



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 4, 2017
MAHS Docket No.: 17-008815
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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. After due notice, a telephone hearing was held on August 24, 2017, from [REDACTED] Michigan. Petitioner was represented by himself. Sara Tibbe also appeared and testified for Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], FIM. [REDACTED] ES, also appeared for the Department. Department Ex. A, pp. 1-269. Petitioner Exhibit 1, pp. 1-53 was received and admitted.

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. Petitioner applied for SDA on June 19, 2017.
2. The Medical Review Team denied the application on June 22, 2017.
3. Petitioner filed a request for hearing on June 29, 2017, regarding the SDA denial.
4. A telephone hearing was held on August 24, 2017.
5. Petitioner is 5' 7" tall and weighs 125 pounds.

6. Petitioner is 41 years of age.
7. Petitioner's impairments have been medically diagnosed as cardiomyopathy, atrial fibrillation, stroke history, partial deafness and low blood pressure.
8. Petitioner has the following symptoms: pain, fatigue, insomnia, memory and concentration problems, shortness of breath and hearing difficulty.
9. Petitioner completed high school.
10. Petitioner is able to read, write, and perform basic math skills.
11. Petitioner is not working. Petitioner last worked in November 2016 as a machinist.
12. Petitioner lives with a friend.
13. Petitioner testified that he cannot perform some household chores.
14. Petitioner takes the following prescribed medications:
 - a. Lisinopril
 - b. Meloxicam
 - c. coumadin
 - d. Coreg
 - e. Prevacid
 - f. Atrovostatin
 - g. claritin
15. Petitioner testified to the following physical limitations:
 - i. Sitting: no difficulty
 - ii. Standing: no difficulty
 - iii. Walking: few blocks
 - iv. Bend/stoop: no difficulty
 - v. Lifting: 20-30 pounds
 - vi. Grip/grasp: no limitations
16. An MRI Report for Petitioner's brain completed on [REDACTED], stated the following under IMPRESSION: "1. Moderate-sized area of subacute infarction involves a majority of the left superior and middle temporal gyri as detailed above. In addition to other functionality, this would involve essentially the entire auditory cortex on the left. 2. No additional acute intracranial abnormalities. 3. Changes of probable chronic left maxillary sinusitis and prior sinus surgery are noted." (Ex. A, p.133)

17. A CT scan Report of Petitioner's head completed on [REDACTED], stated the following under IMPRESSION: "Findings are consistent with a recent infarct in the left temporal lobe. No occluded arterial segments are demonstrated. The circle of Willis is unremarkable, this is no evidence of an aneurysm." (Ex. A., p.133)
18. Petitioner was found to have an ejection fraction of 35% during his hospitalization in November 2016 and 40-50% in the months following that.
19. A Report of Cardiac Event Monitor dated [REDACTED], stated the following under IMPRESSION: "This is a 14-day monitor showing no evidence of atrial fibrillation. No sustained ventricular or supraventricular arrhythmias. Brief episodes of what looks like an atrial tachycardia lasting at most 10 to 12 beats were seen. No AV block. No bradycardia or pauses were seen."
20. A CT of Petitioner's head completed on [REDACTED], showed "Left temporal parietal area of low density similar the prior study predominately involving the white matter. This is not changed or evolved as expected. New right temporal and left temporal hypodensity with effacement of the gray-white junction and the sulci overlying it is an acute abnormality. This could be an infarct without hemorrhage but consider infectious, and inflammatory etiologies as well."
21. An MRI Report for Petitioner's brain completed on [REDACTED], stated the following under IMPRESSION: "1. Multiple areas of nonenhancing abnormal signal change are seen involving the bilateral temporal lobes and a small portion of the lateral left parietal lobe as discussed above. The pattern of change and overall imaging characteristics are felt to be most suspicious for possible nonspecific cerebritis/encephalitis possible representing recurrent or reactivated disease. Herpetic encephalitis would be a primary consideration. Today's multifocal areas of signal change and their configuration are less consistent with elements of acute ischemia. If in fact his does represent ischemic change, a central embolic cardiac source would be implied. 2. No additional significant acute intracranial abnormalities are seen. 3. Elements of limited posterior fossa atrophy and chronic left maxillary sinusitis are again evident."
22. At hearing, the record was extended to gather updated medical information. Petitioner agreed to this and waived timeliness requirements.
23. Hearing testing completed for Petitioner on [REDACTED], showed sensorineural hearing loss in both ears with 70 dB in the right ear and 65dB in the left ear. (Ex. A, p.150)

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 uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA-P 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.

Federal regulations require that the Department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). In this case, Petitioner is not working, therefore, Petitioner is not disqualified at this step in the evaluation.

The second step to be determined in considering whether Petitioner is considered disabled is the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical, or mental, ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, 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).

In the third step of the analysis, the trier of fact must determine if Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Petitioner's medical record does not support a finding that Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listings 4.04 and 2.10 were considered.

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a 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. 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 416.927.

The fourth step of the analysis to be considered is whether Petitioner has the ability to perform work previously performed by Petitioner within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent Petitioner from doing past relevant work. In the present case, Petitioner's past employment was as a machinist. Working as a machinist, as described by Petitioner at hearing, would be considered medium work. Petitioner's impairments would prevent Petitioner from doing past relevant work. This Administrative Law Judge will continue through step 5.

In the final step of the analysis, the trier of fact must determine: if the Petitioner's impairment(s) prevent the Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner's:

1. residual functional capacity defined simply as "what can you still do despite your limitations? 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite her limitations. 20 CFR 416.966.

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: 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: 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: 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: 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).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Petitioner makes it to the final step of the analysis, the Petitioner has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial evidence that the Petitioner has the residual function capacity for substantial gainful activity.

After careful review of the medical evidence presented and Petitioner's statements, and considering the Petitioner in the most restrictive circumstances this Administrative Law Judge finds that Petitioner would be able to perform work, at least on the sedentary exertional level.

This Administrative Law Judge finds that Petitioner is capable of the requisite sitting, standing, and walking for a sedentary job. Petitioner is a younger individual at age 41. 20 CFR 416.963. Petitioner's previous work has been unskilled. Federal Rule 20 CFR 404, Subpart P, Appendix 2 contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table 1, Rule 201.21 the Petitioner is not disabled for the purposes of SDA. Petitioner's testimony regarding his limitations are not supported by substantial medical evidence. Petitioner failed to present sufficient medical evidence that he has a psychological impairment that is substantially limiting. Petitioner credibly testified that he could sit through a two-hour movie. Petitioner testified that he doesn't have any physical manifestations or "body effects" from his previous strokes. Petitioner was able to answer all the questions put to him at hearing and there was no medical evidence to support the contention that he would be incapable of performing a sedentary job. Brain imaging completed in May 2017, showed some abnormalities but nothing that showed damage that would be preclusive of full time work.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is not medically disabled for the purposes of SDA eligibility.

Accordingly, the Department's decision is hereby **AFFIRMED**.

AM/md



Aaron McClintic

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]