



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 8, 2017
MAHS Docket No.: 17-000197
Agency No.: [REDACTED]
Petitioner: [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, a telephone hearing was held on February 1, 2017, from Lansing, Michigan. Petitioner personally appeared and testified. Petitioner was accompanied by her advocate and chore provider, [REDACTED], and [REDACTED], from [REDACTED].

The Department of Health and Human Services (Department) was represented by Eligibility Specialist, [REDACTED]. [REDACTED] testified on behalf of the Department. The Department submitted 476 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 July 11, 2016, Petitioner applied for SDA. [Hearing Summary].
2. On November 8, 2016, the Medical Review Team (MRT) denied Petitioner's SDA application. [Dept. Exh. A, pp 2-8].
3. On November 21, 2016, the Department sent Petitioner notice that his application was denied. [Dept. Exh. E, pp 473-476].

4. On January 9, 2017, Petitioner filed a hearing request to contest the Department's negative action. [Request for Hearing].
5. Petitioner has been diagnosed with posttraumatic stress disorder (PTSD), hypertension, obstructive sleep apnea, bilateral sensory hearing loss, traumatic brain injury (TBI), arthritis, lumbar disc herniation, cervical degenerative disc disease, chronic vertigo, fibromyalgia, back pain, and a learning disability.
6. On [REDACTED], Petitioner's primary care physician, [REDACTED] of the [REDACTED], completed a Medical Examination Report. Petitioner was diagnosed with vertigo, sensorineural hearing loss, fibromyalgia, and back pain. The physician opined that Petitioner's condition was stable and expected to last more than 90 days. Petitioner was limited to occasionally lifting less than 10 pounds, simple grasping and reaching with both hands, and could stand or walk less than 2 hours in an 8-hour workday. The physician indicated that Petitioner had severe vertigo which was worsened by moving his head. The physician opined that Petitioner could not work for prolonged periods of time due to the vertigo. The physician also noted that Petitioner was limited in comprehension, memory, sustained concentration, following simple directions, and social interaction. [Medical Examination Report, dated December 8, 2015, received by the Department on January 9, 2017].
7. On [REDACTED], Petitioner attended a consultation at the [REDACTED] [REDACTED] for his episodic dizziness. The physician noted that Petitioner had a history of traumatic brain injury (TBI) related to a motorcycle accident in 1992. He sustained a left parietal skull fracture and was in a coma for six months. He did not recall the details of the accident. He became aware of dizziness approximately a year and a half after the accident. The dizziness was a sensation of lightheadedness and imbalance. The dizziness was chronic and worse in visually active environments. Petitioner also reported gradual bilateral hearing loss. This was associated with episodic tinnitus slightly worse in his right ear. He had a cardiac catheterization in 2014. He also had a tympanostomy tube placement as a child. His past medical history was positive for TBI, bipolar disorder, PTSD, short-term memory loss, a learning disability, asthma, anxiety, depression, and hearing loss. He also had had an appendectomy, left knee surgery, and a hernia repair. Petitioner was diagnosed with bilateral mild to moderate sensorineural hearing loss, chronic lightheadedness, and imbalance that started after the TBI, and was related to the TBI. [Dept. Exh. D, pp 183-184].
8. On [REDACTED], Petitioner saw his primary care physician complaining of worsening headaches and pain bilaterally on the top of his head. He also noted some light sensitivity at times with headache. He was having ongoing vertigo and had an increased bilateral tremor. He reported lower extremity pain and weakness resulting in frequent falls. The physician noted that Petitioner's history of a TBI may be the cause of most of his symptoms. [Dept. Exh. D, pp 329-330].

9. On [REDACTED], Petitioner followed up with his primary care physician for head pressure that would worsen to a point where Petitioner was unable to function. Petitioner's wife reported that Petitioner would sometimes have some shaking/rocking and she was unsure if it was related to the pain as a coping mechanism or he was having a possible seizure. His wife reported that Petitioner seemed less responsive and slightly more confused afterwards. The physician noted that Petitioner did have an episode of head pressure while in the office. He had no seizure activity, but he did appear uncomfortable. Petitioner was able to stand and walk out of the office with the use of a cane, but had to rest at one point due to left leg pain. Petitioner was assessed with head pressure and worsening memory deficit. [Dept. Exh. D, pp 193-194].
10. On [REDACTED], Petitioner followed up with his primary care physician. He was assessed with possible seizures versus conversion disorder, and was scheduled for an ECG. The physician also gave Petitioner Pneumovax for his asthma, and told Petitioner that bupropion could lower his seizure threshold and to discuss it with his psychiatrist. [Dept. Exh. D, pp 196-197].
11. On [REDACTED], Petitioner underwent an assessment at [REDACTED] ([REDACTED]). Petitioner was using a cane. He was diagnosed with major depressive disorder, recurrent episode severe, bipolar disorder, a learning disability, and PTSD. [Dept. Exh. D, pp 118-123].
12. On [REDACTED], Petitioner saw his physician for worsening sciatica symptoms. He reported increased tingling, and a prickly sensation of his legs bilaterally. Petitioner continued to have vertigo. He reported falling twice due to leg weakness. Petitioner appeared reasonably comfortable when seated, but appeared to be in pain and had difficulty with ambulation without a one-person assist. He relied heavily on the quad cane. Petitioner was referred for an evaluation for a wheelchair versus a power scooter. [Dept. Exh. D, pp 197-198].
13. On [REDACTED], Petitioner underwent an adaptive equipment evaluation at the [REDACTED]. Petitioner reported progressive weakness in his lower upper extremities, and lower leg extremities over the past 1-2 years with worsening pain, dizziness, and vertigo, making it difficult for him to ambulate safely. He reported that he had used a cane in past, however, he was having several falls. He then tried a walker, but continued to have back and lower extremity pain, from his arthritis and fibromyalgia, and continued to be very dizzy. He wore a left knee immobilizer and had a left knee extension contracture. Based on the evaluation and the functional status, a 4-wheeled power scooter was recommended. [Dept. Exh. D, pp 199-200].
14. On [REDACTED], Petitioner appeared for his medication review at [REDACTED] in a motorized wheelchair. Petitioner was dealing with multiple psychosocial issues, and was apparently homeless, living on a friend's couch. Petitioner had been in the emergency department the day before for feeling weak and had been given [REDACTED]. Petitioner reported that he was feeling okay, but his

