



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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

Date Mailed: January 7, 2019
MAHS Docket No.: 18-010738
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on November 14, 2018, from Lansing, Michigan. Petitioner was represented by himself with [REDACTED] [REDACTED] home health aide and family friend, [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Dan Vendzuh, Assistance Payments Supervisor.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of medical review for 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. Petitioner was approved for State Disability Assistance (SDA) by the Administrative Law Judge (ALJ) on November 21, 2016, with a medical review in November 2017 due to a physical impairment of not being able to perform sedentary work.
2. On August 8, 2018, the Medical Review Team (MRT) denied Petitioner's medical review for SDA, stating that Petitioner had medical improvement.
3. On October 11, 2018, the Department Caseworker sent Petitioner a notice that he was denied for SDA because he had medical improvement.

4. On October 18, 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] [REDACTED] 1969. Petitioner is [REDACTED] tall and weighs [REDACTED] pounds. He has a high school diploma and an Associate's Degree in criminal justice. Petitioner can read and write and perform basic math. Petitioner was last employed as a maintenance worker in 2012 at the heavy level. He was also employed in the US Infantry, lead crew member, security, emergency medical worker at the heavy level and home health aide at the light to heavy level.
6. Petitioner's alleged impairments are pulmonary fibrosis, 2017 surgery in right arm for tear in the labrum, uncontrolled high blood pressure, degenerative disc disease in neck and back, congestive heart failure, severe A fibrillation, 7 surgeries to left shoulder due to a fall with total joint replacement in April 2014.
7. On [REDACTED] [REDACTED] 2017, the Petitioner's orthopedic specialist noted that Petitioner presented with right shoulder stiffness, weakness, swelling, pain following surgery 4 months ago. He was post right SLAP repair and open distal clavicle resection on February 16, 2017. On physical examination, he was passively full elevation of his shoulder and internal rotations to approximately T12 passively and crossed arm adduction is the metacarpophalangeal joints. Extra rotation at the side is approximately 45 degrees. He has good strength on forward flexion as well as excellent strength on O'Brien's testing. His incisions have healed well. There was a light scapular drooping on the right side. Petitioner was complaining of cramping type pain and occasional bruising and warmth. His treating specialist thought he was deconditioned and has scapular weakness, which is leading to improper mechanics. He was reassured that his shoulder was doing well. Petitioner was advised to advance his scapular stabilizations and rotator cuff strengthening and core strengthening as tolerated in physical therapy with a follow up appointment in 6 to 8 weeks. He was given a home exercise program with therapy bands. Department Exhibit 1, pgs. 331-332.
8. On [REDACTED] [REDACTED] 2018, the Petitioner was seen by an independent medical examiner at [REDACTED] [REDACTED] [REDACTED] for a psychiatric/psychological medical report. His reported problems were with depression and anxiety. His sleep patterns were poor due to chronic pain. The Petitioner's appetite was variable. Medical problems include tachycardia, syncope collapse, multiple bulging discs in neck and spine, and severe shoulder injury. Self-esteem was regarded as poor. He was relatively independent in his daily functioning. There was no evidence of a severe thought disorder or risk factors. He was mildly impaired in his ability to work. His diagnosis was unspecified depressive disorder. He had a guarded

prognosis. He can manage his benefit funds if awarded. Department Exhibit 1, pgs. 306-311.

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 --

- (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 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 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.

This Administrative Law Judge finds the following based on the objective medical evidence on the record:

On [REDACTED] [REDACTED] 2017, Petitioner's orthopedic specialist noted that Petitioner presented with right shoulder stiffness, weakness, swelling, pain following surgery 4 months ago. He was post right SLAP repair and open distal clavicle resection on [REDACTED] [REDACTED] 2017. On physical examination, he was passively full elevation of his shoulder and internal rotations to approximately T12 passively and crossed arm adduction is the metacarpophalangeal joints. Extra rotation at the side is approximately 45 degrees. He has good strength on forward flexion as well as excellent strength on O'Brien's testing. His incisions have healed well. There was a light scapular drooping on the right side. Petitioner was complaining of cramping type pain and occasional bruising and warmth. His treating specialist thought he was deconditioned and has scapular weakness, which is leading to improper mechanics. He was reassured that his shoulder was doing well. Petitioner was advised to advance his scapular stabilizations and rotator cuff strengthening and core strengthening as tolerated in physical therapy with a follow up appointment in 6 to 8 weeks. He was given a home exercise program with therapy bands. Department Exhibit 331-332.

On [REDACTED] [REDACTED] 2018, Petitioner was seen by an independent medical examiner at [REDACTED] [REDACTED] for a psychiatric/psychological medical report. His reported problems were with depression and anxiety. His sleep patterns were poor due to chronic pain. Petitioner's appetite was variable. Medical problems include tachycardia, syncope collapse, multiple bulging discs in neck and spine, and severe shoulder injury. Self-esteem was regarded as poor. He was relatively independent in his daily functioning. There was no evidence of a severe thought disorder or risk factors. He was mildly impaired in his ability to work. His diagnosis was unspecified depressive disorder. He had a guarded prognosis. He can manage his benefit funds if awarded. Department Exhibit 1, pgs. 306-311.

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 left shoulder, but has healed after surgery. In the medical records, he had a physician's slip dated July 26, 2018, for physical therapy, but no records of his actual attendance were submitted. Department Exhibit 1, pgs. 1-3. He is not in treatment nor taking medications for mental impairments. Petitioner has had medical improvement since his surgery in April 2014. Petitioner has a high school diploma and Associate's Degree. As a result, Petitioner is able to perform 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 none 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 due to his physical issues. He has no mental impairment. Petitioner stopped smoking in 2016 where before he smoked $\frac{3}{4}$ of a pack of cigarettes a day. He does not or has ever used illegal or illicit drugs. He does drink alcohol rarely. 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 left shoulder. Petitioner should be able to perform at least light work. He has had medical improvement where his left shoulder has healed since surgery in 2014. 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 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 left shoulder. He has had medical improvement where his shoulder has healed since his surgery in 2014. Petitioner still has an issue with chronic pain. 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 maintenance worker in 2012 at the heavy level. He was also employed in the US Infantry, lead crew member, security, emergency medical worker at the heavy level and home health aide at the light to heavy level. In this case,

this Administrative Law Judge finds that Petitioner should be able to perform 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.


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 high school education and more with a history of semi-skilled and unskilled work, MA-P is denied using Vocational Rule 202.21 as a guide. 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 light work.

DECISION AND ORDER

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.

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

CF/hb



Carmen G. Fahie
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Dan Vendzuh
931 S. Otsego Suite 1
Gaylord, MI 49735

Otsego County, DHHS

BSC1 via electronic mail

L. Karadsheh via electronic mail

Petitioner

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