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

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Date Mailed: January 18, 2019  
MAHS Docket No.: 18-011795  
Agency No.: ██████████  
Petitioner: ██████████ ██████████

**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 19, 2018, from Lansing, Michigan. Petitioner personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Brandi Eiland, Assistance Payment Supervisor and Joije Herrera, Hearing Facilitator. Ms. Eiland and Mr. Herrera testified on behalf of the Department. The Department submitted 171 exhibits which were admitted into 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 ██████████ ██████████ 2018, Petitioner filed an application for SDA benefits alleging disability. [Dept. Exh. 159-171].
2. On November 6, 2018, the Medical Review Team (MRT) denied Petitioner's application for SDA. [Dept. Exh. 1-7].
3. On September 26, 2016, the Department sent Petitioner notice that his application was denied. [Hearing Summary].
4. On November 16, 2018, Petitioner filed a Request for Hearing to contest the Department's negative action. [Request for Hearing, 11/16/2018].

5. Petitioner reported a history of a hernia, mesh problems, groin area problems, blood pressure problems, bladder/spleen issues, nerve issues and testicle problems.
6. On [REDACTED] [REDACTED] 2018, Petitioner followed up with his surgeon regarding his status post mesh resection and a genitofemoral neuropathic neurectomy. Petitioner reported having some leakage and soilage, diarrhea and occasional leakage of urine following urination. No recurrence of hernia. [Dept. Exh. 139].
7. On [REDACTED] [REDACTED] 2018, Petitioner had a recheck by his surgeon reference two months post-surgery. He had sharp pain in his right groin which was associated with his right testicle, which was noted as worse with steps and quick movements. He was also having back swelling mid thoracic and some flank swelling on the opposite side. There was no obvious hernia on the right or left, but some tenderness at the external ring on examination. He was assessed with right inguinodynia, improved, but still persistent. [Dept. Exh.140].
8. On [REDACTED] [REDACTED] 2018, Petitioner followed up with his surgeon post-surgery. Petitioner was still having significant pain in the right groin. He was seen in the emergency department for groin pain and a dilated penis vein. He was worked up and the ultrasound was normal. No recurrence of hernia. He was assessed with right inguinodynia and at risk for recurrent hernia. [Dept. Exh. 141].
9. On [REDACTED] [REDACTED] 2018, Petitioner met with his surgeon. He was still having intense pain in the right groin, as well as abdominal pain in the upper abdomen. He also has diarrhea off and on. He was seen by his primary care physician for continued right groin pain and he admitted that his right testicle does get pulled up into his groin. He also reported swollen testicles off and on. Petitioner was assessed with right inguinodynia, possible recurrence of hernia given removal of mesh. The groin pain was multifactorial despite the surgeon's best attempts at genitofemoral neuropathic resection. A CT was order of the pelvis to assess for hernia recurrence dynamic valsalva. [Dept. Exh. 142].
10. On [REDACTED] [REDACTED] 2018, Petitioner was referred to physical therapy for evaluation and treatment. [Dept. Exh. 81].
11. On [REDACTED] [REDACTED] 2018, Petitioner was evaluation for physical therapy. He was diagnosed with unilateral inguinal hernia, without obstruction or gangrene, recurrent; abdominal tenderness, unspecified site; and difficulty in walking. Petitioner reported decreased range of motion, difficulty lifting, pain, difficulty with job specific tasks, difficulty squatting/stooping and weakness. He ambulated with a slow antalgic gait. His ability to go from sitting to standing or sit or stand for a prolonged period was poor. Petitioner presented with signs and symptoms consistent with referring diagnosis. He presented with a history of an inguinal hernia and failed herniorrhaphy which caused considerable pain and dysfunction to the point that he can no longer work. Petitioner presented with decreased

strength, incontinence, tenderness and sensitivity, decreased flexibility and increased pain. [Dept. Exh. 82-85].

12. On [REDACTED] [REDACTED] 2018, Petitioner presented to his physical therapy appointment. He complained of worsening symptoms and to having contacted his surgeon regarding the symptoms. On examination, Petitioner had to hold onto the stairs to complete the standing hip abductions and standing marching activities. [Dept. Exh. 78-79].
13. On [REDACTED] [REDACTED] 2018, Petitioner underwent an independent medical evaluation on behalf of the Department. Petitioner reported a hernia repair and a mesh implant. He reported multiple surgeries, including one robotic surgery. He had an infection after surgery that affected his pubic area. The mesh was intertwined with nerves and blood vessels and was surgically removed. Petitioner appeared to be slightly distressed and in pain. During the evaluation, Petitioner was able to ambulate for a few minutes, then had to sit down. He could not do the toe-to-heel walk. His gait was short and jerky. He had muscle spasms in his back when he tried to do straight-leg raising. He had two of 18 trigger points for fibromyalgia. He used a walking aid due to the pain. He tried to touch his toes. His lumbar area appeared to be in pain. Most of the pain seemed to come from the groin area. Range of motion cause him pain in his hips bilaterally, worse on the right than the left. Test results indicated that his reflexes on his bilateral upper extremities, biceps, triceps, brachia radialis, ulnar and Hoffman's were abnormal. His reflexes on his bilateral extremities, including the patellar, achilles, and Babinski were also abnormal. The examining physician indicated that Petitioner had a hernia repair, groin and bladder issues which were obvious. Petitioner reported that after the surgery he was urinating blood and pus. His testicles were enlarged and became hard and he felt dysfunctional. The physician opined that Petitioner required an assistive walking device to help reduce his pain. [Dept. Exh. 64].
14. Petitioner is a [REDACTED] year-old man born on [REDACTED] [REDACTED] [REDACTED]. He has a high school education and last worked in 2015.
15. Petitioner was appealing the denial of Social Security disability benefits at the time of the hearing.

### **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 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 history of a hernia, mesh problems, groin area problems, blood pressure problems, bladder/spleen issues, nerve issues and testicle problems.

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 was not currently working and that he last worked in 2015. Petitioner is not disqualified for SDA at this first step in the sequential evaluation.

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 (6<sup>th</sup> 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 history of a hernia, mesh problems, groin area problems, blood pressure problems, bladder/spleen issues, nerve issues and testicle problems.

As previously noted, the Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Petitioner has presented some medical evidence establishing that he does have some mental and 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 the Petitioner’s 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.

Listing 5.00 (digestive system) was considered in light of the objective evidence. 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 not worked since 2015. 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 29 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant had a high school equivalent 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 credibly testified that he is in constant pain from nerve damage as a result of mesh implanted during a hernia surgery that ended up tangled in his blood vessels and nerves, leading to a subsequent surgery to remove the mesh and his last pain and problems since. However, Petitioner is ■ years old, with a high school education. Petitioner's medical records do not show that he has been unable to engage in even a full range of sedentary work since his application. See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). There is no current evidence from either his primary care physician or surgeon, the Petition is unable to work due to the recurrent hernias, nerve damage, mesh problems, groin area problems, blood pressure problems, bladder/spleen issues, nerve issues and testicle problems. Without evidence from his physician, primary care physician or independent physician documenting his inability to work, Petitioner is found not disabled.

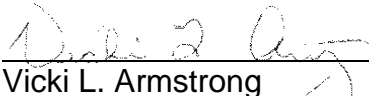
In light of the foregoing, it is found that Petitioner maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.27, it is found that Petitioner is not disabled for purposes of the SDA program at Step 5.

#### **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

  
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Vicki L. Armstrong  
Administrative Law Judge  
for Robert Gordon, 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**

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**Petitioner**

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