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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: June 8, 2018  
MAHS Docket No.: 18-003876  
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 May 24, 2018, from Detroit, Michigan. The Petitioner appeared for the hearing with his father/authorized hearing representative [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED], Eligibility Specialist and [REDACTED] [REDACTED], Assistance Payments Supervisor.

**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 30, 2017 Petitioner submitted an application seeking cash assistance benefits on the basis of a disability. (Exhibit A, pp. 1-24)
2. On or around March 19, 2018 the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. (Exhibit A, pp. 30-36)
3. On or around March 29, 2018 the Department sent Petitioner a Notice of Case Action denying his SDA application based on DDS' finding that he was not disabled.
4. On April 6, 2018 Petitioner submitted a timely written Request for Hearing disputing the Department's denial of his SDA application.

5. Petitioner alleged physically disabling impairments due to low back pain due to herniated disc, and torn ACL. Petitioner alleged mental disabling impairments due to bipolar disorder, post-traumatic stress disorder (PTSD), anxiety and depression.
6. As of the hearing date, Petitioner was [REDACTED] years old with a [REDACTED] date of birth; he was [REDACTED] and weighed [REDACTED] pounds.
7. Petitioner has a high school education and employment history of work as an iron worker with the union iron workers.
8. Petitioner has not been employed since July 2015.
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 under 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, such as (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:

On February 27, 2018 Petitioner participated in a consultative physical examination. Petitioner reported history of chronic pain of the lumbar spine and right knee. He reported sustaining an injury to his right knee in high school due to a wrestling accident and that seven to eight years ago, fell about 25 feet landing on his back causing a lower back injury. He has not had surgery or physical therapy but has had injections to the lumbar spine in the past was recommended to have right ACL repair. Petitioner indicated that he can walk for 20 minutes, stand for 10 minutes, sit for 60 minutes, and lift up to the weight of a gallon of milk. He indicated he had difficulty getting in and out of the bathtub but could dress himself. He stated he receives help from his parents with cooking, cleaning and grocery shopping tasks. He does not drive due to anxiety. Petitioner's physical examination of systems was normal, including range of motion and motor strength, with the exception of him having noted difficulty heel and toe walking and squatting due to pain and a depressed affect. He did not require the use of an assistive device to ambulate and his gait was normal. (Exhibit A, pp. 78-81)

On March 11, 2018 Petitioner participated in an Adult Mental Status Examination. Records indicate that Petitioner has been diagnosed with PTSD and bipolar disorder, the symptoms of which began as a teenager, around age 14. The PTSD issues were precipitated by being molested by a half-sister. Petitioner reported that he had a recent inpatient hospitalization in December 2017 and in the past at [REDACTED]. Prior to starting his treatment at [REDACTED], he went through another period of suicidal thoughts. Petitioner's father was present for the examination and reported that he is concerned about Petitioner's violent outbursts. It was noted that Petitioner had been psychiatrically hospitalized at [REDACTED] twice and at the [REDACTED] for not sleeping for one full

week. It was reported that Petitioner also had physical diagnoses of chronic pain due to injury, pinched nerve in his back, a condition in his right knee and persistent insomnia. It was noted that Petitioner smokes cigarettes but does not use alcohol or illicit drugs. It was also noted that his self-esteem appeared to be much lower than average, he did not appear to exaggerate his symptoms, his affect was significantly depressed, he has intermittent and significant suicidal ideations and reported having terrible nightmares. The Medical Source Statement indicates that: Petitioner has marked limitations in his ability to concentrate and show task persistence; he has significant problems sustaining a routine and marked difficulties making simple decisions and following complex instructions; his concentration is moderately limited; his social interaction showed moderate limitations; and his ability to adapt and self-manage is markedly limited. (Exhibit A, pp. 88-92)

