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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 11, 2018
MAHS Docket No.: 18-002911
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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, an in-person hearing was held on May 17, 2018, at the Ingham County Department of Health and Human Services (Department). Petitioner personally appeared and testified. Petitioner submitted one exhibit, which was admitted into evidence.

The Department was represented by Eligibility Specialist, Shanna Ward. Ms. Ward testified on behalf of the Department. The Department submitted 391 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purpose 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 November 15, 2017. [Dept. Exh. 4-36].
2. On February 20, 2018, the Medical Review Team denied Petitioner's application for SDA. [Dept. Exh. 53-58].
3. On March 5, 2018, the Department issued Petitioner a Notice of Case Action informing him that his application for SDA had been denied. [Dept. Exh. 37-41].

4. On March 12, 2018, Petitioner submitted a Request for Hearing regarding his SDA denial. [Dept. Exh. 2-3].
5. Petitioner has been diagnosed with sciatica, myalgia, mild bulges to the discs at L2-L3 and L3-L4, moderate sized broad-based central herniation L4-L5 eccentric to the left, degenerative joint disease, high blood pressure, a wound on his left foot, depression, anxiety, arthritis, a trigger middle finger of right hand, hypothyroidism and vitamin D deficiency.
6. On January 26, 2017, Petitioner underwent a psychological evaluation on behalf of the Department. The psychologist noted that Petitioner looked thin and sickly, weak and tired. His posture was poor, sort of sunken-like. His gait was slowed, as if in pain moving. Petitioner lacked insight into himself and his symptoms. He did not appear to exaggerate problems or deliberately misrepresent himself. Petitioner appeared quite depressed with a flat affect. He seemed to be without energy, ambition or motivation. The psychologist opined that Petitioner's ability to understand, remember, and carry out simple instructions was not severely impacted from psychological or emotional sources. His abilities to respond appropriately to others, including supervisors and co-workers, and to adapt to changes in a work setting were severely impaired from psychopathology. Petitioner was diagnosed with major depression, chronic, recurrent, moderate with a strong anxiety component; stress exacerbating somatic symptoms; and possibly subclinical posttraumatic stress, defer regarding personality disorder. His prognosis is guarded. [Dept. Exh. 260-274].
7. On January 31, 2017, Petitioner underwent a medical evaluation on behalf of the Department. Petitioner complained of degenerative disc disease, left shoulder pain, low thyroid, high blood pressure, left hip pain and depression. Petitioner stated that his back pain radiates down the right leg. He reported that he used a cane, but now has a trigger finger in his right hand and is unable to hold the cane until he has surgery. The examining physician noted that Petitioner appeared older than his stated age. Petitioner had tenderness over the anterior aspect of the left shoulder with a positive impingement sign. Petitioner also appeared to have mild to moderate degeneration to multiple joints. The physician opined that pain management and activity as tolerated would be indicated. [Dept. Exh. 254-258].
8. On November 3, 2017, Petitioner presented to the emergency department complaining of left leg pain. Petitioner's left hip was hurting and had decreased range of motion. The pain started in the hip and radiated down his left leg. He was also complaining of lower back pain and his toes were numb. On examination, Petitioner was positive for arthralgias, back pain and a gait problem. His left toes were numb. He had occasional coarse sounds and wheezes in his chest. He had tenderness to the left lumbar spine and sciatic area. Both feet were cold to the touch. It was hard to feel deep pulses in either foot. He had whiteish areas of right distal toes. His left foot had whiteish and cyanotic areas to the 4th and 5th toes. His lower left extremity had decreased sensation. He had alcohol on board but

responded appropriately. He was discharged on November 4, 2017, with a diagnosis of alcohol intoxication without complication and chronic midline low back pain with left-sided sciatica. [Dept. Exh. 142-154].

