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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Date Mailed: October 26, 2017
MAHS Docket No.: 17-011344
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 September 26, 2017, from [REDACTED] Michigan. Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED], AP Worker. Department Exhibit 1, pp. 1-234 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 April 4, 2017.
2. The Medical Review Team denied the application on August 14, 2017.
3. Petitioner filed a request for hearing on August 22, 2017, regarding the SDA denial.
4. A telephone hearing was held on September 26, 2017.
5. Petitioner is 5' 9.5" tall and weighs 177 pounds having lost 30 pounds in the last year.

6. Petitioner is 59 years of age.
7. Petitioner's impairments have been medically diagnosed as trigeminal neuralgia and panic attacks.
8. Petitioner has the following symptoms: pain, fatigue, hand and leg tremors, concentration problems.
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 full time in 2013 as a cook.
12. Petitioner lives with his sister.
13. Petitioner testified that he cannot perform some household chores.
14. Petitioner takes the following prescribed medications:
 - a. Lisinipril
 - b. Trileptal
 - c. Norco
 - d. Miralax
15. Petitioner testified to the following physical limitations:
 - i. Sitting: 45 minutes
 - ii. Standing: 15-20 minutes
 - iii. Walking: 1 block
 - iv. Bend/stoop: difficulty
 - v. Lifting: 10-15 lbs.
 - vi. Grip/grasp: no limitations
16. Petitioner testified to experiencing pain, at a high level of 10 on an everyday basis with some pain always present at a low level of 2.
17. In a consultative psychological examination report dated [REDACTED], the consulting psychologist provided the following Medical Source Statement: "Based on the today's examination, this claimant would be able to retain and follow through with simple, structured and repetitive tasks. He can maintain basic self care responsibilities. He would be able to manage benefit funds directed to him. Prognosis remains guarded at this time." (Ex. 1, pp. 87-90)

18. In a consultative physical examination report dated [REDACTED], the examining physician found Petitioner to have diagnoses of "1. Trigeminal neuralgia 2. Essential Tremor. 3. Labile hypertension, well controlled." (Ex. 1, pp.96-99)

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 1.04 and 3.02 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 cook. Working as a cook, as described by Petitioner at hearing, would be considered medium exertional work. Petitioner's impairments would prevent him from doing past relevant work. Specifically, Petitioner's hand tremors would prevent him from working as a cook. 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 Petitioner in the most restrictive circumstances this Administrative Law Judge finds that Petitioner would be able to perform work at most on the light exertional level.

This Administrative Law Judge finds that Petitioner is capable of the requisite sitting, standing and walking for a light exertional job. Petitioner is of advanced age at age 59. 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 202.04 Petitioner is disabled for the purposes of SDA. Petitioner's testimony regarding his or his limitations and ability to sit, stand, walk, lift and carry is supported by substantial medical evidence.

Accordingly, this Administrative Law Judge concludes that Petitioner is disabled for purposes of the SDA program as of April 2017. Petitioner's testimony regarding his limitations and ability to sit, stand, walk, lift, and carry is credible and supported by substantial medical evidence and the assessment of his treating physician's assistant.

Therefore, Petitioner is found to be disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is medically disabled as of April 2017.

Accordingly, the Department's decision is hereby **REVERSED** and the Department is ORDERED to:

1. Initiate a review of the application for SDA dated April 4, 2017, if not done previously, to determine Petitioner's non-medical eligibility.

The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for October 2018

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]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]