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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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Date Mailed: January 16, 2018
MAHS Docket No.: 17-015472
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 January 3, 2018, from Detroit, Michigan. Petitioner was present and testified. He was represented by ██████████, attorney for Human Arc, a Centauri Solutions Company, Petitioner's authorized hearing representative. ██████████ appeared as Petitioner's witness and translator (Arabic). The Department of Health and Human Services (Department) was represented by ██████████, Hearing Facilitator.

During the hearing, Petitioner's counsel waived the time period for the issuance of this decision in order to allow for the submission of additional records. A copy of the October 30, 2014 decision of the Social Security Administration was received and admitted into evidence as Petitioner's Exhibit 1. The record closed upon receipt of the document, and the matter is now before the undersigned for a final determination based on the evidence presented.

ISSUE

Did the Department properly deny Petitioner's application for retroactive Medical Assistance (MA-P) benefits for January 2011 to March 2011?

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 was born May 7, 1978.
2. Petitioner entered the U.S. in April 2008 as a refugee.

3. Petitioner has no employment history.
4. Petitioner has a first-grade education from Iraq. He speaks conversational English. He does not read English.
5. On April 21, 2011, Petitioner filed an application with the Social Security Administration (SSA) for Supplemental Security Income (SSI) benefits alleging a disability due to pancreatic problems/stomach pain; depression; trouble sleeping/nightmares; problems walking; hearing problems; and diabetes.
6. On October 30, 2014, the Social Security Administration (SSA) issued a decision finding Petitioner disabled as of the date of application, which disability continued as of the hearing date, and approved him for SSI effective April 2011. The decision noted that, although Petitioner had alleged a disability onset date of January 1, 2010, SSI did not become payable until the month after the month in which the application is filed. SSA considered Petitioner's impairments for depressive disorder; posttraumatic stress disorder (PTSD); anxiety disorder; panic disorder; pancreatitis; diabetes; and obesity and concluded that Petitioner's impairments met the criteria of a listing under 12.04(A)(B) of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d) and 416.925). In support of this finding, the decision noted that the record supported Petitioner's long-standing emotional distress due to living in war-torn █████ where he witnessed deeply disturbing atrocities, and based on his psychiatric hospitalizations on numerous occasions for profoundly dysfunctional state. Additionally, it was found that Petitioner's obesity and diabetes and long-standing and recurrent bouts of abdominal pain secondary to pancreatitis further limited his ability to work. (Petitioner's Exhibit 1.)
7. On June 25, 2015, the AHR filed an application for retroactive MA-P coverage for January 2011 to March 2011 (Exhibit A, pp. 7-9). Petitioner alleged personality changes, mood swings, emotional outbursts, hallucinations, and post-trauma and indicated that he could not stand, walk or lift much (Exhibit A, p. 21).
8. On May 26, 2017, the Disability Determination Services (DDS)/Medical Review Team (MRT) concluded that the medical evidence presented supported the prior DDS/MRT decision for the period January 2011 to March 2011 that concluded that Petitioner did not meet the 12-month duration period (Exhibit A, pp. 20).
9. On August 28, 2017, the Department sent Petitioner notice that his application for retroactive MA-P coverage was denied.
10. On October 30, 2017, the Department notified the AHR of the denial via email.
11. On October 30, 2017, the Department received the AHR's request for hearing disputing the denial of Petitioner's application (Exhibit A, pp. 2, 12-13).

CONCLUSIONS OF LAW

Department policies are found in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Bridges Reference Tables (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 Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Petitioner was approved for SSI by the SSA in a fully favorable decision, with the SSA administrative law judge finding that Petitioner was disabled as of the application date, April 21, 2011, and eligible for SSI effective April 2011. Department policy provides that an SSI recipient who is a Michigan resident and cooperates with third-party resource liability requirements is automatically eligible for MA-P, with ongoing MA-P eligibility beginning the first day of the month of SSI entitlement. BEM 150 (April 2017), p. 1. BEM 150, p. 1.

Clients who are SSI recipients may also qualify for *retroactive* MA coverage for up to three calendar months prior to SSI entitlement. BEM 150, p. 1; BAM 115 (January 2018), p. 11. At issue in this case is whether Petitioner was disabled from January 2011 to March 2011 and eligible for retroactive MA-P coverage for those months. In order to be eligible for such coverage, the evidence must establish that Petitioner was disabled from January 2011 to March 2011. Disability for MA-P purposes is defined as the inability to do any substantial gainful activity (SGA) 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(a). To meet this standard, a client must satisfy the requirements for eligibility for Supplemental Security Income (SSI) receipt under Title XVI of the Social Security Act. 20 CFR 416.901.

