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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: April 25, 2018
MAHS Docket No.: 18-000451
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 February 22, 2018, from [REDACTED] Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED] Assistant Payments Supervisor. The record was left open for additional medical information, which was received on March 23, 2018 and March 29, 2018, and the record was closed.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the 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. On October 16, 2017, the Petitioner applied for SDA.
2. On January 10, 2018, the Medical Review Team (MRT) denied the Petitioner's application for SDA is denied per BEM 261 because the nature and severity of the Petitioner's impairments would not preclude work activity at the above stated level for 90 days and is capable of performing light under Medical Vocation Grid Rule 203.15 per 20 CFR 416.920(f).
3. On January 17, 2018, the Department Caseworker sent the Petitioner a notice that his application was denied.

4. On January 19, 2018, the Department received a hearing request from the Petitioner, contesting the Department's negative action.
5. The Petitioner is a [REDACTED] man whose date of birth is [REDACTED]. The Petitioner is 6' 2" tall and weighs 184 pounds. The Petitioner completed High School and a bachelor's Degree in the Arts in Graphic Design and Broadcasting. The Petitioner can read and write and do basic math. The Petitioner was last employed as a crew leader in siding at the heavy level in March 2017. He was also employed as a house siding worker and construction worker at the heavy level, farm laborer, screen printer, and machinist at the heavy to medium level.
6. The Petitioner's alleged impairments are anxiety, depression, right hand tendinitis or fatty cell growth, degenerative disc disease, compression fracture in the thoracic spine, lumbar burst fracture that resulted in back surgery in [REDACTED], [REDACTED], left arm fracture in 7 pieces, median nerve damage, right leg fracture of sacrum and hip socket where the Petitioner fell off a roof on March 13, 2017.
7. The Petitioner was discharged from physical therapy at [REDACTED] on [REDACTED]. He reported a 50% improvement since starting pt where his leg is functioning at about 70% now. He is compliant with exercises and self-massaging. His lower extremity functional score was 41/80. He was diagnosed with right knee and hip pain. He met his maximum goals. The Petitioner continues to be limited by pain, especially following prolonged activities. Department Exhibit 1, pgs. 393-396.
8. On [REDACTED], the Petitioner was seen by his treating specialist at the [REDACTED]. He was diagnosed with adjustment disorder with depression and anxiety. The reason for the appointment was back pain, left arm and hand pain, and right leg pain. He is a tobacco user without any desire to discontinue. His opioid risk potential was rated as high. He has a history of substance use with a recent marijuana use. She was undecided if he would be willing to discontinue his marijuana use if he was to receive pain medications from the clinic. He has refused to discontinue his smoking even though he has been urged to quit by multiple sources. He has also attempted to obtain narcotic medications from more than one source. His case will be discussed at a team meeting and he will be apprised of the decision. Department Exhibit 1, pgs. 390-393.
9. On [REDACTED], the Petitioner underwent a MRI of the lumbar and thoracic spine at [REDACTED]. The radiologist's clinical impression was a normal exam of the lumbar spine and a stable to slightly improved compression fracture at the L1 level with a stable thoracolumbar fusion. Department Exhibit 1, pgs. 388-389.
10. On [REDACTED], the Petitioner was seen by his treating specialist at [REDACTED]. He was considered a light smoker with possible passive smoke exposure. He had a moderate activity level where he exercises

daily. He had a normal gait with full weight bearing. The Petitioner had pain to deep palpation along the trochanteric ridge. He had a normal right knee x-ray. The Petitioner was diagnosed with hamstring tendinitis of the right thigh, trochanteric bursitis, right, and iliotibial band syndrome, right. He complains of pain, but the specialist did not see anything radiographically. The Petitioner appears to have some inflammation within the trochanteric bursa iliotibial band and hamstring insertion. He would benefit from additional physical therapy. After a significant spine injury, these findings are not unusual. Department Exhibit 1, pgs. 153-156.

11. On [REDACTED], the Petitioner was seen by his specialist at [REDACTED]. He was seen for a chief complaint of left arm pain and numbness resulting from a fall off a roof in March 2017. He had an abnormal EMG study. On his left arm, there was discomfort on manual muscle testing, but strength was 5/5 to 4+/5. He has some mild tenderness. He has median neuropathy in the left forearm. His symptoms may improve with time. His specialist recommended medication for neuropathic pain. Department Exhibit 1, pgs. 44-47.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of 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.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

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 exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income 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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. 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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Petitioner does not have a severe medically determinable impairment or combination of impairments, the Petitioner is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Petitioner's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the trier must consider all of the Petitioner's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of his past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually

performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner has the residual functional capacity to do past relevant work, then the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, the Petitioner has satisfied requirements as set forth in steps one and two of the sequential evaluation. However, the Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for step 3. Therefore, vocational factors will be considered to determine the Petitioner's residual functional capacity to do relevant work and past relevant work.

