motor strength bilaterally; intact sensory perception to pin and light touch; and intact reflexes. Specifically to Petitioner's right upper extremity, the Doctor found normal motor unit potentials no positive sharp waves, fibrillations or fasciculations in any of the muscle groups. Department's Exhibit A page 153.

There is a [REDACTED] examination report from [REDACTED]. [REDACTED] recorded Petitioner's report of entire right side weakness resulting in difficulty speaking, walking and fine motor tasks with right hand. Upon examination [REDACTED] found: normal station and stability; normal muscle strength, tone and range of motion throughout; a slow rate of speech that was clear and fluent with 1-2 words slurred during lengthy conversation; normal sensory exam; normal reflexes; and a right sided limp in gait. Department's Exhibit A pages 150 – 152.

#### 20 CFR 416.927

How we weigh medical opinions. Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

**Examining relationship.** Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

**Treatment relationship.** Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.

**Supportability.** The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because non-examining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions.

**Consistency.** Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

**Specialization.** We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

The relevant, objective medical evidence of record has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimus* effect on Petitioner's basic work activities. Petitioner is not disqualified from receipt of Medical Assistance (MA) based on disability and the analysis continues.

### **STEP 3**

At the third step, it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

Petitioner's nonischemic dilated cardiomyopathy was compared with the Social Security Administration impairment listing 4.00 Cardiovascular System. Petitioner's objective medical evidence of record does not match any of the listing criteria in section 4. Petitioner is not found disabled at this step.

### **STEP 4**

At the fourth step, we assess your residual functional capacity to determine if you are still able to perform work you have done in the past. Your residual functional capacity is your remaining physical, mental, and other abilities. It is a description of your maximum performance at work-like activities considering your impairments. It does not require that you be pain free, but rather is based on your ability to do work-like activities on a sustained basis despite limitations, such as pain, from your impairments. 20 CFR 416.929 says that statements about your pain or other symptoms will not alone establish that you are disabled, there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged.

Your residual functional capacity is determined by considering all symptoms and the extent to which they can reasonably be accepted as consistent with the objective medical evidence and other evidence. All relevant evidence including reported symptoms and medical opinions are considered as required in 20 CFR 416.927, 416.928, and 416.929.

Physical, mental, and other abilities are outlined as follows in 20 CFR 416.945.

**Physical abilities.** When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work.

**Mental abilities.** When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in

understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work.

Other abilities affected by impairment(s). Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If you have this type of impairment(s), we consider any resulting limitations and restrictions which may reduce your ability to do past work and other work in deciding your residual functional capacity.

Classifications of work based on physical exertion requirements are defined in 20 CFR 416.967.

(a) *Sedentary work*. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) *Light work*. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work*. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

(d) *Heavy work*. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

Petitioner asserts disability based on heart disease, a previous heart attack and a previous stroke. Consideration of your reported symptoms involves two parts. First is determining if there is any underlying medically determinable physical or mental impairment, shown by medically acceptable clinical and laboratory diagnostic

techniques that could reasonably be expected to produce the symptoms you have reported.

Next all the medically supported symptoms you reported are evaluated. The credibility of the symptom's intensity, persistence, and limiting affects you reported, is considered in light of the entire case record.

There is no objective medical evidence in the record which provides medically assessed physical or mental limitations. Considered on the whole, the objective medical evidence, medical opinions, and your credible testimony show you have the residual functional capacity to perform sedentary work of any kind.

In accordance with the Medical-Social Questionnaire (DHS-49-F) (Department's Exhibit A pages 28 - 31) which you submitted, indicates you have past relevant work of a sedentary nature. Your past relevant work in [REDACTED] does not exceed your residual functional capacity to perform sedentary work of any kind.

You are found not disabled at this step.

## **STEP 5**

At the fifth step your residual functional capacity (RFC) is considered along with your age, education, and work experience to see if you can make an adjustment to other work you have not previously done. If you have a combination of sufficient remaining abilities and transferable skills to adjust to other work, you are not disabled. If it is determined that you cannot make an adjustment to other work, we will find that you are disabled.

Age is one of the aspects of your vocational profile considered in this step. The following age categories are established in 20 CFR 416.963 for use in the Social Security Administration Medical-Vocational Guidelines.

A younger person is under age 50. If you are a younger person we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45-49 are more limited in their ability to adjust to other work than persons who have not attained age 45.

A person closely approaching advanced age is 50-54 years old. If you are closely approaching advanced age, we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

A person of advanced age is over 55. We consider that at advanced age, age significantly affects a person's ability to adjust to other work. We have special



rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60-64).

Education is another aspects of your vocational profile considered in this step. The following categories of education are established in 20 CFR 416.964 for use in the Social Security Administration Medical-Vocational Guidelines.

(1) *Illiteracy*. Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.

(2) *Marginal education*. Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.

(3) *Limited education*. Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.

(4) *High school education and above*. High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

(5) *Inability to communicate in English*. Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

Work skills are another aspects of your vocational profile considered in this step. The following categories of work skills are established in 20 CFR 416.968 for use in the Social Security Administration Medical-Vocational Guidelines.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

(b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

(c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

The Social Security Administration Medical-Vocational Guidelines are divided into categories based on the maximum sustained work capability a person still has.

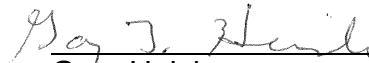
Petitioner is a [REDACTED] year old with more than a high school education, the residual functional capacity to perform sedentary work and a transferable skilled work history. In accordance with Social Security Administration Medical-Vocational Guidelines Rule 201.05 Petitioner is not disabled.

**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 not disabled for purposes of the SDA benefit program.

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

GH/nr



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Gary Heisler  
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]

[REDACTED]

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]