



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: October 9, 2018
MAHS Docket No.: 18-008947
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 October 4, 2018, from Lansing, Michigan. Petitioner personally appeared and testified. The Department of Health and Human Services (Department) was represented by Jamie Manning, ES Worker.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) 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 [REDACTED], 2018, Petitioner applied for SDA, a cash benefit program based on disability, with the Michigan Department of Health and Human Services.
2. Petitioner is a beneficiary of the Medicaid program and receives medical benefits under the Healthy Michigan Plan (HMP).
3. On August 10, 2018, the Medical Review Team (MRT) denied Petitioner.
4. On August 20, 2018, the Department issued notice, and on September 4, 2018, Petitioner filed a timely hearing request.

5. Petitioner testified that he applied and was denied SSI by the SSA approximately 5-6 years ago. At that time, Petitioner's only medical issue for that application was diverticulitis, which has been resolved with surgery by testimony. Petitioner reapplied on [REDACTED], 2018 and was denied. Petitioner testified under oath that he filed an appeal of the denial on the morning of the day of this administrative hearing. The Department's representative contacted the SSA on behalf of Petitioner to establish jurisdiction. On October 4, 2018, Mr. Wiggins at SSA informed the Department "nothing pending, and he check the electronic logs back to Monday and client's name was not on it as having been at the office." Fax authored by Cheryl Vincent, St. Clair County Department of Health and Human Services.
6. As of the date of application, Petitioner was a 52-year-old, standing 5' 9" tall and weighing 170 pounds. Petitioner's Body Mass Index (BMI) is 25.1, classifying Petitioner as 'overweight' under the BMI.
7. Petitioner testified to no alcohol/drug abuse problem or history.
8. Petitioner smokes. Petitioner has a nicotine addiction.
9. Petitioner does have a driver's license and can drive an automobile.
10. Petitioner has a high school level of education.
11. Petitioner testified that he has no income, lives alone in a house and gets money from a friend out of state because "I mail him stuff." The person out of state also bought Petitioner a vehicle and sends him money.
12. Petitioner is not currently working. Petitioner last worked for six months in 2013 as a painter. Exhibit A. p 34. Petitioner did not work after the resolution of his diverticulitis. Petitioner testified that he does jobs 'here and there'. Petitioner's work could not be ascertained from Petitioner's work history. MRT stated that Petitioner's capacity for past relevant work has not been made but that this information is not material because all potentially applicable medical vocational guidelines would direct a finding of "not disabled" given the individual's age, education and RFC. Therefore, the individual can adjust to other work, specifically Rule 202.13. Exhibit A. p 25.
13. Petitioner lists the following conditions at application: lumbar herniated disc diseases; COPD; diverticulitis; colitis; DVT LLE. Exhibit A. p 18.
14. Petitioner did not present any additional medical evidence other than those collected and contained in Respondent's evidentiary packet.
15. The MRT findings and conclusions are adopted and incorporated by reference herein.

16. Petitioner did not present evidence of severe impairments that interfere with the ability to engage with activities of daily living (ADL).
17. Petitioner testified to the ability to fix food, do light housework, and laundry.
18. Petitioner testified that he does not need any assistance with his bathroom and grooming needs.
19. Petitioner did not present evidence of exercising.
20. Petitioner could not identify any exhibits in the medical packet as medical evidence to support a claim of disability due to the inability to work.

CONCLUSIONS OF LAW

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

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

Here, Petitioner applied for SDA based on disability. Individuals who apply for welfare benefits have the burden to prove their eligibility. The burden of proof is by a preponderance of evidence.

Policy with regards to SDA eligibility is found in BEM 261. That policy, with certain exceptions not applicable herein, states in part: “When the person does not meet one of the criteria under Other Benefits or Services or Special Living Arrangements, follow the instructions in BAM 815, Medical Determination and Disability Determination Service (DDS), Steps for Medical Determination Applications.” BEM 261, page 4, effective 4/1/17.

Applicable policy found in BAM 815 states in part: SSA's final determination that a client is not disabled and/or blind supersedes DDS's certification. See BEM 260 for MA to determine when to proceed with a medical determination for these clients. BAM 815, page 2, effective 4/1/18.

Referring to BEM 260, as applicable to the case here states in part:

**Final SSI
Disability
Determination**

SSA's determination that disability or blindness does **not** exist for SSI is **final** for MA if:

- The determination was made after 1/1/90, **and**
- No further appeals may be made at SSA; see EXHIBIT II in this item, **or**
- The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- The client is **not** claiming:
 - A totally different disabling condition than the condition SSA based its determination on, **or**
 - An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. BEM 260, page 3, Effective 7/1/15.

Prior to any substantive review, jurisdiction is paramount. The facts of record indicate that Petitioner has failed to come forth with credible and substantial evidence that jurisdiction is proper. The Department assisted Petitioner in obtaining information from the SSA as to Petitioner having filed an appeal with SSA. However, the SSA indicated that there has been no appeal filed, and, that it checked the books to preview whether Petitioner name was entered onto the electronic logs. Petitioner's name did not appear. Petitioner's credibility was compromised.

A review of the SOLQ however does not definitely identify the denial date. As such, whether Petitioner has exhausted his 60-day jurisdictional window was not clear and thus, in the alternative, this ALJ will conduct a substantive review.

As to the disability assessment, the State of Michigan follows the general guidelines with regards to the MA program to show SDA statutory disability with one major exception: duration for the SDA program is due to a disability which has lasted or can be expected to last for a continuous period of not less than 90 days. Unless otherwise noted below, the MA regulations, policy and law are followed.

