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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: July 13, 2018
MAHS Docket No.: 18-004105
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 June 6, 2018, from Lansing, Michigan. The Petitioner was represented by himself and [REDACTED] case manager from Permanent Supportive Housing. The Department of Health and Human Services (Department) was represented by Shanna Ward.

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 July 25, 2017, the Petitioner applied for SDA.
2. On October 9, 2017, 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 other work under Medical Vocation Grid Rule 201.27 per 20 CFR 416.920(f).
3. On March 19, 2018, the Department Caseworker sent the Petitioner a notice that his application was denied.
4. On April 17, 2018, the Department received a hearing request from the Petitioner, contesting the Department's negative action.

5. The Petitioner is a [REDACTED]-year-old man whose date of birth is [REDACTED] [REDACTED] 1977. The Petitioner is [REDACTED] tall and weighs [REDACTED] pounds. The Petitioner completed High School and had some college in IT. The Petitioner can read and write and do basic math. He was special education in all classes in high school. The Petitioner was last employed as a sewer in January 2017 but was not fast enough. He has also been employed as a home health provider at the light level.
6. The Petitioner's alleged impairments are anxiety, depression, bipolar disorder, and glaucoma in the right eye.
7. The Petitioner was seen by his treating physician at Ingham County Health Center on May 16, 2017. He was seen for cellulitis follow-up and a rash. His cellulitis is resolved where he was treated with antibiotics. He smokes marijuana daily. He has a rash on his lower right leg. He was given a cream to use twice a day until the rash is resolved. He had an essentially normal physical examination. Department Exhibit 1, pgs. 182-187.
8. On September 21, 2017, the Petitioner underwent a medical evaluation by an independent medical examiner at Michigan Medical Consultants, PC. His chief complaints were back, bipolar disorder, and depression. He has chronic lumbosacral strain with no active radicular symptoms. His range of motion was stable. The Petitioner's main issue appears to be his anxiety and bipolar disorder. He had no findings of psychosis today. The Petitioner had an essentially normal physical examination except for tenderness at the lumbar spine. Department Exhibit 1, pgs. 171-177.
9. On September 22, 2017, the Petitioner underwent a psychological evaluation by an independent medical examiner at Michigan Medical Consultants, PC. he was alleging disability due to bipolar, depression, schizophrenia, and back problems. A note in file dated March 16, 2017 stated that he was diagnosed with marijuana dependence. He was diagnosed with unspecified personality disorder, major depressive disorder, recurrent, moderate, generalized anxiety disorder, cannabis use disorder, severe, and rule out unspecified neurodevelopmental disorder. The Petitioner is not capable of managing his own funds. His prognosis was poor. The Petitioner had marked limitations to carry out complex tasks, to interact appropriately and effectively with coworkers and supervisors, adapt to changes in the work setting, and to perform work duties reliably and consistently. There was no evidence of a severe thought disorder or risk factors. Department Exhibit 1, pgs. 163-169.

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 seen by his treating physician at Ingham County Health Center on May 16, 2017. He was seen for cellulitis follow-up and a rash. His cellulitis is resolved where he was treated with antibiotics. He smokes marijuana daily. He has a rash on his lower right leg. He was given a cream to use twice a day until the rash is resolved. He had an essentially normal physical examination. Department Exhibit 1, pgs. 182-187.

On September 21, 2017, the Petitioner underwent a medical evaluation by an independent medical examiner at Michigan Medical Consultants, PC. His chief complaints were back, bipolar disorder, and depression. He has chronic lumbosacral strain with no active radicular symptoms. His range of motion was stable. The Petitioner's main issue appears to be his anxiety and bipolar disorder. He had no findings of psychosis today. The Petitioner had an essentially normal physical examination except for tenderness at the lumbar spine. Department Exhibit 1, pgs. 171-177.

On September 22, 2017, the Petitioner underwent a psychological evaluation by an independent medical examiner at Michigan Medical Consultants, PC. he was alleging disability due to bipolar, depression, schizophrenia, and back problems. A note in file dated March 16, 2017 stated that he was diagnosed with marijuana dependence. He was diagnosed with unspecified personality disorder, major depressive disorder, recurrent, moderate, generalized anxiety disorder, cannabis use disorder, severe, and rule out unspecified neurodevelopmental disorder. The Petitioner is not capable of managing his own funds. His prognosis was poor. The Petitioner had marked limitations to carry out complex tasks, to interact appropriately and effectively with coworkers and supervisors, adapt to changes in the work setting, and to perform work duties reliably and consistently. There was no evidence of a severe thought disorder or risk factors. Department Exhibit 1, pgs. 163-169.

This Administrative Law Judge finds that the Petitioner does have limitations. His issues with his back may limit him to light work. However, his mental impairments seem to affect his ability to work where he had marked limitations that would keep him from being employed. He is in therapy but is not taking prescribed medication instead smoking marijuana. As a result, he is not in compliance with his treatment regimen.

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 depression and no cash. The Petitioner stated that he does have mental impairments where he is taking medication of medical marijuana and in therapy at Community Mental Health (CMH). There were no records submitted from CMH. The Petitioner stopped smoking cigarettes 15 years ago where before he smoked one pack of cigarettes every 2 days. He drinks alcohol seldomly. He uses illegal and illicit drugs of medical marijuana for the past 10 years. 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 sewer in January 2017 but was not fast enough. He has also been employed as a home health provider at the light level. The Petitioner is in therapy, but not taking prescribed medication for his mental impairments. He has issues with his back 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 his 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 anxiety, depression, bipolar disorder. The Petitioner is not taking prescribed medication and is in therapy for his mental impairments. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. The Petitioner should be able to perform simple and unskilled light 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 light work, based upon the Petitioner's physical abilities. Under the Medical-Vocational guidelines, a younger individual with a high school education, and an unskilled work history, who is limited to light work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.20. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as anxiety, depression, bipolar disorder. 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 continued marijuana use is material to his being able to work and that the Petitioner does not meet the definition of disabled under the MA program.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use are material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the

regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Petitioner's testimony and the information contained in the file indicate that claimant has a history of **tobacco, drug, and alcohol abuse**. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Petitioner does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability.

DECISION AND ORDER

The Administrative Law Judge based upon the above findings of fact and conclusions of law decides that the Department has appropriately established that it was acting in compliance with Department policy when it denied the Petitioner's application for SDA. The Petitioner's substance abuse is material to his disability. The Department has established its case by preponderance of the evidence.

Accordingly, the Department decision 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) 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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Petitioner

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