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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Date Mailed: February 9, 2018
MAHS Docket No.: 17-013239
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 December 5, 2017, from [REDACTED] Michigan. Petitioner was represented by himself and his mother, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Coordinator.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of continued State Disability Assistance (SDA) benefit programs?

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 approved for SDA by the Medical Review Team (MRT) on May 19, 2016, with a medical review in June 2016 due to a physical impairment.
2. On September 13, 2017, the MRT denied Petitioner's medical review for SDA stating that Petitioner had medical improvement.
3. On September 19, 2017, the Department Caseworker sent Petitioner a notice that he was denied for SDA because he had had medical improvement.
4. On October 13, 2017, the Department received a hearing request from Petitioner, contesting the Department's negative action.

5. Petitioner is a 51-year-old man whose date of birth is [REDACTED]. The Petitioner is 5' 10" tall and weighs 220 pounds. He has completed the 9th grade of high school. Petitioner can read and write and perform basic math. Petitioner was last employed as a production laborer at the heavy level in 2015. Petitioner has also been employed as a road marker.
6. Petitioner's alleged impairments are foot pain, 4th surgery on bunion on [REDACTED], where a steel plate was put in. He has also had surgery for a hammer toe on his right foot.
7. On [REDACTED], Petitioner underwent surgery to fix a hallux valgus, metatarsal deformity, mass of skin on foot, primary osteoarthritis, and hammertoe of right foot at [REDACTED]. He underwent a right 1st MPJ fusion, [REDACTED] 2nd metatarsal, arthroplasty toes 2 and 3 on the right foot, and excision of soft tissue mass. He tolerated the procedure well. Petitioner was released in stable condition. He was to avoid excessive ambulation. There were no records submitted of his follow up appointments after surgery. Petitioners Exhibit 1, pgs. 2-10.
8. On [REDACTED], Petitioner was seen for a physical examination with [REDACTED]. His chief complaints were numbness in both feet, pain, tightness in both feet and toes, right hip numb, lower back pain, and a history of seizures since age 14. The independent medical examiner's clinical impression was bilateral foot pain with toe pain secondary to hammer toes and post-surgical screws in the right foot with the left foot status post removal of the screws with improved pain in the left foot. He has mild arthritis in the lower back with radiculopathy. He has not had a seizure since he was age 14 and is not on any medications. There is no physical limitation with the upper extremities, but he has a slight limitation of long standing and walking due to the toe pain. Department Exhibit 1, pgs.224-232.
9. On [REDACTED], Petitioner was seen by his treating specialist at the [REDACTED]. He was seen for follow up for previous surgery on bilateral foot. Petitioner complained of painful contracture of the right hallux, contracted right second digit. He stated that he felt like he was walking on small pebbles pointing to his bilateral third MP1. A physical examination of the right foot revealed a hallux abducted on the first metatarsal. There were scar adhesions on the right first MP1. He had elongated, contracted right second digit with well nucleated skin lesions sub third MPJ bilaterally consistent with porokeratosis. His treating specialist's assessment was hallux valgus right, hammer toe of right foot, porokeratosis, bilateral sub third. The debridement of the bilateral porokeratosis of the third mpj was performed. A further surgery was required and was discussed with Petitioner. Department Exhibit 1, pgs. 276-278.

CONCLUSIONS OF LAW

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 Department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. BEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, 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).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under **"SSI TERMINATIONS," INCLUDING "MA While Appealing Disability Termination,"** does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See **"Medical Certification of Disability"** below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be

designated as "special education" as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.

- Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit BEM, Item 261, pp. 1-2.

"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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

Medical history.

Clinical findings (such as the results of physical or mental status examinations);

Laboratory findings (such as blood pressure, X-rays);

Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

In general, Petitioner has the responsibility to prove that he is disabled. Petitioner's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the petitioner has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

Step 1

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, Petitioner is not engaged in substantial gainful activity and has not worked since 2015. Therefore, Petitioner is not disqualified from receiving disability at Step 1.

Step 2

In the second step of the sequential consideration of a disability claim, 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 will 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. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that Petitioner's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, Petitioner is disqualified from receiving disability at Step 2.

Step 3

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that Petitioner was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Petitioner's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to Petitioner's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

On [REDACTED], Petitioner underwent surgery to fix a hallux valgus, metatarsal deformity, mass of skin on foot, primary osteoarthritis, and hammertoe of right foot at [REDACTED]. He underwent a right 1st MPJ fusion, [REDACTED] 2nd metatarsal, arthroplasty toes 2 and 3 on the right foot, and excision of soft tissue mass. He tolerated the procedure well. Petitioner was released in stable condition. He was to avoid excessive ambulation. There were no records submitted of his follow up appointments after surgery. Petitioners Exhibit 1, pgs. 2-10.

On [REDACTED], Petitioner was seen for a physical examination with [REDACTED]. His chief complaints were numbness in both feet, pain, tightness in both feet and toes, right hip numb, lower back pain, and a history of seizures since age 14. The independent medical examiner's clinical impression was bilateral foot pain with toe pain secondary to hammer toes and post-surgical screws in the right foot with the left foot status post removal of the screws with improved pain in the left foot. He has mild arthritis in the lower back with radiculopathy. He has not had a seizure since he was age 14 and is not on any medications. There is no physical limitation with the upper extremities, but he has a slight limitation of long standing and walking due to the toe pain. Department Exhibit 1, pgs.224-232.

