



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 1, 2017
MAHS Docket No.: 17-001103
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 23, 2017, from Lansing, Michigan. Petitioner personally appeared and testified. Petitioner submitted 20 exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Family Independence Manager, [REDACTED]. [REDACTED] testified on behalf of the Department. The Department submitted 157 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 September 26, 2016, Petitioner filed an application for SDA benefits alleging disability. [Dept. Exh. 2-23].
2. On December 14, 2016, the Medical Review Team (MRT) denied Petitioner's application for SDA benefits indicating that he was capable of other work, pursuant to 20 CFR 416.920(f). [Dept. Exh. 61-67].

3. On January 3, 2017, the Department sent Petitioner notice that his application was denied. [Dept. Exh. 24-27].
4. On January 17, 2017, Petitioner submitted a Request for Hearing contesting the Department's negative action. [Dept. Exh. 156-157].
5. Petitioner has a history of dyspnea, bilateral nephrolithiasis, hyperlipidemia, hypertension, chlamydia, chronic lumbar degenerative disc disease, herniated lumbar discs, and chronic back pain of the thoracolumbar region.
6. On [REDACTED], Petitioner's lumbar MRI without contrast showed left L4-L5 subarticular and intraforaminal disc extrusion, likely compressing the left L4 and possibly the left L5 nerve root, a left L5-S1 subarticular narrow-based disc protrusion compressing the left S1 nerve root, and a mild L2-L3 shallow broad-based disc protrusion without nerve root compression. [Dept. Exh. 150-151].
7. On [REDACTED], Petitioner underwent a neurological consultation for lower back pain. Petitioner reported he has had lower back pain for 20 years and it was worsening. Upon examination, the neurosurgeon found there was no radiation of pain to Petitioner's legs. Most of Petitioner's pain was centered in his lower back. His physical examination was unremarkable. Petitioner did have increased multilevel degenerative disc disease and bulging discs when his lumbar MRI from December 2015, was compared to Petitioner's previous MRI's of 2012, and 2014. Petitioner was referred to physical therapy and for Toradol injections. [Dept. Exh. 99-103].
8. On [REDACTED], Petitioner saw his primary care physician with complaints of hypertension and chronic obstructive pulmonary disease (COPD). Symptoms associated with the COPD included activities of daily living, exposure to cigarette smoke, dust, vapors, etc. Petitioner was assessed with COPD, essential hypertension, tobacco use, and chronic rhinitis. [Dept. Exh. 125-128].
9. On [REDACTED], Petitioner returned to the neurosurgeon complaining of back pain and tingling in both feet. Petitioner complained of dyspnea, back pain, chest pain, extremity weakness, gait disturbance, headache, numbness in extremities, and tingling in both feet. His neurological examination did not give any localizing abnormality. The neurosurgeon noted that the MRI showed a small lumbar spine bulge on the left neural foramen at L4-L5, and a small subarticular disc bulge at L5-S1 on the left. The neurosurgeon opined that neither of the bulges were producing any significant compression. Petitioner was assessed with lumbar degenerative disc disease, and cigarette nicotine dependence without complication. The neurosurgeon told Petitioner he did not believe Petitioner had any surgical disease and that he could benefit from physical therapy and the pain clinic. [Dept. Exh. 104-107].

10. On [REDACTED], Petitioner saw his primary care physician complaining of chest pain and dyspnea. He also requested that something be done for his kidney stones. Petitioner was assessed with chest pain, essential hypertension, and renal calculus. Petitioner's electrocardiogram (ECG) was normal. He was referred to urology. [Dept. Exh. 115-118, 149].
11. On [REDACTED], Petitioner underwent a consultation for kidney stones. He reported vision changes, chest pain, wheezing, leg pains, kidney stones, nocturia, backache, arthritis, and anxiety. He had a 4mm left, and a 5 mm right, non-obstructing renal stones. He was diagnosed with bilateral nephrolithiasis. [Dept. Exh. 82-85].
12. On [REDACTED], Petitioner presented to his primary care physician for a check of his hypertension. The physician opined that Petitioner's hypertension was well controlled on Lisinopril. [Dept. Exh. 112-114].
13. On [REDACTED], Respondent's lumbar MRI without contrast revealed multilevel degenerative changes with no significant central canal stenosis, or impingement of the nerve roots. X-rays of Petitioner's right hip were normal. There was no evidence of metallic foreign objects within or around the orbits. [Petitioner Exh. 2-4].
14. Petitioner is a [REDACTED] year old man, born on [REDACTED]. Petitioner is [REDACTED] tall, and weighs [REDACTED]. He has a high school education, and last worked in 2012, as a low voltage technician, and uses a cane.
15. Petitioner 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

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 testified that he has not worked since 2012. 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 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 alleges disability due to pain radiating down his right leg, spinal stenosis, chronic obstructive pulmonary disease, high blood pressure, high cholesterol, kidney stones, anxiety, and sleep apnea.

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 limited medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities, based on his bulging discs at L2 through S1. 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 MA program 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 alleged pain radiating down his right leg, spinal stenosis, chronic obstructive pulmonary disease, high blood pressure, high cholesterol, kidney stones, anxiety and sleep apnea.

Petitioner has the burden of establishing his disability. There was no evidence of sleep apnea in the record or pain radiating down his legs. Petitioner has been diagnosed with bulging discs, but has no spinal canal stenosis, and no nerve impingement. The record evidence was insufficient to meet a listing because nothing in the record indicated Petitioner was unable to work. 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 the residual functional capacity to perform light work as defined in 20 CFR 404.1567(b). In making this finding, the Administrative Law Judge considered all Petitioner's symptoms, and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence.

Petitioner testified that he could not walk very far, stand or sit very long, and could not carry anything. After considering the evidence of record, the Administrative Law Judge finds that Petitioner's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that Petitioner's statements concerning the intensity, persistence, and limiting effects of these symptoms are partially credible.

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, 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 low voltage technician. The demands of 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 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 pain radiating down his right leg, spinal stenosis, chronic obstructive pulmonary disease, high blood pressure, high cholesterol, kidney stones, anxiety, and sleep apnea. The record contained no evidence of sleep apnea or radiating leg pain.

Petitioner was seen twice by a neurologist who found that Petitioner did not have a surgical disease, and that the disc bulges at L4-L5 and L5-S1 were not producing any significant compression. The neurosurgeon opined that Petitioner could benefit from the pain clinic and physical therapy. Petitioner refused the injections at the pain clinic and did not go to physical therapy.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Petitioner has the residual functional capacity to perform other work. However, Petitioner is qualified to receive disability at Step 5 under the Medical-Vocational guidelines. An individual over 55 (Petitioner is [REDACTED] years of age), with a high school education, and an unskilled non-transferable work history, who can perform even only light work, is considered disabled pursuant to Medical-Vocational Rule 202.04.

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, finds Petitioner disabled for purposes of the SDA benefit program.

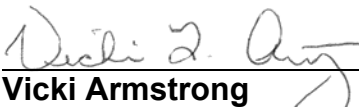
Accordingly, the Department's determination is **REVERSED**.

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 September 26, 2016, 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 February 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.

VLA/bb



Vicki Armstrong
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]