



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 15, 2018
MAHS Docket No.: 18-006169
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 August 7, 2018, from Lansing, Michigan. Petitioner was represented by himself. The Department of Health and Human Services (Department or Respondent) was represented by Rhonda Hainer, Eligibility Specialist; and Sara Terreros, Assistance Payments Supervisor. At the conclusion of the hearing Petitioner waived the time limits and requested to submit additional information. The hearing record was left open until August 13, 2018, to allow for the submission of additional information. Petitioner submitted new information August 13, 2018, which was considered.

Respondent's Exhibit A pages 1-597 were admitted as evidence.

Petitioner's Exhibit 1 was admitted into evidence.

ISSUE

Whether the Department properly determined 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 J [REDACTED], 2017, Petitioner filed an application SDA benefits alleging disability.

- (2) Petitioner receives Medical Assistance (MA) benefits and Food Assistance Program (FAP) benefits.
- (3) On May 10, 2018, the Medical Review Team denied Petitioner's application stating that Petitioner could perform other work.
- (4) On May 14, 2018, the department caseworker sent Petitioner notice that his application was denied.
- (5) On June 19, 2018, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On June 27, 2018, the Michigan Administrative Hearing System received the Hearing summary and attached documentation.
- (7) On August 7, 2018, the hearing was held.
- (8) Petitioner is a [REDACTED]-year-old man whose date of birth is [REDACTED] 1972. He is [REDACTED]" tall and weighs [REDACTED] lbs. He has a master's Degree in public administration and a bachelor's degree in Political Science.
- (9) Petitioner last worked as a grant writer. His fellowship was dropped in 2015.
- (10) Petitioner alleges as disabling impairments: Diabetes Mellitus I; hearing aids; hypertension; glasses; cataracts; chronic pain in the clavicle; six broken ribs (2014); dyslexia; Attention Deficit Disorder (ADD); Post Traumatic Stress Disorder (PTSD); depression; panic attacks; eight suicide attempts; and sleep violence.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. 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 is 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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

...Medical reports should include:

- (1) Medical history;
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);

- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913.

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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 your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Petitioner is not engaged in substantial gainful activity and has not worked since August 3, 2016. Petitioner is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates:

Petitioner testified on the record that he lives with a roommate. He has visitation with his 12-year-old child every other weekend. The visits are unsupervised. He has a driver's license and drives 1-2 times per week. He does cook stir fry and chili. He grocery shops late at night one time per week with help. He vacuums and straightens up, but it is painful. He can stand for 20 minutes and sit for 30 minutes. He can walk 1.5 blocks. He uses a cane. He needs help putting on his socks and shoes. His pain is a 9 of 10 without medication or 7-8 with medication. Prior to 2013, he was successful. He had a motorcycle accident, got divorced, his mother died in a car accident, his father died, he lost this fellowship, and his son got diagnosed with Diabetes Mellitus Type 1.

This Administrative Law Judge did consider the entire record in making this decision.

Medical documentation indicates a non-severe condition:

A [REDACTED], 2018, Physical Residual capacity assessment indicates that Petitioner can lift or carry 20 pounds occasionally, 10 pounds frequently and stand, walk or sit about 6 hours in an 8-hour work day. He is able to push and pull in unlimited fashion. Petitioner can occasionally climb, balance, stoop, kneel, crouch, or crawl. Petitioner is limited in his ability to reach all directions. Petitioner has no visual, communicative or environmental limitations. (Pages 43-50)

An [REDACTED], 2018, disability determination service evaluation indicates that Petitioner has not worked since 2011. He sustained a distal right clavicle fracture in 2016, due to a motorcycle accident. Since that time, he has been in chronic pain. Petitioner's remote, recent and immediate memory are intact with normal concentration. Petitioner's insight and judgment are both appropriate. Petitioner provided a good effort during the examination. Petitioner is right hand dominant. Blood pressure was 114/86. Neck was supple without masses. Breath sounds are clear to auscultation and symmetrical. There is no accessory muscle use. The heart had regular rate and rhythm without enlargement. There is a normal S1 and S2. The abdomen had no organomegaly or masses. Bowel sounds were normal. The vascular had no clubbing or cyanosis appreciated. There is no edema present. Femoral, Popliteal, dorsalis pedis, and posterior tibial pulses are normal bilaterally. Hair is present bilaterally. The feet are warm and there is normal color. There is no evidence of joint laxity, crepitation, or effusion. Petitioner has a superiorly displaced non-union right clavicle. Grip strength remains intact. Dexterity is unimpaired. Petitioner could button clothing and opened the door. Petitioner had no difficulty getting on and off the examination table, no difficulty heel and toe walking, mild difficulty squatting and no difficulty standing 3 seconds a need a foot. Range of motion was normal. Cranial nerves are intact. Motor strength is 4/5 in the upper right extremity at the shoulder. Muscle tone is normal. Sensory is intact to light touch in pinprick. Petitioner walks with a normal gait without the use of an

assist device. Petitioner's diabetes appears to be stable, he is on insulin management. There are no neuropathic findings. He appeared mildly anxious. A neuropsychological evaluation would be helpful. Cognitively he is appropriate. (Respondent's Exhibit Pages 68-71)

At Step 2, Petitioner has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Petitioner suffers a severely restrictive physical or mental impairment.

