



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 21, 2017  
MAHS Docket No.: 17-001124  
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 [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 165 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 [REDACTED], Petitioner applied for SDA.
2. On [REDACTED], the Medical Review Team (MRT) denied Petitioner's SDA application. [Dept. Exh. 3-9].
3. On [REDACTED], the Department sent Petitioner notice that his application was denied. [Dept. Exh. 164].

4. On [REDACTED], Petitioner filed a Request for Hearing to contest the Department's negative action. [Request for Hearing].
5. Petitioner has a history of diabetes, hypertension, hyperlipidemia, bipolar disorder, schizophrenia, attention deficit hyperactivity disorder (ADHD), depression, anxiety, and a learning disorder.
6. On [REDACTED], Petitioner was admitted to the [REDACTED] [REDACTED] due to suicidal ideation, psychosis, anxiety, depression, mood instability, and substance use. The discharging physician noted that Petitioner was passively engaged with care and did not fully appreciate his clinical condition. He was discharged on [REDACTED], in good condition. [Dept. Exh. 67-87].
7. On [REDACTED], Petitioner reported for his Medication Review. Petitioner was cooperative, less annoyed and irritated than at the previous appointment. He did not start asking if he could leave, or when the appointment was over, as he did often at the last two or three appointments. His eye contact was still minimal. His behavior and psychomotor activity were a little bit restless. His attention and concentration were impaired. His communication and speech were improved. His affect was a bit improved. He was somewhat evasive, somewhat distracted, and possibly experienced disorganized thinking and thought blocking. He may have had some delusional thoughts. He had been hearing voices in the past, but denied hearing voices during the appointment. Insight and judgment were fair at best. Potential for harm to self would be due to lack of care for himself, especially treating his diabetes. [Dept. Exh. 57-61].
8. On [REDACTED], Petitioner underwent an independent Disability Determination Consultation regarding his diabetes, autism, and mental health issues. Petitioner had two previous psychiatric hospitalizations, one at [REDACTED] [REDACTED], and the other at [REDACTED]. Petitioner was diagnosed with schizoaffective disorder, bipolar type. Prognosis is guarded. The psychologist opined that Petitioner would have difficulties working in close proximity to others, difficulties getting along with authority figures, and interacting appropriately with the general public. Petitioner would be easily frustrated, and his concentration and attention span would be limited. The psychologist indicated that Petitioner would be unable to manage his own funds. [Dept. Exh. 42-47].
9. Petitioner is a [REDACTED]-year-old man, born on [REDACTED]. He is [REDACTED], and weighs [REDACTED] pounds. He has a high school education.
10. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
11. 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 testified that he has never held a job for a year. 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 alleges disability due to bipolar disorder, schizophrenia, attention deficit hyperactivity disorder (ADHD), depression, anxiety, and a learning disorder.

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 mental limitations on his ability to perform basic work activities, based on independent psychological evaluation. 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-P 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 bipolar disorder, schizophrenia, attention deficit hyperactivity disorder (ADHD), depression, anxiety, a learning disorder.

Petitioner has the burden of establishing his disability. Petitioner was discharged from a psychiatric hospitalization in August 2015. His discharge diagnosis included schizoaffective disorder. The record evidence was insufficient 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, it is unclear whether Petitioner has the residual functional capacity to perform even sedentary work as defined in 20 CFR 404.1567(a).

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, in particular the opinion of the independent psychologist.

Petitioner testified that he needs reminders to shower and sleeps a lot. The Hearing Facilitator testified that Petitioner appeared anxious in public and did not sit down during the hearing, but was pacing. 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 the 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 her 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 her 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.

In this case, Petitioner has no past relevant work. He has never held a job for a year. 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.

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.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Petitioner reaches Step 5 in the sequential review process, Petitioner

has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6<sup>th</sup> Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Petitioner has the residual functional capacity for substantial gainful activity.

The medical information indicates that Petitioner suffers from diabetes, hypertension, hyperlipidemia, bipolar disorder, schizophrenia, attention deficit hyperactivity disorder (ADHD), depression, anxiety, a learning disorder.

Petitioner underwent an independent psychological evaluation on [REDACTED]. Petitioner was diagnosed with schizoaffective disorder, bipolar type. His prognosis was guarded. The psychologist opined that Petitioner would have difficulties working in close proximity to others, difficulties getting along with authority figures, and interacting appropriately with the general public. The psychologist indicated that Petitioner would be easily frustrated and his concentration and attention span would be limited. The psychologist also noted that Petitioner would be unable to manage his own funds.

Petitioner is [REDACTED] years old, with a high school education. Petitioner's medical records are consistent with his testimony that he is unable to engage in even a full range of sedentary work on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

Petitioner's complaints and allegations concerning his impairments and limitations, when considered in light of all 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.

### **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:

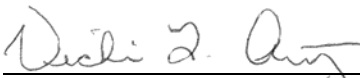
1. The Department shall process Petitioner's [REDACTED], SDA application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement 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.**

VLA/bb



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**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]

[REDACTED]

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]