Relevant federal guidelines provide in pertinent part:

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.

Federal regulations require that several considerations be analyzed in sequential order:

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.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required.

These steps are:

1. 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). Monthly income limit for 2017 presumptive SGA for non-blind individuals is \$1,170.00. If the applicant is not engaged SGA or presumptive SGA, the analysis continues to Step 2.
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 416.909(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 that meets

the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f).
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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends, and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application, Petitioner has the burden of proof:

...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).

Federal regulations are very specific regarding the type of medical evidence required to establish statutory disability. Statements alone made by the applicant and/or the applicant's physician are not sufficient. Rather, regulations require laboratory or clinical medical reports that corroborate an any applicant's or physicians' statements regarding disability. These regulations state in part:

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

...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).

...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.
- (c) **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;
- (d) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a 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).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927.

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug and alcohol addiction. This removal reflects the view of a strong behavioral component. In addition, these behavioral driven impairments are not considered to fall within the category of diseases under consideration of statutory disability under the social security disability program.

Applying the sequential analysis herein, Petitioner is not ineligible at the first step as Petitioner is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a de minimis standard. Ruling any ambiguities in Petitioner's favor, this Administrative Law Judge (ALJ) finds that Petitioner meets both. The analysis continues.

The third step of the analysis looks at whether an individual meet or equals one of the Listings of Impairments. 20 CFR 416.920(d). Petitioner does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Petitioner in the past. 20 CFR 416.920(f).

Petitioner failed to articulate or document his past relevant work. MRT was cognizant of the same finding: Petitioner's capacity for past relevant work has not been made but that this information is not material because all potentially applicable medical vocational guidelines would direct a finding of "not disabled" given the individual's age, education and RFC. Therefore, the individual can adjust to other work, specifically Rule 202.13. Thus, a finding of not disabled is indicated at the fifth and final step of the analysis applying Petitioner's biographical data to the Medical Vocational Grids to determine the residual functional capacity to do other work. 20 CFR 416.920(g) is support by credible and substantial evidence of record.

As to Petitioner's alleged disabling lumbar herniated disc disease, Petitioner alleges that he can only lift less than 10 pounds, walk about 10 minutes, sit 20-30 minutes, uses a cane. However, the [REDACTED] 18 MS exam shows gait is normal, motor strength full, and no means of AD usage. Exhibit A.24.

It is noted that Petitioner's smoking and/or obesity are the "individual responsibility" types of behaviors reflected in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th Cir 1988) decision. In *Sias*, the Petitioner was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised Petitioner to reduce his body weight. The court said in part:

...The Petitioner's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening situation. The Petitioner admitted to the ALJ he was at least 40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the Petitioner in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *Sias*, supra, p. 481.

In *Sias*, the Petitioner was found not truly disabled because the secretary disregarded the consequences resulting from the Petitioner's unhealthy habits and lifestyles—including the failure to stop smoking. *Awad v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6th Cir 1984).

Statutory disability does not recognize many behaviors as statutorily disabling where behavioral driven treatment will remove or reduce the severity or complaint. Among others, this includes complaints such as drug and alcohol addiction, obesity, and smoking. *Issues related to these problems often result from life style choices.* In addition, many heart problems, type 2 diabetes, neuropathy, and high cholesterol have been significantly correlated with many life style behaviors. In such instances, the symptoms and problem are treatable--obesity is treatable with weight loss, diet and exercise; alcoholism and drug addiction with abstinence; lung/breathing related medical issues are treatable with cessation from smoking. As with the congressional mandate denying statutory disability for alcohol and drug addiction, individual behaviors that drive medically related complaints and symptoms are not considered under the federal social security law as "truly disabling". See *Sias, supra*. In most instances, standard medical protocol is to instruct the individual to stop consuming alcohol, stop the drug addiction, stop smoking, and to lose weight. In fact, 20 CFR 416.930 requires a finding of not disabled where an individual fails to follow the recommended or prescribed treatment program.

Petitioner's conditions result in some limitations on his ability to perform work related activities. However, the evidence does not support that Petitioner's conditions are severe enough to keep him from working. Based on the evidence of record, the medical vocational grid requires a finding that Petitioner can adjust to other work.

It is noted that Petitioner received the entire copy of the medical exhibits prior to the administrative hearing. Petitioner failed to indicate which exhibits supported a claim that there is substantial and credible medical evidence to show that Petitioner cannot work. Petitioner's complaint of symptoms is not recognized as statutorily disabling absent corroboration requirements pursuant to 20 CFR 416.929. Petitioner further failed to meet the burden of proof required by 20 CFR 416.912(c) and further as required by the sufficiency requirements found at 20 CFR 416.913(b), and .913(d), and .913(e).

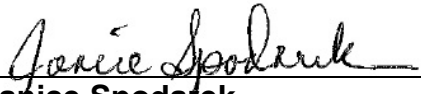
Petitioner's complaints and descriptions of symptoms are not consistent with the great weight of the objective medical evidence pursuant to the requirements found at 20 CFR 416.913(b), .913(d), and .913(e).

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 State Disability Assistance (SDA) benefit program.

DECISION AND ORDER

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

JS/hb



Janice Spodarek
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

Pam Assemany
220 Fort St.
Port Huron, MI 48060

St. Clair County, DHHS

BSC2 via electronic mail

L. Karadsheh via electronic mail

Petitioner

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