Records from Petitioner's May 2013 inpatient psychiatric admission were presented for review. Petitioner reported suicidal ideations and expressed wishes to die, described a long history of fighting, most recently erratic behaviors and domestic conflicts that lead to his wife leaving him. He reported being alienated from his older sister after he confronted her with vague memory of inappropriate contact. He described mood changes and endorses all items in the MDQ including periods where he is so hyper that he gets into trouble and starts fights. He reported being able to sleep only about an hour a day in the last week, that his mind cannot slow down and that he has difficulty concentrating. It was expected that Petitioner was to be hospitalized for five days. (Exhibit A, pp. 93-102, 317-319)

Clinic Notes from Petitioner's 2016 – 2017 treatment with his primary care office show that he was diagnosed with and receiving treatment for chronic pain due to injury, gastroesophageal reflux disease (GERD), insomnia persistent and bipolar 1 disorder. Notes indicate that Petitioner reported having been admitted to [REDACTED] because he had not slept for seven days. (Exhibit A, pp. 106-143)

Progress Notes from Petitioner's mental health treatment at [REDACTED] indicate that he was diagnosed with bipolar disorder and PTSD and had been seeing a counselor at [REDACTED]. During his initial assessment in March 2016, Petitioner reported having issues with crying and anger, further reporting that he was molested by his sister when he was five years old and is afraid to go to sleep, so his sleep schedule is disrupted. Throughout the course of his treatment, it was noted that when he is not medicated for his bipolar disorder, Petitioner will have periods of several days where he is manic, up a lot. Now that he is taking medication, he has more depressive days, is suicidal at times and has paranoia. Petitioner's records indicate that he continued treatment with this provider through December 2016. (Exhibit A, pp. 144-196)

Petitioner's 2013 to 2017 mental health treatment records from [REDACTED] were reviewed and show that Petitioner received continuous treatment for bipolar 1 disorder depressed moderate, depression, generalized anxiety, and PTSD. In March 2013 Petitioner had a GAF score of 45. Records indicate that throughout his treatment, Petitioner reported suicidal thoughts, racing thoughts, anxiety and excessive worry

about his every day routines. He complained that he had feelings of impending doom, had occasional thoughts about wanting to hurt himself and chronic thoughts that life is not worth living. In a July 2014 assessment, Petitioner reported that he gets irate for no reason and that he occasionally thinks about jumping off of the iron at his iron work job. He reported having trouble sleeping, as he has nightmares every night of fire and hell. Petitioner had a psych evaluation in February 2015 during which he described avoidant behavior, hyperarousal, paranoia and reported having nightmares and flashbacks, indicating that his sister made him touch her sexually when he was a child and that he observed domestic violence in his home. It was noted that Petitioner's judgement was fair to poor and he had fair impulse control. Records indicate that Petitioner's symptoms had not improved during the course of his treatment through March 2017. (Exhibit A, pp. 198-337)

Petitioner presented clinical summary records from his December 2017 inpatient psychiatric hospitalization at [REDACTED]. (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), 1.04 (disorders of the spine), 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders), 12.08 (personality and impulse-control disorders), and 12.15 (trauma-and stressor-related disorders) were considered. The medical evidence presented does not show that Petitioner's physical impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration.

Petitioner's medical record reflects bipolar depressive disorder characterized by depressed mood, sleep disturbances, thoughts of death or suicide, feelings of worthlessness. He has documented history of PTSD, impulse control issues, avoidant behavior, hyperarousal, paranoia and reported having nightmares and flashbacks of childhood trauma including sexual abuse. The most recent adult mental status exam showed that Petitioner had: marked limitations in his ability to concentrate and show task persistence; significant problems sustaining a routine; marked difficulties making simple decisions and following complex instructions; his concentration is moderately

limited; his social interaction showed moderate limitations; and his ability to adapt and self-manage is markedly limited.

Upon thorough review, while Petitioner's medical evidence does not show that each of his mental impairments meet an individual listing, when combined, the impairments are equal to the required level in severity to the criteria in Appendix 1 of the Guidelines to be considered as disabled. 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 30, 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 November 2018.

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 USPS**

[REDACTED]

**Authorized Hearing Rep. – Via USPS**

[REDACTED]