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GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: May 22, 2018  
MAHS Docket No.: 18-001427  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

**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 April 25, 2018, from Detroit, Michigan. The Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

**ISSUE**

Did the Department properly determine 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. On or around October 9, 2017 Petitioner submitted an application for cash assistance on the basis of a disability.
2. On or around January 23, 2018 the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. The DDS determined that Petitioner was capable of performing other work. (Exhibit A, pp. 2-8)
3. On or around January 25, 2018 the Department notified Petitioner that his SDA application was denied based on DDS' finding that he was not disabled.
4. On February 6, 2018 Petitioner submitted a timely written Request for Hearing disputing the Department's denial of his SDA application.

5. Petitioner alleged physical disabling impairments due to: nerve damage in his left leg; left total hip replacement; back pain due to herniated disc; and heart condition requiring stents.
6. As of the hearing date, Petitioner was ■ years old with a ■ date of birth; he was ■" and weighed ■ pounds.
7. Petitioner completed some college and has employment history of work as: a truck driver; a line worker at a factory; and a forklift driver at a warehouse. (Exhibit A, pp. 48-54)
8. Petitioner has not been employed since September 2013.
9. Petitioner has a pending disability claim with the Social Security Administration (SSA).

### **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.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

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**

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 was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he is not ineligible at Step 1, and the analysis continues to Step 2.

### **Step Two**

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA 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 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean 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). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have

more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the de minimis standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. Id.; SSR 96-3p.

The medical evidence presented at the hearing was thoroughly reviewed and is briefly summarized below:

Petitioner was evaluated by [REDACTED], Orthopedic Surgeon with [REDACTED] on November 29, 2016. Records indicate that Petitioner complained of left hip pain for the last three years after being involved in a motor vehicle accident at work in September 2013. It was noted that Petitioner had significant limitation in internal and external rotation of the left hip. The doctor reviewed Petitioner's previous x-rays of the hip and recent MRI, finding that Petitioner had severe degenerative arthritis of the left hip, which is also moderately severe on the right side. It was further noted that Petitioner had some narrowing at the lower part of the lumbosacral spine canal and degenerative disc disease. The doctor recommended a total hip replacement of the left hip to alleviate some of Petitioner's pain. (Exhibit A, pp. 143-146)

In May 2017 Petitioner was treated at the [REDACTED] and presented with hip pain that radiates to the knee and increased pain putting on shoes and socks, getting in and out of cars, walking, and standing. He was observed to ambulate with a Trendelenburg gait. Physical examination of the left hip revealed marked pain elicited on flexion and internal or external rotation. Hip ROM: IR: 0, ER: 15, Flexion: 85, Extension: 0, and abduction: 20. A pelvic and hip x-ray showed severe left hip osteoarthritis with bone on bone articulation, mild right hip arthrosis and bilateral hip dysplasia and coxa valga. (Exhibit A, pp. 160-165).

Petitioner's treatment records from the [REDACTED] were presented for review and show that on August 17, 2017 he received a joint/muscle intra-articular hip joint injection due to a chronic low back pain diagnosis. (Exhibit A, pp. 67-71, 167-174)

Records from [REDACTED] were presented for review and indicate that he was receiving treatment for osteoarthritis of the left hip, lumbar back pain, hypertension, diabetes, and high cholesterol. Records show that it was recommended that Petitioner undergo a left hip replacement. Various physical examinations showed normal findings with the exception of range of motion of lower spine due to pain and the left hip limited to 15 degrees on abduction and adduction. There was no joint enlargement or tenderness present. Petitioner used a cane to assist with ambulation. (Exhibit A, pp. 72-142)

[REDACTED] records indicate that at initial examination in August 2017, Petitioner reported left hip and lower back pain that radiates down to his left leg, lumbar disc bulging and nerve damage in his left leg. He reported that the pain is debilitating, that his leg gives out intermittently, that he will have hip injections in the near future and eventually need a hip replacement. He indicated that he is no longer able to do his house chores and has a home help aid to assist him. The lower extremity functional scale completed scored 3/80. The assessment/diagnosis indicates that: Petitioner's left hip is severely restricted in motion; he has severe restriction in mobility of the left hip; his left hip flexors are tight and contracted; he ambulates with a strong limp; he has decreased tolerance to walking due to left hip and low back pain; and requires skilled therapy to restore prior level of functioning. Upon discharge from physical therapy in or around September 2017, it was noted that Petitioner was observed to have an antalgic gait and used a cane to assist in ambulation. Range of motion to the left measured 50% loss at trunk flexion and 75% loss at extension. His lower back pain radiated down to the left leg. His range of motion showed no improvement and he was discharged due to poor progression. (Exhibit A, pp. 64-66, 148-154, 176-206)

