



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: December 18, 2018
MAHS Docket No.: 18-008504
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

AMENDED 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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on October 11, 2018, from Lansing, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Jim Tervo, Assistance Payments Supervisor.

At the conclusion of the hearing, a Hearing Decision was issued by Administrative Law Judge Fahie and mailed on November 13, 2018, which is hereby **AMENDED** to correct and delete typos in the original decision.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was approved for State Disability Assistance (SDA) by the Medical Review Team (MRT) on August [REDACTED] 2016, with a medical review in October of 2017 due to a physical and mental impairment.
2. On August [REDACTED] 2018, the MRT denied Petitioner's medical review for SDA, stating that Petitioner had medical improvement.
3. On August [REDACTED] 2018, the Department Caseworker sent Petitioner a notice that he was denied for SDA because he had medical improvement.
4. On August [REDACTED] 2018, the Department received a hearing request from Petitioner, contesting the Department's negative action.

5. Petitioner is a [REDACTED]-year old man whose date of birth is [REDACTED]. Petitioner is [REDACTED] tall and weighs [REDACTED] pounds. He has completed the 11th grade of high school. Petitioner can read and write and perform basic math. Petitioner was last employed as a cook in 2012, which is his pertinent work history at the heavy level. He was also employed as a housekeeper at the heavy level and laborer at the heavy level.
6. Petitioner's alleged impairments are three back surgeries in 2000, 2004, and 2015, type II diabetes, neuropathy in his hands and feet, arthritis in back, social anxiety and depression, chronic pain, nerve pain in legs, and upper teeth removed on liquid diet.
7. On May [REDACTED] 2018, Petitioner was seen by an independent medical examiner, [REDACTED] Psy.D, for a psychiatric evaluation. Petitioner was diagnosed with social anxiety disorder, with episodes of panic and major depressive disorder, recurrent, moderate. His prognosis was guarded. His depression and anxiety appear to be fairly significant and are related to his ongoing back problems. His ability was markedly impaired due to attention issues caused by pain for inability to understand instructions and concentrate and carry out instructions. In addition, his ability was markedly impaired due to social anxiety for interaction with the general public, coworkers, and supervisors. His abilities to adapt to changes in a work environment and use public transportation are moderately impaired. He is able manage his own benefits funds. There was no evidence of a severe thought disorder or risk factors. Department Exhibit 2, pgs. 3-5.
8. On April [REDACTED] 2018, Petitioner was seen by an independent medical examiner, AAA Evaluations, for a physical evaluation. Petitioner was evaluated due to back problems, diabetes mellitus, neuropathy, anxiety, depression, and hypertension. He had three previous back surgeries with the last in 2015. Petitioner does not use any assistive devices. He had normal gait and station with no limp. Petitioner did have moderate difficulty with heel walking. There was no atrophy of the musculature seen. He has very limited range of motion in flexion and extension of his lumbar spine. He had a slight limitation on lateral flexion. Petitioner had weakness in his bilateral lower extremities secondary to pain. He has tenderness to palpitation in the midline of his lumbar spine. Petitioner has loss of lumbar spine lordosis because of his fusion. He was in obvious discomfort during the physical examination. Department Exhibit 2, pgs. 12-17.
9. On April [REDACTED] 2018, Petitioner was seen by his treating physician. He was diagnosed with chronic low back pain, depression, diabetes mellitus, high cholesterol, marijuana abuse, suicidal thoughts, tobacco use disorder, and Vitamin D deficiency. Petitioner had no back pain or cervical neck pain. He was in no acute distress. Department Exhibit 2, pgs. 66-69.

CONCLUSIONS OF LAW

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 90 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's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. BEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services,
or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under **"SSI TERMINATIONS," INCLUDING "MA While Appealing Disability Termination,"** does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See **"Medical Certification of Disability"** below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**

- .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as "special education" as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit BEM, Item 261, pp. 1-2.

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment] ... must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]... We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

...[The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities... 20 CFR 416.920(c).

...Medical reports should include --

Medical history.

Clinical findings (such as the results of physical or mental status examinations);

Laboratory findings (such as blood pressure, X-rays);

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

...The medical evidence... must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

(a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your

statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine –

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

In general, Petitioner has the responsibility to prove that he/she is disabled. Petitioner's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only Petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that Petitioner has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of

impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

Step 1

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, Petitioner is not engaged in substantial gainful activity and has not worked since 2012. Therefore, Petitioner is not disqualified from receiving disability at Step 1.

Step 2

In the second step of the sequential consideration of a disability claim, the trier of fact must determine if Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Petitioner's medical record will not support a finding that Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that Petitioner's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, Petitioner is disqualified from receiving disability at Step 2.

Step 3

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that Petitioner was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Petitioner's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to Petitioner's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

On May █ 2018, Petitioner was seen by an independent medical examiner, █
█ Psy.D, for a psychiatric evaluation. Petitioner was diagnosed with social anxiety disorder, with episodes of panic and major depressive disorder, recurrent, moderate.

His prognosis was guarded. His depression and anxiety appear to be fairly significant and are related to his ongoing back problems. His ability was markedly impaired due to attention issues caused by pain for inability to understand instructions and concentrate and carry out instructions. In addition, his ability was markedly impaired due to social anxiety for interaction with the general public, coworkers, and supervisors. His ability to adapt to changes in a work environment and use public transportation are moderately impaired. He is able manage his own benefits funds. There was no evidence of a severe thought disorder or risk factors. Department Exhibit 2, pgs. 3-5.

