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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

Date Mailed: January 26, 2017
MAHS Docket No.: 16-017947
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 [REDACTED], from Detroit, Michigan. Petitioner appeared and testified. [REDACTED] his medical case manager at [REDACTED], represented Petitioner and testified on his behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor.

ISSUE

Did the Department properly determine 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 [REDACTED], Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On [REDACTED], the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 5-11).
3. On [REDACTED], the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 1-4).
4. On [REDACTED], the Department received Petitioner's timely written request for hearing.

5. Petitioner alleged disabling impairment due to HIV, sickle cell trait, neurosyphilis, lymphocytosis, and encephalopathy.
6. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED], birth date; he is 6' 2" in height and weighs about 155 pounds.
7. Petitioner completed the [REDACTED] grade and can read and do basic math.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as a [REDACTED] driver, sales associate, and fast-food restaurant worker.
10. Petitioner has a pending disability claim with the Social Security Administration (Exhibit B).

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.

Petitioner applied for cash assistance alleging a disability. Under BEM 261 (July 2015), pp. 1-2, an individual is eligible for SDA if the person is disabled. A person is disabled if he (i) receives other specified disability-related benefits or services; or (ii) resides in a qualified special living arrangement (SLA) facility; or (iii) is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or (iv) is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS). There was no evidence presented at the hearing that Petitioner receives disability-related benefits or services, as defined in policy, or that he resided in an SLA facility. However, the AHR contended that Petitioner was disabled because he was diagnosed as having AIDS.

At the hearing, the AHR argued that Petitioner satisfied the criteria for an AIDS diagnosis because his HIV diagnosis with encephalitis made him eligible for a stage 3 HIV classification. In support of her position, the AHR presented a treatise from the Center for Disease Control and Prevention (CDC) that indicated that HIV infection progresses to stage 3 (AIDS) when the immune system of a person infected with HIV becomes severely compromised (measured by CD4 cell count under 200) and/or the person becomes ill with a stage 3-defining opportunistic infection, which includes encephalopathy attributed to HIV (Exhibit 1, pp. 2, 5, 9, 14-16, 20).

The medical evidence in this case shows that when Petitioner was diagnosed with HIV in [REDACTED], he was also diagnosed with acute encephalopathy (Exhibit A, p. 49). However, there is no medical evidence of HIV-encephalopathy. In the absence of any medical evidence supporting the AHR's position that Petitioner's HIV had progressed to stage 3, Petitioner is not eligible for SDA on the basis of an AIDS diagnosis. Therefore, the evidence was reviewed to determine whether he satisfied the criteria for being unable to work due to mental or physical disability for at least 90 days from the onset of the disability.

To be considered disabled for SDA purposes, a person who has not been approved for Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness for must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The medical evidence presented at the hearing was reviewed and is summarized below.

On [REDACTED], Petitioner went to the emergency room with an altered mental status and vomiting, and his family explained that he had been complaining of headaches, weakness and inability to move for the preceding 2 to 3 weeks. He was admitted and hospitalized from [REDACTED]. A chest x-ray showed no findings of acute cardiopulmonary disease process. A brain CT showed no acute intracranial abnormality. He tested positive for syphilis and retroviral infection (HIV infection), with a viral load of 55,700 cpy/mL. He was treated with antibiotics and started on Truvada and Dolutegravir and released with instructions to follow up with infectious disease on an out-patient basis. His discharge diagnosis was encephalitis and encephalomyelitis, unspecified; encephalopathy acute; HIV disease; hyponatremia; meningitis, acute secondary to syphilis; neurosyphilis, unspecified; and syphilis. (Exhibit A, pp. 49-95).

On [REDACTED], Petitioner initiated treatment for his HIV. He complained of occasional chest pain and headaches occurring every few hours daily lasting 15 to 20 minutes with blurred vision and dizziness. While he was taking medication, his use was inconsistent. He returned [REDACTED] complaining of gum pain and was referred to a dentist. (Exhibit A, pp. 15-19, 108-110).