Petitioner submitted his 2014-2015 treatment records from the [REDACTED] and [REDACTED] which indicate that he was diagnosed with lumbar disc herniation with radiculopathy and was treated for neck and back pain. (Exhibit 2). Petitioner reported pain radiating from his back down his left leg and below his knees. He reported numbness in his lower extremities and trouble with his left leg giving out on him. Diagnostic testing showed L4-L5 protrusion/herniation and L3-L4 bulge, congenital narrow lumbar canal. An MRI of Petitioner's lumbar spine taken on September 17, 2014 showed mild congenital narrowing of the lumbar spinal canal, mild degenerative hypertrophic facet joints at L4-L5 and L5-S1 level, and minimal central disk herniation at L4-L5 and L5-S1 without nerve root compression. Petitioner's most recent physical examination with [REDACTED] in June 2015 indicated: cervical spinous process tenderness at C3-C7; spinous process tenderness noted in the lower back L3-S1; no facet tenderness; limited range of motion of both the cervical spine and the lumbar spine with pain upon extension, flexion, right or left lateral rotation; no sacroiliac joint tenderness; straight-leg raise is negative, sitting; no muscle wasting, edema or cyanosis; pedal pulses are 2 plus; strength in lower extremities in all areas innervated by L2 through S1 is 5/5; in the upper extremities, all areas innervated by C4 through T1, strength 5/5; capillary refill is within normal limits; deep tendon reflexes in the knees, ankles, biceps, and triceps are 2/4; and Romberg and Babinski tests were negative.

Petitioner was to remain off work and placed on a 10 pound weight lifting restriction with no excessive bending, lifting and twisting. During the course of Petitioner's treatment, records indicate that he was unable to heel and toe walk, that his neurological sensation is diminished, and that EMG results showed L5 denervation, suggestive of nerve damage. It was noted that Petitioner's condition continues to get progressively worse. (Exhibit 2)

Petitioner presented documentation showing that he was scheduled to have a left hip replacement surgery in March 2018 but was required to undergo a cardiac assessment prior to the surgery. According to the letter drafted by the doctor at the [REDACTED], Petitioner was evaluated and will be scheduled for heart stents surgery in May 2018. It was noted that Petitioner will be on Plavix for one year following the stents and thus, will not be able to have hip-replacement surgery until one year following the stent placement. (Exhibit 1)

Petitioner presented a Services Approval Notice (Increase in Payment) from the Department showing that his Home Help Services payments have been increased effective January 1, 2018 based on an increase in Independent Living Services hours per month. The Services Approval Notice indicates that Petitioner was approved for a home help services provider to assist him with bathing, dressing, grooming, mobility, transferring, medication, housework, laundry, shopping/errands and meal preparation. (Exhibit 1)

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 90 days. 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 if 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.

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint(s) due to any cause) and 1.04 (disorders of the spine) were considered. Upon review, Petitioner's hip impairment results in his inability to ambulate effectively. This is evidenced by the medical records showing that Petitioner is in need of a hip replacement that he is unable to undergo for at least one year after his cardiac stent surgery. Additionally, as referenced above, Petitioner has been approved for home help services, as it was determined that he is unable to carry out activities of daily living. Although it is likely that Petitioner's condition may improve after he receives a left hip replacement, the medical evidence reviewed show that Petitioner's impairments

presently meet or are equal in severity to the criteria in Appendix 1 of the Guidelines to be considered disabling without further consideration. Accordingly, Petitioner is **disabled** at Step 3 and no further analysis is required.

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 SDA benefit program.

### **DECISION AND ORDER**

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. Reregister and process Petitioner's October 9, 2017 SDA application 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; and
3. Review Petitioner's continued eligibility in April 2019.



ZB/tlf

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**Zainab A. Baydoun**  
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

**Via Email:**

[REDACTED]

**Petitioner – Via First-Class Mail:**

[REDACTED]