



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: September 25, 2018
MAHS Docket No.: 18-008505
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 September 18, 2018, from Lansing, Michigan. Petitioner was represented by himself and his mother, [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Brandi Eiland, Assistance Payments Supervisor.

Respondent's Exhibit A pages 1-459 were admitted as evidence. Petitioner's Exhibits 1-27 were admitted as evidence.

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 [REDACTED], 2018, Petitioner filed an application for SDA benefits alleging disability.
- (2) Petitioner receives Medical Assistance (MA) benefits and Food Assistance Program (FAP) benefits.
- (3) On July 25, 2018, the Medical Review Team denied Petitioner's application stating that Petitioner could perform other work.

- (4) On August 14, 2018, the Department caseworker sent Petitioner notice that his application was denied.
- (5) On August 24, 2018, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On August 30, 2018, the Michigan Administrative Hearing System received the Hearing summary and attached documentation.
- (7) On September 18, 2018, the hearing was held.
- (8) Petitioner is a [REDACTED]-year-old man whose date of birth is [REDACTED]. He is [REDACTED]' [REDACTED]" tall and weighs [REDACTED] pounds. He has a Bachelor of Science degree in criminal justice.
- (9) Petitioner last worked for the [REDACTED] County Friend of the court January 24, 2017. He has also worked as a bartender for 7+ years.
- (10) Petitioner alleges as disabling impairments: depression, anxiety, bipolar disorder, herniated discs, degenerative disc disease, spondylosis, nerve damage, arm pain, panic attacks, suicidal ideation, back and leg pain.

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 2017. 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 girlfriend and has no income. He receives MA and FAP benefits. He cooks four times per week and makes microwave meals, frozen dinners, and pasta. He does not do chores but tries to cut grass. He grocery shops one time per week and needs help carrying the bags. The heaviest

weight he can carry is 5 pounds. He watches television 2 hours per day and sometimes plays video games 2 hours per day. He can stand for 5 minutes and sit for 10-15 minutes. He can walk for ¼ mile. He takes baths and can dress himself, but needs help putting a sock on his left foot.

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

Medical documentation indicates a non-severe condition:

An [REDACTED], 2018 Progress Note indicates that petitioner was mildly anxious and talkative. Petitioner reported that he has been having problems with some of his friends. He has been officially denied social security disability. He has been more nervous about the upcoming surgery. Petitioner discussed that he feels better but still might not be the right combination of medications. (Petitioner's Exhibit page 15)

An [REDACTED], 2018, medical report indicates that Petitioner's blood pressure was 124/72; pulse 83; temperature 98.6 degrees Fahrenheit, respiration 16, BMI 29.28. He was alert, oriented to person, place and time. He appeared well-developed and well nourished. His physical examination was normal in all areas except for the lumbar back: He exhibits decreased range of motion, tenderness and bony tenderness. He has a normal mood and affect. His speech is normal. Behavior is normal. Judgment normal. His mood appears not anxious. His affect is not angry. He is not agitated. Thought content is not paranoid and not delusional. Cognition and memory are normal. He does not exhibit a depressed mood. He expresses no homicidal and no suicidal ideation. He expresses no suicidal plans and no homicidal plans. He was diagnosed with degenerative disc disease, lumbosacral; anxiety and depression; bipolar 1 disorder. (Petitioner's Exhibit page 26)

A Disability Determination Explanation dated [REDACTED], 2018, indicates: a physical residual functional capacity assessment indicates that petitioner can occasionally carry 20 pounds, frequently carry 10 pounds. Petitioner can stand, sit or walk about 6 hours in an 8-hour workday. Petitioner can occasionally climb ladders, frequently stoop, occasionally kneel, crouch and crawl. He does have a limited range of motion of cervical and lumbar spine which reduces the ability to crouch, crawl and climb ladders and ropes. Petitioner has no manipulative, visual, or communicative limitations. Petitioner should avoid concentrated exposure to machinery and heights. Petitioner has reduced spinal range of motion which limits ability for quick movement to avoid hazards.

The mental residual functional capacity assessment indicates that Petitioner is moderately limited in the ability to understand and remember detailed instructions; the ability to carry out detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to concentrate into complete complex assignments; the ability to maintain socially appropriate behavior; the ability to respond appropriately to changes in the work setting; the ability to adapt to changes on a job. Petitioner is not significantly limited in any other areas. Petitioner is capable of performing simple, low stress, routine tasks, on a sustained basis. Petitioner is not

disabled, pursuant to medical vocational rule 202.20. (Respondent's Exhibit A pages 8-24)