In the present case, the Petitioner was discharged from physical therapy at [REDACTED] [REDACTED] on [REDACTED]. He was diagnosed with right knee and hip pain. The Petitioner reported a 50% improvement since starting physical therapy where his leg is functioning at about 70% now. He is compliant with exercises and self-massaging. His lower extremity functional score was 41/80. He met his maximum goals. The Petitioner continues to be limited by pain especially following prolonged activities. Department Exhibit 1, pgs. 393-396.

On [REDACTED], the Petitioner was seen by his treating specialist at the [REDACTED]. He was diagnosed with adjustment disorder with depression and anxiety. The reason for the appointment was back pain, left arm and hand pain, and right leg pain. He is a tobacco user without any desire to discontinue. His opioid risk potential was rated as high. He has a history of substance use with a recent marijuana use. She was undecided if he would be willing to discontinue his marijuana use if he was to receive pain medications from the clinic. He has refused to discontinue his smoking even though he has been urged to quit by multiply sources. He has also attempted to obtain narcotic medications from more than one source. His case will be discussed at a team meeting and he will be apprised of the decision. Department Exhibit 1, pgs. 390-393.

On [REDACTED], the Petitioner underwent a MRI of the lumbar and thoracic spine at [REDACTED]. The radiologist's clinical impression was a normal exam of the lumbar spine and a stable to slightly improved compression fracture at the L1 level with a stable thoracolumbar fusion. Department Exhibit 1, pgs. 388-389.

On [REDACTED], the Petitioner was seen by his treating specialist at [REDACTED] [REDACTED]. He was considered a light smoker with possible passive smoke exposure. He had a moderate activity level where he exercises daily. He had a normal gait with full weight bearing. The Petitioner had pain to deep palpation along the trochanteric ridge. He had a normal right knee x-ray. The Petitioner was diagnosed

with hamstring tendinitis of the right thigh, trochanteric bursitis, right, and it band syndrome, right. He complains of pain, but the specialist did not see anything radiographically. The Petitioner appears to have some inflammation within the trochanteric bursa iliotibial band and hamstring insertion. He would benefit from additional physical therapy. After a significant spine injury, these finding are not unusual. Department Exhibit 1, pgs. 153-156.

On [REDACTED], the Petitioner was seen by his specialist at [REDACTED]. He was seen for a chief complaint of left arm pain and numbness resulting from a fall off a roof in March 2017. He had an abnormal EMG study. On his left arm, there was discomfort on manual muscle testing, but strength was 5/5 to 4+/5. He has some mild tenderness. He has median neuropathy in the left forearm. His symptoms may improve with time. His specialist recommended medication for neuropathic pain. Department Exhibit 1, pgs. 44-47.

This Administrative Law Judge finds that the Petitioner can perform light work. He fell from a roof in March 2017, but the medical records reflect that his condition was already improving when he filed for SDA in October 2017. His condition has continued to improve with physical therapy and home exercises. His MRI showed stabilization of his back on [REDACTED]. He is still physically limited with his back, left arm, and right leg impairments.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the Petitioner testified that he does perform some of his daily living activities. The Petitioner does feel that his condition has worsened because of his increase in pain. The Petitioner stated that he does have mental impairments where he is not taking medication nor in therapy. The Petitioner smokes 3 to 4 cigarettes a day. He drinks alcohol rarely. He does not or has ever used illegal and illicit drugs. The Petitioner did not feel there was any work he could do.

At Step 4, this Administrative Law Judge finds that the Petitioner has established that he cannot perform any of his prior work. He was previously employed as a crew leader for siding at the heavy level in March 2017. He was also employed as a house siding worker and construction worker at the heavy level, farm laborer, screen printer, and machinist at the medium to heavy level. The Petitioner is not in therapy nor taking medication for his mental impairments. He has issues with his back, left arm, and left leg that may limit him to light work. Therefore, the Petitioner is not disqualified from receiving disability at Step 4. The Petitioner is not capable of performing his past work. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the Petitioner has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

The objective medical evidence on the record is insufficient that the Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in him previous employment or that he is physically unable to do any tasks demanded of him.

The Petitioner's testimony as to his limitation indicates his limitations are non-exertional and exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work) 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the Petitioner testified that he has depression and anxiety. The Petitioner is not taking medication nor in therapy for his mental impairments. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. He has a high school diploma and bachelor's degree. The Petitioner is capable of performing work.

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).

At Step 5, the Petitioner can meet the physical requirements of lightwork, based upon the Petitioner's physical abilities. Under the Medical-Vocational guidelines, a closely approaching advanced age individual with a high school education and more, and a semi-skilled, skilled, and unskilled work history, who is limited to light work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.14. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression and anxiety. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the Petitioner's mental and physical impairments, the Administrative Law Judge finds that the Petitioner could perform light work and that the Petitioner does not meet the definition of disabled under the SDA program.

DECISION AND ORDER

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 not disabled for purposes of the SDA benefit program. The Petitioner could perform light work and that the Petitioner does not meet the definition of disabled under the SDA program.

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



CF/nr

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]