This Administrative Law Judge finds that Petitioner has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the Petitioner. There are no laboratory or x-ray findings listed in the file. The clinical impression is that Petitioner is stable. There is no medical finding that Petitioner has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, Petitioner has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Petitioner has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that Petitioner has a severely restrictive physical impairment.

Petitioner alleges the following disabling mental impairments: depression, post-traumatic stress disorder, anxiety, ADD, and panic attacks.

An [REDACTED], 2018 disability determination service psychological evaluation (Respondent's Exhibit Pages 74-80), indicates that Petitioner was oriented to person, place and time as far as month and year but gave the day as the seventh when it was in fact the ninth. He was diagnosed with generalized anxiety disorder, panic disorder, major depression, recurrent, mild. ADHD by history; Dyslexia by history; Chronic pain the back and chest wall; Diabetes type one; and hypertension. His prognosis is fair. He seems to be functioning at a much lower level than he had previously given his history and education. He has issues with anxiety and depression which have been significant over time leading to psychiatric hospitalizations, use of medication, and need for counseling. He continues to struggle with some of these issues, but they do not necessarily overwhelm him as far as day to day functioning. His primary issue seems to be his limited motivation to leave home or go out in public at this point. He is capable of simple tasks and complex information as well. With respect to concentration, persistence and pace, his limitations are moderate. With respect to social interactions, his limitations are mild. He is capable of dealing with the general public and handling criticism. With respect to adaptation or management of himself, his limitations are mild. He's able to travel. He can utilize public transportation if needed still drives. He can set goals for himself and handle changes in setting. He is able to manage benefit funds. With respect to his ability to understand, remember and apply information his limitations are moderate. He is capable of remembering locations, learning job skills and applying those in a work setting.

A [REDACTED], 2010, psychological evaluation indicates that intellectual, academic, perceptual, and personality test results indicate that Petitioner is a highly motivated young adult of above average to superior intelligence who suffers from dyslexia and an attention deficit disorder. Historical data indicates that these deficits are not caused by a generalized developmental disability or sensory defect. His strengths are in vocabulary, abstract thinking, visual spatial relationships, reality testing, emotional control, self-image and relationships with others. His weaknesses are attention, memory, persistence and a repetitive paper and pencil tasks, visual processing, and fall logical processing. Unfortunately, at times Petitioner's weaknesses overwhelm the strengths, specifically, is learning disability interferes with the ability to quickly and accurately encode and the cold written language. He demonstrates functional limitations in reading, writing, taking essay tests or timed tests, note taking, and foreign languages. (Petitioner's Exhibit 1)

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).

There is insufficient objective medical/psychiatric evidence in the record indicating Petitioner suffers severe mental limitations. There is no mental residual functional capacity assessment in the record, but Petitioner was oriented x3 at all psychiatric evaluations. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was oriented to time, person and place during the hearing. Petitioner was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that Petitioner suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Petitioner has failed to meet his burden of proof at Step 2. Petitioner must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If Petitioner had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Petitioner's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If Petitioner had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that Petitioner is unable to perform work in which he has engaged in, in the past. Therefore, if Petitioner had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether Petitioner has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the Department to establish that Petitioner does not have residual functional capacity.

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).

Petitioner has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Petitioner's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Petitioner has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. Petitioner's testimony as to his limitations indicates that he should be able to perform light or sedentary work. Thus, he retains the capacity to perform prior work and he is found not disabled at Step 4.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was able to answer all the questions at the hearing and was responsive to the questions. Petitioner was oriented to time, person and place during the hearing. Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to

Petitioner's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that Petitioner has no residual functional capacity. Petitioner is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. Under the Medical-Vocational guidelines, a person closely approaching advanced age (age [REDACTED]), master's degree education and an unskilled work history who is limited to light work is not considered disabled pursuant to medical vocational rule 204.00.

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 is 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 indicate that Petitioner has a history of tobacco, drug, or alcohol abuse. Applicable herein 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.

It should be noted that Petitioner continues to smoke (marijuana and cigarettes) despite the fact that the doctor has told Petitioner to quit. Petitioner is not in compliance with the treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

Careful consideration has been given to Petitioner's allegations and symptoms. Petitioner has established that his physical and mental condition could cause problems with daily and work functioning. However, the totality of the evidence does not support total disability. The

Petitioner's medically determinable impairments could reasonably be expected to produce alleged symptoms, but Petitioner's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible when compared to the limitations suggested by the objective medical evidence contained in the file

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because Petitioner does not meet the definition of disabled under the MA based upon disability and because the evidence of record does not establish that Petitioner is unable to work for a period exceeding 90 days, Petitioner does not meet the disability criteria for State Disability Assistance benefits.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was not eligible to receive State Disability Assistance based upon 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 on the record that it was acting in compliance with department policy when it denied Petitioner's application for State Disability Assistance benefits. Petitioner should be able to perform a wide range of light or sedentary work even with his impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is **AFFIRMED** based upon the substantive information contained in the file.

LL/bb

A handwritten signature in cursive script, reading "Landis y. Lain", written over a horizontal line.

Landis Lain

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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, DHHS

BSC3 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]