9. On [REDACTED], Petitioner presented to the emergency department complaining of burning pain from his left hip into his lower leg. Petitioner was discharged on [REDACTED], with a diagnosis of sciatica of the left side. [Dept. Exh. 155-164].
10. On November 16, 2017, Petitioner underwent x-rays for chronic low back pain. The x-rays showed mild multi-level degenerative spondyloarthropathy. [Dept. Exh. 183-184].
11. On December 19, 2017, a lumbar spine MRI found mild bulges at L2-L3 and L3-L4. At L4-L5, there was a moderate bulge to the disc. Broad-based superimposed central herniation eccentric to the left extending into the lateral recess and nerve root canal, not all the way out to the neural foramen peripherally. There was some effacement of the thecal sac and mild effacement to the L5 nerve root. The MRI of Petitioner's left hip revealed an abnormal signal in the medial wall of the left acetabulum in the region of the ligamentum teres. There was a small amount of fluid adjacent within the joint, but no generalized effusion was present, etiology unknown. [Dept. Exh. 116-118].
12. On April 23, 2018, Dr. Roth completed a Medical Needs form on behalf of Petitioner. Petitioner was diagnosed with degenerative joint disease, a wound on his left foot and low back pain. The examining physician indicated Petitioner required assistance with taking medications, meal preparation, shopping, laundry and housework. [Petitioner Exh. 1].
13. Petitioner is a [REDACTED]-year-old man born on [REDACTED], 1963. He is [REDACTED]" and weighs [REDACTED] pounds. He is a high school graduate and last worked in 2014 as a caregiver for five years, and as a furniture mover for 25 years before that.
14. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
15. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

A person is disabled for SDA purposes if he or she:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, 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), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2015).

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 **or 90 days for the SDA program**. 20 CFR 416.905(a). 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 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove

disability. 20 CFR 416.912(a). 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). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and testified that he has not worked since 2014. Therefore, he is not disqualified from receiving SDA benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). 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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and*

Human Services, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleges disability due to sciatica, myalgia, mild bulges to the discs at L2-L3 and L3-L4, moderate sized broad-based central herniation L4-L5 eccentric to the left, degenerative joint disease, high blood pressure, a wound on his left foot, depression, anxiety, arthritis, a trigger middle finger of the right hand, hypothyroidism and vitamin D deficiency.

Petitioner credibly testified that he has a very limited tolerance for physical activities. He is unable to walk a block. He can stand for 20 minutes and carry 10 pounds. He can sit for 45 minutes, but his left hip, leg and foot go numb. Petitioner stated that he is unable to do housekeeping and must use an electric cart when in the grocery store.

The MRI of the lumbar spine dated December 19, 2017, revealed mild bulges at L2-L3 and L3-L4. At L4-L5, there was a moderate bulge to the disc. Broad-based superimposed central herniation eccentric to the left extending into the lateral recess and nerve root canal, not all the way out to the neural foramen peripherally. There was some effacement of the thecal sac and mild effacement to the L5 nerve root.

Further, the physician completing the Medical Needs form on April 23, 2018, certified that Petitioner has a medical need for assistance in taking medications, meal preparation, shopping, laundry and housework.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Petitioner has alleged disabling impairments due to sciatica, myalgia, mild bulges to the discs at L2-L3 and L3-L4, moderate sized broad-based central herniation L4-L5 eccentric to the left, degenerative joint disease, high blood pressure, wound on his left foot, depression, anxiety, arthritis, trigger middle finger of right hand, hypothyroidism and vitamin D deficiency.

Listing 1.00 (musculoskeletal system) was considered in light of the objective evidence. Based on the Listing 1.04, Petitioner's impairments are severe, in combination, if not singly, (20 CFR 404.15.20 (c), 416.920(c)), in that Petitioner is significantly affected in her ability to perform basic work activities (20 CFR 404.1521(b) and 416.921(b)(1)).

Listing 1.04 requires a disorder of the spine such as a herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture, resulting in compromise of a nerve root (including the cauda equine) or the spinal cord. With evidence of nerve root compression characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine) and lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

As indicated by Petitioner during his testimony, and supported by the medical evidence in the file, the MRI indicates involvement of the nerve root, resulting in limitation of motion of the spine, motor loss, muscle spasms, radiculopathy and associated muscle weakness displayed by Petitioner's weakness and inability to stand for long periods of time or walk long distances. Accordingly, this Administrative Law Judge finds that Petitioner's impairments meet or equal Listing 1.04 and concludes Petitioner is disabled for purposes of 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, finds Petitioner disabled for purposes of the SDA benefit program.

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

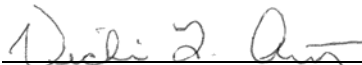
THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. The Department shall process Petitioner's November 15, 2017 application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in June 2019, unless his Social Security Administration disability status is approved by that time.

3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.

VLA/hb



Vicki Armstrong
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) 763-0155; 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

Amber Gibson
5303 South Cedar
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BSC2 via electronic mail

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Petitioner

[REDACTED]