On [REDACTED], Petitioner was seen by his treating specialist at the [REDACTED]. He was seen for follow up for previous surgery on bilateral foot. Petitioner complained of painful contracture of the right hallux, contracted right second digit. He stated that he felt like he was walking on small pebbles pointing to his bilateral third MP1. A physical examination of the right foot revealed a hallux abducted on the first metatarsal. There were scar adhesions on the right first MP1. He had elongated, contracted right second digit with well nucleated skin lesions sub third MPJ bilaterally consistent with porokeratosis. His treating specialist's assessment was hallux valgus right, hammer toe of right foot, porokeratosis, bilateral sub third. The debridement of the bilateral porokeratosis of the third mpj was performed. A further surgery was required and was discussed with the Petitioner. Department Exhibit 1, pgs. 276-278.

At Step 3, this Administrative Law Judge finds that Petitioner does not have medical improvement and his medical improvement is not related to Petitioner's ability to perform substantial gainful activity. The Administrative Law Judge finds that Petitioner is not capable of performing work. He has continuing issues with his bilateral feet. Petitioner also has issues with his back and balance. He is still looking at further surgeries and treatment on his feet. Petitioner has not fully recovered from his previous surgery. As a result, Petitioner is not able to perform work. Therefore, Petitioner is not disqualified from receiving disability at Step 3.

Step 4

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to Petitioner's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been medical improvement where she can perform work.

At Step 4, Petitioner testified that he does not perform any of his daily living activities. However, the objective medical evidence on the record does support that level of impairment. He still has a surgical boot on his right foot. Petitioner does feel that his condition has worsened because of his last surgery and pain. Petitioner smokes a pack of cigarettes a day. He stopped drinking 10 to 12 years ago, where before he drank a lot. He stopped using legal and illicit drugs of marijuana 10 to 12 years ago. Petitioner did not feel there was any work he could do.

This Administrative Law Judge finds that Petitioner has not had medical improvement related to his ability to do work. This Administrative Law Judge finds that Petitioner does not have medical improvement and his medical improvement is not related to Petitioner's ability to perform substantial gainful activity. The Administrative Law Judge finds that Petitioner is not capable of performing work. He has continuing issues with his bilateral feet. Petitioner also has issues with his back and balance. He is still looking at further surgeries and treatment on his feet. Petitioner has not fully recovered from his previous surgery. As a result, Petitioner is not able to perform work. Therefore, Petitioner is not disqualified from receiving disability at Step 4 where

Petitioner cannot perform work. If there is a finding of medical improvement related to Petitioner's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

Step 6

In the sixth step of the sequential evaluation, the trier of fact is to determine whether Petitioner's current impairment(s) is not severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a Petitioner's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds Petitioner cannot perform work. See Steps 3 and 4. He has continuing issues with his bilateral feet. Petitioner also has issues with his back and balance. He is still looking at further surgeries and treatment on his feet. Petitioner has not fully recovered from his previous surgery. As a result, Petitioner is not able to perform work. Therefore, Petitioner is not disqualified from receiving disability at Step 6 where Petitioner passes for severity.

Step 7

In the seventh step of the sequential evaluation, the trier of fact is to assess a Petitioner's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess Petitioner's current residual functional capacity based on all current impairments and consider whether Petitioner can still do work he has done in the past. At Step 7, Petitioner was last employed as a production laborer at the heavy level in 2015. Petitioner has also been employed as a road marker. In this case, this Administrative Law Judge finds that Petitioner cannot perform work. Petitioner is not capable of performing past, relevant work. See Steps 3 and 4. Therefore, Petitioner is not disqualified from receiving disability at Step 7 where Petitioner is capable of performing her past, relevant work.

Step 8

The objective medical evidence on the record is sufficient that Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. Petitioner's testimony as to his limitation indicates his limitations are exertional.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether Petitioner can do any other work, given Petitioner's residual function capacity and Petitioner's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon Petitioner's vocational profile of a closely approaching advance age individual, with a limited education and more, and a history of unskilled work, MA-P is approved using Vocational Rule 201.09 as a guide. This Administrative Law Judge finds that Petitioner does not have medical improvement in this case and the

Department has not established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it proposed to close Petitioner's SDA case based upon medical improvement. Because Petitioner does meet the disability criteria for SDA, he has not had medical improvement making him capable of not performing sedentary work.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the medical review of SDA benefit programs.

DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED**. Petitioner is eligible for SDA based on his medical review of October 2017 with a medical review date of March 2019 within 10 days of the date of mailing of this decision and order of initiating a redetermination of the Petitioner's eligibility for SDA.

Based on policy, the Department should provide Petitioner with written notification of the Department's revised eligibility determination and issue Petitioner any retroactive benefits she/he may be eligible to receive, if any.



CF/md

Carmen G. Fahie
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]