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, 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).

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner testified that the only employment he had was at [REDACTED]. Although he was unable to identify the period when he was employed, he testified that he had only worked for a month and a half. Thus, Petitioner's employment never constituted SGA. Because there was no evidence that Petitioner had engaged in SGA activity during the period for which assistance might be available, Petitioner is not ineligible under Step 1, and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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 416.920(a)(4)(ii); 20 CFR 416.920(c). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

Basic work activities means the abilities and aptitudes necessary to do most jobs, including (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

In the present case, Petitioner alleges disabling impairment due to pancreatic problems/stomach pain; depression; trouble sleeping/nightmares; problems walking; hearing problems; and diabetes. The evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below.

From October 16, 2010 to October 20, 2010 and on December 3, 2010; January 5, 2011; February 3, 2011; and March 31, 2011, Petitioner was treated at the hospital for acute pancreatitis. The discharge notes from the October 16, 2010 indicated that Petitioner had a possible history of depression and there was evidence to alcohol abuse and opioid dependence. The notes from the February 2011 discharge notes indicated that the pancreatitis was likely secondary to alcohol abuse and included a discharge diagnosis for polysubstance abuse with urine drug screen positive for THC. They also indicated that Petitioner was non-compliant with his medication. The March 2011 discharge summary also referenced noncompliance with medication. (Exhibit A, pp. 28-54.)

In a May 14, 2012, [REDACTED], Petitioner's diagnoses were listed as major depressive disorder, severe, with 4 features; PTSD; nicotine dependence, GAD (generalized anxiety disorder), and history of alcohol abuse. It was noted that he had little or no psychotic symptoms when taking medication. (Exhibit A, pp. 62-63.)

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months, particularly where the SSA administrative law judge concluded that the impairments Petitioner alleged in his April 2011 application continued as of the October 2014 decision. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination of whether the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

In the October 30, 2014 SSA decision finding Petitioner disabled as of the date of the SSI application on April 21, 2011 and approving him for SSI effective April 2011, the SSA administrative law judge considered Petitioner's impairments for depressive disorder; posttraumatic stress disorder; anxiety disorder; panic disorder; pancreatitis; diabetes; and obesity and concluded that Petitioner's impairments met the criteria of a listing under 12.04(A)(B) of 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 416.920(d) and 416.925). In support of this finding, the decision noted that the record supported Petitioner's long-standing emotional distress due to living in war-torn [REDACTED] where he witnessed deeply disturbing atrocities, and based on his psychiatric hospitalizations on numerous occasions for profoundly dysfunctional state. Additionally, it was found that Petitioner's obesity and diabetes and long-standing and recurrent bouts of abdominal pain secondary to pancreatitis further limited his ability to work. (Petitioner's Exhibit 1.)

A listing under 12.04 at the time the decision was rendered was for affective disorders. The SSA decision focused on the Petitioner's history in Iraq before he came to the United States. At the hearing Petitioner testified that he came to the United States in [REDACTED]. Therefore, his mental impairments, which arose from the atrocities he witnessed in [REDACTED] were highly likely present January 2011 to March 2011 and the same as they were in April 2011. The medical documentation from January 2011 to March 2011 presented at the hearing references Petitioner's history of anxiety disorder and depression (Exhibit A, p. 39), supporting the conclusion that Petitioner's mental impairment was present in the three months before his April 2011 SSA application. Thus, the evidence presented is sufficient to establish that Petitioner's impairments from January 2011 to March 2011 met a listing under 12.04.

There is evidence that Petitioner had substance abuse and this was a contributing factor to his pancreatitis. However, there was no medical evidence to suggest that Petitioner's drug or alcohol use was a contributing factor material to the determination that he is disabled under a mental impairment. See 20 CFR 416.935(b).

Accordingly, Petitioner **is disabled** at Step 3 for the period January 1, 2011 to March 31, 2011, and no further analysis is required.

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reprocess Petitioner's MA-P application for retroactive coverage for January 1, 2011 to March 31, 2011, to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;

2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified.



AE/tm

Alice C. Elkin

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

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