On April [REDACTED] 2018, Petitioner was seen by an independent medical examiner, AAA Evaluations, for a physical evaluation. Petitioner was evaluated due to back problems, diabetes mellitus, neuropathy, anxiety, depression, and hypertension. He had three previous back surgeries, with the last in 2015. Petitioner does not use any assistive devices. He had normal gait and station with no limp. Petitioner did have moderate difficulty with heel walking. There was no atrophy of the musculature was seen. He has very limited range of motion in flexion and extension of his lumbar spine. He had a slight limitation on lateral flexion. Petitioner had weakness in his bilateral lower extremities secondary to pain. He has tenderness to palpitation in the midline of his lumbar spine. Petitioner has loss of lumbar spine lordosis because of his fusion. He was in obvious discomfort during the physical examination. Department Exhibit 2, pgs. 12-17.

On April [REDACTED] 2018, Petitioner was seen by his treating physician. He was diagnosed with chronic low back pain, depression, diabetes mellitus, high cholesterol, marijuana abuse, suicidal thoughts, tobacco use disorder, and Vitamin D deficiency. Petitioner had no back pain or cervical neck pain. He was in no acute distress. Department Exhibit 2, pgs. 66-69.

At Step 3, this Administrative Law Judge finds that Petitioner does have medical improvement and his medical improvement is related to Petitioner's ability to perform substantial gainful activity. He does have physical limitations with his back. Petitioner does walk with a normal gait and station with no limp. He is not in treatment but is taking medications for mental impairments. Petitioner has had medical improvement since his surgery in 2015. He was denied Social Security Disability and has filed a new application. Petitioner completed the 11th grade of high school, which may limit him to simple and unskilled work. As a result, Petitioner is able to perform simple and unskilled light work. Therefore, Petitioner is disqualified from receiving disability at Step 3.

Step 4

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to Petitioner's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been medical improvement where he can perform work.

At Step 4, Petitioner testified that he does perform some of his daily living activities. However, the objective medical evidence on the record does not support that level of impairment. Petitioner testified that his condition has gotten worse because of the increased neuropathy in his feet and arthritis in his back has gotten worse. For his mental impairments, he is taking medications, but not in therapy. Petitioner does smoke a pack of cigarettes every three to four days. He uses illegal or illicit drugs of medical marijuana where he has a card for pain, anxiety, and depression. He stopped drinking beer over one year ago. Petitioner did not think that there was any work that he could perform.

This Administrative Law Judge finds that Petitioner's medical improvement is related to his ability to do work. He does have physical limitations related to his back. Petitioner should be able to perform at least simple and unskilled light work. He has had medical improvement where he no longer walks with a limp. Petitioner still has an issue with chronic pain. He has a normal gait and station. He is not in treatment but taking medications for his mental impairments. There was no evidence of a severe thought disorder or risk factors. Therefore, Petitioner is disqualified from receiving disability at Step 4 where Petitioner can perform simple and unskilled light work. If there is a finding of medical improvement related to Petitioner's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

Step 6

In the sixth step of the sequential evaluation, the trier of fact is to determine whether Petitioner's current impairment(s) is not severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a Petitioner's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. He does have physical limitations related to his back. He has had medical improvement where he no longer walks with a limp. Petitioner still has an issue with chronic pain. He has a normal gait and station. He is not in treatment but is taking medications for his mental impairments. There was no evidence of a severe thought disorder or risk factors. Therefore, Petitioner is not disqualified from receiving disability at Step 6 where Petitioner passes for severity.

Step 7

In the seventh step of the sequential evaluation, the trier of fact is to assess a Petitioner's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess Petitioner's current residual functional capacity based on all current impairments and consider whether Petitioner can still do work he has done in the past. At Step 7, Petitioner was last employed as a cook in 2012, which is his pertinent work history at the heavy level. In this case, this Administrative Law Judge finds that Petitioner should be able to perform simple and unskilled light work. Petitioner is not capable of performing past relevant work at the heavy level. See Steps 3 and 4. Therefore, Petitioner is not disqualified from receiving disability at Step 7 where Petitioner is not capable of performing his past relevant work.

Step 8

The objective medical evidence on the record is insufficient that 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. Petitioner's testimony as to his limitation indicates his limitations are exertional and non-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, Petitioner testified that he has social anxiety and depression. Petitioner is taking medication, but not in therapy for his mental impairments. See MA analysis Step 2. There was no evidence of a serious thought disorder or risk factors. Petitioner completed the 11th grade of high school education. He will be limited to simple and unskilled work.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether Petitioner can do any other work, given Petitioner's residual function capacity and Petitioner's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon Petitioner's vocational profile of a younger-age individual with a limited education and a history of semi-skilled and unskilled work, MA-P is denied using Vocational Rule 202.21 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as social anxiety and depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. This Administrative Law Judge finds that Petitioner does have medical improvement in this case and the Department

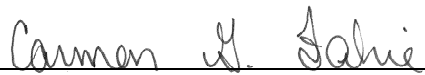
has established by the necessary competent, material, and substantial evidence on the record that it was acting in compliance with Department policy when it proposed to close Petitioner's SDA case based upon medical improvement. Because Petitioner does not meet the disability criteria for SDA, he has had medical improvement making him capable of performing simple and unskilled, light work.

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 not disabled for purposes of the medical review of SDA benefit programs.

DECISION AND ORDER

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

CF/hb



Carmen 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

Jim Tervo
47420 State Hwy M-26
Suite 62
Houghton, MI 49931

Houghton County, DHHS

BSC1 via electronic mail

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