mood was edgy and he did not believe that his psychiatric medication was working anymore. The nurse practitioner did not want to wean him off the medication until his seizure activity had been fully worked up. Petitioner's mood was somewhat irritable, his affect was blunted, and his insight and judgment were good. He was assessed with bipolar disorder, PTSD, and a personality disorder. [Dept. Exh. D, p 153].

15. On [REDACTED], Petitioner saw a physician for vertigo, fatigue, weakness, headache, and nausea. The physician noted that Petitioner walked with a cane and came in on a scooter. Upon examination, the physician noted that Petitioner had weakness in the upper and lower extremities, and had some difficulty with ambulation. [Dept. Exh. D, pp 411-412].
16. On [REDACTED], Petitioner followed up with his primary care physician for his asthma. Petitioner was seated in a wheelchair and had a fine tremor bilaterally. The tremor was worse when he tried to use his hands to type in his password on his phone. He had a history of TBI with persistent vertigo and low back pain. [Dept. Exh. D, pp 412-413].
17. Petitioner is a [REDACTED]-year-old man, born on [REDACTED]. He is [REDACTED], and weighs [REDACTED] pounds. He completed the [REDACTED], and last worked in 2010 as a furniture mover.
18. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
19. 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).

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 (90 days for SDA). 20 CFR 416.905(a). 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 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or

blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and he has not worked since 2010. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a petitioner's age, education, or work experience, the impairment would not affect the petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner has been diagnosed with posttraumatic stress disorder (PTSD), anxiety, bipolar disorder, personality disorder, hypertension, obstructive sleep apnea, bilateral sensory hearing loss, traumatic brain injury (TBI), arthritis, lumbar disc herniation, cervical degenerative disc disease, sciatica, chronic vertigo, fibromyalgia, short term memory loss, and a learning disability.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented some medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Petitioner has been diagnosed with bipolar disorder, PTSD, depression, and a personality disorder.

Listing 12.04, Affective Disorders, are characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the medically documented persistence, either continuous or intermittent of depressive syndrome, mania or bipolar disorder result in restrictions on activities of daily living, social functioning, concentration or repeated instances of decompensation.

With regards to the Petitioner's mental impairments, this Administrative Law Judge has carefully considered all the evidence of record in light of the requirements of section 12.04 (affective disorders). The evidence shows Petitioner's mental disorders satisfy the diagnostic criteria that Petitioner has a bipolar disorder. However, his symptoms over the previous year prior to his SDA application, and symptoms since his SDA application, do not satisfy the diagnostic criteria.

Petitioner has the burden of establishing his disability. The record evidence was insufficient to meet a listing. While there was evidence of bipolar disorder, there was no evidence that her bipolar disorder was severe enough to meet a listing. Therefore, the analysis continues to Step 4.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine Petitioner's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of Petitioner's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Based on the record evidence, Petitioner has been prescribed a 4-wheeled scooter for his documented issues with vertigo, lower and upper extremity weakness, and sciatica. Considering the only Medical Examination Report in the file is from Petitioner's primary care physician which indicates Petitioner was limited to occasionally lifting less than 10

pounds, simple grasping and reaching with both hands and able to stand or walk less than 2 hours in an 8-hour workday, Petitioner does not have the residual functional capacity to perform even sedentary work as defined in 20 CFR 404.1567(a).

Next, the Administrative Law Judge must determine at step four whether Petitioner has the residual functional capacity to perform the requirements of his past relevant work. (20 CFR 404.1520(f) and 416.920(f)). 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 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for Petitioner to learn to do the job and have been substantial gainful activity (SGA). (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If Petitioner has the residual functional capacity to do his past relevant work, the petitioner is not disabled. 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's past relevant employment was as a furniture mover. The demands of the Petitioner's past relevant work exceed the residual functional capacity. As a result, the analysis continues.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the Petitioner is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If Petitioner is able to do other work, he/she is not disabled. If Petitioner is not able to do other work and meets the duration requirements, he/she is disabled.

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).

At Step 5, the burden of proof shifts to the Department to establish that Petitioner does have residual function capacity. 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. See discussion at Step 2 above.

In this case, Petitioner alleged that he had PTSD, short-term memory loss, a learning disability, a TBI, bilateral sensorineural hearing loss, seizures, chronic vertigo, tremors, shaking, and asthma. According to Petitioner's last Medical Examination Report completed by his primary care physician, Petitioner was limited to occasionally lifting less than 10 pounds, simple grasping and reaching with both hands, and was able to stand or walk less than 2 hours in an 8-hour workday. Further, the physician opined that Petitioner could not work for prolonged periods of time due to the vertigo. The physician also noted that Petitioner was limited in comprehension, memory, sustained concentration, following simple directions, and social interaction. Since the completion of that Medical Examination Report, Petitioner has been prescribed a motorized scooter for ambulation.

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 July 15, 2016, SDA application cannot be upheld.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds Petitioner disabled for purposes of the SDA benefit program.

DECISION AND ORDER

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 July 15, 2016, 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 March 2018, 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]

Petitioner

[REDACTED]