



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

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

Date Mailed: January 4, 2019
MAHS Docket No.: 18-011321
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 December 6, 2018, from Lansing, Michigan. The Petitioner personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Family Independence Manager, Julie McLaughlin. Ms. McLaughlin testified on behalf of the Department. The Department submitted 155 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

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

1. Petitioner applied for SDA on [REDACTED] 2018.
2. On October 17, 2018, the Medical Review Team (MRT) denied Petitioner's application for SDA, finding Petitioner was capable of other work. [Dept. Exh. 141-147].
3. Petitioner testified that he has neuropathy, high blood pressure, hyperthyroidism, and diabetes. He also reported he had two strokes in 2008 and a heart attack in August 2018.

4. Petitioner's medical records reflect a history of opioid abuse, alcohol abuse, back pain, hypertension, hyperthyroidism, stroke in 2008, anemia, diabetes type II with neurological complications, heroin use disorder, neuropathy, insomnia, and onychomycosis.
5. On [REDACTED], 2017, Petitioner established care with [REDACTED]. Petitioner reported a history of opioid disorder and lower extremity neuropathy. The musculoskeletal examination was positive for back pain, numbness and tingling. Petitioner had a history of a transient ischemic attack. [Dept. Exh. 80-89].
6. On [REDACTED] 2018, Petitioner followed up with his primary care physician complaining of neuropathy and back pain. Petitioner was assessed with essential hypertension, hypothyroidism, diabetes mellitus type 2 with neurological complications and heroin use disorder. Petitioner admitted to daily heroin use. His cocaine urine level was positive. [Dept. Exh. 67-79].
7. On [REDACTED] 2018, Petitioner saw his physician for left leg pain. Petitioner was assessed with left posterior leg pain, chronic pain of right knee, stable but possibly increasing sciatica and improving off street drugs. [Dept. Exh. 60-66].
8. On [REDACTED] 2018, Petitioner met with his primary care physician to discuss his hypertension and hypothyroidism. He was assessed with type 2 diabetes mellitus without complication, and without long-term current use of insulin. The physician indicated that Petitioner's diabetes was diet controlled at this time. [Dept. Exh. 49-59].
9. On [REDACTED] 2018, Petitioner saw his physician following an emergency department (ED) visit for high blood pressure. The physician noted that Petitioner was going through opioid withdrawal at the time of his ED visit. Petitioner was assessed with essential hypertension, benign; an injury of the left knee, initial encounter; and an upper respiratory infection. An x-ray of Petitioner's left knee was normal. [Dept. Exh. 38-48].
10. On [REDACTED] 2018, Petitioner underwent an independent medical examination on behalf of the Department. The examining physician opined that Petitioner has mild weakness of the left leg and foot, however, sensation and reflexes were grossly intact. The physician also found he had limitation of range of motion of the lumbar spine, left hip, left knee and left wrist. [Dept. Exh. 93-97].

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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

A person is disabled for SDA purposes if he or she:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, 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), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2014).

Federal regulations require that the Department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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. [SDA = 90-day duration].

[As Judge] We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled. 20 CFR 416.927(e).

Petitioner is diagnosed with a history of opioid abuse, alcohol abuse, back pain, hypertension, hyperthyroidism, stroke in 2008, anemia, diabetes type II with neurological complications, heroin use disorder, neuropathy, insomnia, and onychomycosis.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b). In this case, Petitioner testified that he has never held a job lasting longer than a year. As a result, Petitioner is not disqualified for SDA at this first step in the sequential evaluation process because Petitioner was not engaged in substantial gainful activity.

Second, in order to be considered disabled for purposes of SDA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last 90 days or more (or result in death) which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In the present case, Petitioner alleges disability due to neuropathy, high blood pressure, hyperthyroidism, diabetes, two strokes and a heart attack.

As previously noted, the Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Based on the medical evidence, Petitioner has presented some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on his basic work activities. Further, the impairments have lasted continuously for 90 days; therefore, Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Petitioner's impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926).

This Administrative Law Judge finds that the Petitioner's medical record does not support a finding that Petitioner's impairment(s) is a "listed impairment" or is medically equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Based on the foregoing, it is found that Petitioner's impairment(s) do not meet the intent and severity requirement of a listed impairment; therefore, Petitioner cannot be found disabled at Step 3. Accordingly, the Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner has the residual functional capacity (RFC) to perform the requirements of Petitioner's past relevant work. 20 CFR 416.920(a) (4) (iv).

The term past relevant work means work performed (either as Petitioner actually performed it or as it is generally performed in the national economy) within the last fifteen years or fifteen years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Petitioner to learn to do the job and have been substantially gainfully employed (20 CFR 416.960 (b) and 416.965.) If Petitioner has the residual functional capacity to do Petitioner's past relevant work, Petitioner is not disabled. 20 CFR 416.960(b)(3). If Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

Petitioner has a history of less than gainful employment. As such, there is no past work for Petitioner to perform, nor are there past work skills to transfer to other work occupations. Accordingly, Step 5 of the sequential analysis is required.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment(s) prevents Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite his/her limitations. 20 CFR 416.966.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience are considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Petitioner was 42 years old and was, thus, considered to be a younger individual for MA-P

purposes. Claimant had a high school education. Disability is found if an individual is unable to adjust to other work. *Id.*

At this point in the analysis, the burden shifts from the Petitioner to the Department to present proof that the Petitioner has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, Petitioner testified that he has uncontrolled hyperthyroidism, fluctuating high blood pressure and neuropathy. He reported that he could not do his own grocery shopping due to his neuropathy, and the medication for his neuropathy made him drowsy. He stated he was able to do some housekeeping and could cook his own meals. Petitioner also testified that he had never had an alcohol problem and that he quit using prescription drugs 10 months earlier. However, his testimony is contradicted by his medical records. Further, Petitioner reported that he had a heart attack in August 2018. The medical evidence revealed that he was actually going through opioid withdraws when at the emergency department, and he was treated for high blood pressure. No evidence was submitted indicating Petitioner had ever had a heart attack.

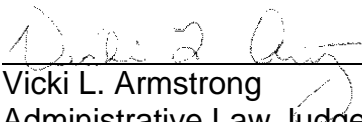
Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Petitioner has the residual functional capacity to perform other work. Petitioner is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform sedentary work. Under the Medical-Vocational guidelines, an individual age 18 - 44 (Petitioner is 42 years of age), with limited education (Petitioner completed high school) and an unskilled or limited history who can perform even only light work is not considered disabled pursuant to Medical-Vocational Rule 202.20. See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

DECISION AND ORDER

Therefore, the Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds Petitioner not disabled for purposes of the SDA benefit program.

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

VLA/nr



Vicki L. Armstrong
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

Lynne Greening
2700 Baker Street
PO Box 4290
Muskegon Heights, MI
49444

Muskegon County DHHS- via electronic
mail

BSC3- via electronic mail

L. Karadsheh- via electronic mail

Petitioner

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