Lab work from [REDACTED], was consistent with either untreated or recently treated syphilis and positive for HIV (Exhibit A, pp. 20-26, 37-48).

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2; and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 7.05 (hemolytic anemias) and 14.11 (human immunodeficiency virus (HIV) infection) were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3; and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only

the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 20 CFR 416.967(a). 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 the light 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. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner testified that he suffered from joint pain, weakness, headaches, dizziness, and mental confusion. He could walk up to two blocks but sometimes had difficulty because of joint pain. He could sit up to two hours, stand more than 30 minutes, and lift up to 20 pounds. He denied having any recurring mouth sores. He lived with his sister and her family and was able to do his own grooming and dressing. He did some minimal chores at home but claimed he was not mentally or physically able to assist his sister for most chores. He did not shop or drive. He testified that, because of his extreme fatigue, he had to take long naps during the day. In response to the AHR's questions, he testified that he was looking for office work but did not believe he had the stamina to work a full day without needing to take a nap.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

Petitioner's HIV diagnoses support his symptoms of fatigue and headaches. The medical evidence shows that when Petitioner was released from the hospital on [REDACTED], following his HIV diagnosis, his mental status was back to baseline, he was up and ambulatory with no complications noted, and he was stable for discharge, with a PICC line inserted for antibiotics infusion. While he complained of ongoing headaches at one of the three follow-up appointments with an infectious disease doctor, he also reported taking his medication inconsistently. The evidence presented does not support the intensity, persistence, and limiting effects of fatigue and headaches alleged by Petitioner. With respect to Petitioner's exertional limitations, it is found based on a review of the entire record, including Petitioner's testimony, that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(b). He also has additional nonexertional limitations that would limit him to simple, repetitive work, requiring occasional breaks.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Steps Four and Five

Step 4 in analyzing a disability claim requires an assessment of an individual's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past, either as Petitioner actually performed it or as it is generally performed in the national economy, is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920.

If an individual does not have the RFC to perform past relevant work, the analysis proceeds to Step 5 where the individual's RFC, age, education, and work experience is considered to determine whether the individual can adjust to other work. 20 CFR 416.920(a)(4)(v). If the individual can adjust to other work, then there is no disability; if the individual cannot adjust to other work, then there is a disability. 20 CFR 416.920(a)(4)(v). At Step 5, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(c)(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

Petitioner's work history in the [REDACTED] years prior to the application consists of work as a [REDACTED] driver, sales associate, and fast-food restaurant worker. Petitioner's work as a [REDACTED] driver and fast food worker, which required substantial standing and lifting up to 50 pounds, required medium physical exertion. Sales associate work, as traditionally performed in the national economy, is categorized as light. See Dictionary of Occupational Titles (DOT), 290.477-014.

Based on the RFC analysis above, Petitioner's exertional RFC limits him to light work activities. As such, Petitioner is capable of performing past relevant work based on his exertional RFC. His additional nonexertional limitations would not preclude him from performing past relevant work as a sales associate. Because Petitioner is able to perform past relevant work, he is not disabled at Step 4.

It is further noted that, even if the analysis proceeds to Step 5, Petitioner, based on his RFC, age, education and work experience, is able to adjust to other work. In this case, Petitioner was [REDACTED] years old at the time of application and considered to be a younger individual (age 18-44) for purposes of Appendix 2. He completed the [REDACTED] grade and can read and write. He has a semi-skilled work history, but his skills are not transferable. Based on an exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform light work activities and his age, education, and skills, the Medical-Vocational Guidelines, 202.18, result in a finding that Petitioner is not disabled. Because Petitioner's nonexertional RFC would not erode his ability to adjust to other work, he is also found not disabled at Step 5.

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**.



ACE/tlf

Alice C. Elkin

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]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]

Via Email

[REDACTED]