



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: March 29, 2017
MAHS Docket No.: 16-016721
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen Fahie

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 [REDACTED], Michigan. Petitioner personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Hearing Facilitator, [REDACTED]. [REDACTED] testified on behalf of the Department. The Department submitted 218 exhibits which were admitted into evidence.

On [REDACTED], the Administrative Law Judge issued an Interim Order extending the record for therapy records from Petitioner's therapist. On [REDACTED], the record was closed.

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 [REDACTED], Petitioner applied for SDA. [Dept. Exh. 2].
2. On [REDACTED], the Medical Review Team denied Petitioner's application for SDA. [Dept. Exh. 16-22].

3. On [REDACTED], the Department issued a Notice of Case Action denying Petitioner's request for SDA. [Dept. Exh.217-218].
4. On [REDACTED], Petitioner requested a hearing contesting the Department's negative action.
5. Petitioner reported a medical history of an injury to his right hand, asthma, anxiety, and attention deficit hyperactivity disorder (ADHD).
6. On [REDACTED], Petitioner was brought into the emergency department by ambulance. Petitioner presented with a two day history of vomiting and diarrhea. Petitioner was diagnosed with gastroenteritis and onychomycosis. He was treated and discharged. [Dept. Exh. 179-187].
7. On [REDACTED], Petitioner underwent a psychological evaluation on behalf of the Michigan Disability Determination Service. The examining psychologist indicated that Petitioner appeared to be appropriately dressed, but he was somewhat disheveled and had body odor. His hair appeared unwashed. He had his emotional support dog with him. Petitioner presented as very depressed and rather anxious. He had a mostly flat affect, seemed depressed and near tears much of the evaluation. He was clearly anxious and somewhat fidgety. Progress notes from [REDACTED] and [REDACTED], were reviewed and indicated a diagnosis of delayed post-traumatic stress disorder (PTSD), tooth pain, and pectus carinatum. A report, from [REDACTED], was also reviewed which indicated a diagnosis of Major Depressive Disorder, Anxiety Disorder, Unspecified Personality Disorder, ADHD, a possible eating disorder, and a history of special education classes. The psychologist opined that Petitioner would have some difficulty being able to relate appropriately and consistently with others. Petitioner was dealing with depression, anxiety, ADHD, and personality issues, which could have a fairly significant impact on his overall functioning. He could possibly do some simple tasks, but would need a very flexible environment, limited direct contact with people, and generally some extra practice and reminders when learning and doing tasks. He was not mentally or emotionally stable at the time of the evaluation. He would generally have difficulty sustaining tasks, and even more so when his symptoms were severely exacerbated. His prognosis was guarded to poor. He was participating in medical care and medical monitoring. He had been in counseling, but not in the last few months due to some insurance issues, but did plan to continue counseling in the future. The Petitioner might benefit from regular and ongoing participation in individual therapy, in order to address coping skills and other personal issues. The issues he was dealing with would likely last into the next year. [Dept. Exh. 140-145].
8. On [REDACTED], Petitioner underwent an independent medical evaluation of asthma, back pain, and a right hand injury. Petitioner reported he had a spontaneous pneumothorax in [REDACTED], that resolved, but since then he had had shortness of breath. He injured his right hand in [REDACTED], when he tore all the tendons. He had reconstructive surgery in [REDACTED], but he stated it did not help. The

examining physician opined that Petitioner needed to quit smoking, see a spine surgeon for an assessment, and see a hand surgeon for an evaluation of his wrist. [Dept. Exh. 132-136].

9. On [REDACTED], Petitioner saw his primary health care provider about a bite on his right wrist. Petitioner was assessed with anxiety disorder, COPD, PTSD, tinea corporis, and an elevated blood pressure on re-reading without a diagnosis of hypertension. He was discharged with refills of all his medications, with the addition of [REDACTED] and instructions to apply it twice a day to the right wrist until gone. [Petitioner Exh. A, pp 1-4; Petitioner Exh. B, pp 18-20].
10. Petitioner is diagnosed with anxiety disorder, personality disorder, major depression, ADHD, PTSD, tinea corporis, COPD, gastroenteritis, and onychomycosis.
11. Petitioner is a [REDACTED]-year-old man, born on [REDACTED]. He is [REDACTED] and weighs [REDACTED] pounds. He completed high school and last worked in 2012, as a maintenance worker. He has a service dog and is unable to use his right hand.
12. Petition was appealing the denial of Social Security disability benefits at the time of the hearing.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as 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 to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920. If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c). If the impairment, or combination of impairments, do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not

considered disabled. 20 CFR 416.994(b)(1)(iv). Basic work activities are 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967. 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. 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 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. 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. If someone can do medium work, we determine that he or she can also do sedentary and light work. 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. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Based on Findings of Fact #5-#10 above this Administrative Law Judge answers:

Step 1: No.

Step 2: Yes.

Step 3: Yes. Petitioner has shown, by clear and convincing documentary evidence and credible testimony, his mental impairments meet or equal Listing 12.00.

The psychologist opined that Petitioner would have some difficulty being able to relate appropriately and consistently with others. The psychologist indicated that Petitioner is dealing with depression, anxiety, ADHD, and personality issues, which may have a fairly significant impact on his overall functioning. He may be able to do some simple tasks, but would need a very flexible environment, limited direct contact with people, and generally some extra practice and reminders when learning and doing tasks. He is not mentally or emotionally stable currently. He would generally have difficulty sustaining tasks, and even more so when his symptoms are severely exacerbated. His prognosis is guarded to poor.

As a result of the psychologist's evaluation, Petitioner would have difficulties understanding, carrying out, and remembering simple instructions; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting. 20 CFR 416.921(b).

Accordingly, this Administrative Law Judge concludes that Petitioner is disabled for the purpose of the SDA program. Consequently, the Department's denial of his [REDACTED] SDA application cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department erred in determining Petitioner is not currently disabled for SDA eligibility purposes.

Accordingly, the Department's decision is REVERSED, and it is Ordered that:

1. The Department shall process Petitioner's [REDACTED], SDA application, 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 [REDACTED] 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**.

CF/bb



Carmen Fahie
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]

Petitioner

[REDACTED]