A [REDACTED], 2018, EMG nerve conduction study indicates mild to moderate chronic left sciatic mononeuropathy with ongoing the denervation and mild chronic right L5 radiculopathy with ongoing denervation, due to lack of the superficial peroneal sensory potential, a superimposed peroneal mononeuropathy is difficult to exclude. It is possible the left sciatic mononeuropathy was associated with the significant rhabdomyolysis which the patient sustained in December of 2017. Petitioner reported significant improvement in the abyss distal lower extremity paresthesia, improvement in the left lower extremity distal strength allowing him to ambulate without the use of the left foot boot most of the time. (Respondent's Exhibit A page 232)

On [REDACTED], through [REDACTED], Petitioner was admitted to the [REDACTED] rehabilitation and treatment for chemical dependency (cocaine abuse and cannabis dependency). Petitioner completed all programs and was discharged with complete after care for continued treatment and recovery. (Respondent's Exhibit A pages 79-80)

A [REDACTED], 2017 MRI of the spinal cervical without contrast indicates C2-C3, C3-C4 and C4-C5 levels unremarkable. C5-C6/C6-C7 levels demonstrate loss of T2 signal in the intervertebral disc compatible with dehydration and circumferential disc bulging. Bilateral uncovertebral joint hypertrophy is noted, resulting in bilateral neuroforaminal stenosis, left worse than right. The spinal canal is mild to moderately narrowed with residual and AP diameter 7mm. The cord is mildly flattened. Signal within the cord is preserved. C7-T1 is unremarkable. (Respondent's Exhibit A page 276)

A [REDACTED], 2017, MRI of the spinal lumbar without contrast indicates degenerative disc disease at L4-5 with mild spinal canal and bilateral neuroforaminal narrowing. Diffuse edema throughout the paraspinal musculature. (Respondent's Exhibit A page 278)

A [REDACTED], 2017, admission report indicates that Petitioner was assessed with acute renal failure, elevated liver enzymes. Hepatitis, etiology unclear; bilateral lower extremity weakness with finding of questionable myositis on paraspinal muscles and lower extremity weakness. (Respondent's Exhibit A page 340)

An [REDACTED], 2017, admission note indicates that Petitioner was a [REDACTED]-year-old Caucasian male with fair eye contact, and fair hygiene and grooming. His speech was clear in coherent with normal rate and rhythm. His thought processes were logical in goal directed. His affect was happy. He describes his mood as good. He denies hearing voices. He did nice seeing things. His memory is intact. He denies homicidal ideation. He is awake, alert, and oriented eight appropriately. His memory intact. His concentration and attention are good. His judgment and insight are fair. Petitioner currently denied thoughts of self-harm or suicide, he also presently states he does not

want to harm anyone else and will be discharged. While inpatient he has had a lessening of his symptoms. (Respondent's Exhibit A page 142)

An [REDACTED], 2017, initial evaluation indicates that Petitioner was admitted to prevent harm to himself because he had been extremely depressed and was also getting involved in abusing illicit drugs, such as nitrous oxide, opioid, benzodiazepine, and Norcos with the intention to end his life. He also started developing significant psychotic symptoms of visual and auditory hallucinations along with severe panic attacks. (Respondent's Exhibit A page 147)

Petitioner was diagnosed with bipolar one disorder currently depressed was psychotic features an active suicidal ideation with a plan to drown himself and also having urges to self-abuse; attention deficit hyperactivity disorder; or opioid use disorder; benzodiazepine use disorder; inhalant use disorder, especially nitrous oxide; tobacco use disorder; chronic back pain syndrome, and a global assessment of functioning at the time if evaluation should be considered between 15 and 20. (Respondent's Exhibit A page 150)

A [REDACTED], 2017, radiology examination of the cervical spine indicates a mild amount of spondylosis is present at the C5-C6 level anteriorly. The osseous structures of the cervical spine appear otherwise intact and unremarkable. (Respondent's Exhibit A page 259)

A [REDACTED], 2017, radiology examination of the lumbar spine indicates an unremarkable examination of the lumbar spine. The osseous structures of the lumbar spine appear intact and unremarkable with no evidence of traumatic or degenerative pathology identified. (Respondent's Exhibit A page 260)

A [REDACTED], 2017, radiology examination of the thoracic spine indicates an impression of unremarkable examination of the thoracic spine. The osseous structures of the thoracic spine appear intact and unremarkable with no evidence of traumatic or significant degenerative change identified. (Respondent's Exhibit A page 261)

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 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.

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 a mental residual functional capacity assessment in the record. 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.

At Step 3, the medical evidence of Petitioner's condition does not give rise to a finding that Petitioner would meet a statutory listing in the code of federal regulations. This Administrative Law Judge finds that Petitioner's medical record does 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.

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 or not 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]),**

bachelor's degree education and an unskilled work history who is limited to light work is not considered disabled.

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 the 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 SDA 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



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

Kim Cates
1399 W. Center Road
Essexville, MI 48732

Bay County, DHHS

BSC2 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]
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