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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 1, 2019
MAHS Docket No.: 18-013381
Agency No.: ██████████
Petitioner: ██████████

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, an administrative hearing was held on January 22, 2019, with the Administrative Law Judge (ALJ) appearing by conference phone from Lansing, Michigan. All other parties appeared in-person at the Jackson County Department of Health and Human Services (Department or Respondent). Petitioner appeared and testified. Tracy Old, ES worker, appeared as a witness.

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 ██████████ ██████ 2018, Petitioner applied for SDA, a cash benefit program, 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 November 30, 2018, the Medical Review Team (MRT) denied Petitioner's application. On December 4, 2018, the Department issued notice of denial, and on December 17, 2018, Petitioner filed a timely hearing request.

4. Petitioner has an SSI application pending with the Social Security Administration with a [REDACTED] [REDACTED] 2018 application date, and an alleged onset date of disability of November 1, 2017.
5. As of the date of application, Petitioner was a [REDACTED]-year old, standing [REDACTED] tall and weighing [REDACTED] pounds. Petitioner's Body Mass Index (BMI) is [REDACTED], classifying Petitioner as overweight under the BMI.
6. Petitioner smokes about a pack a day. Petitioner has had a nicotine addiction his entire life and has recently cut back from 1.5 packs per day.
7. Petitioner has a driver's license.
8. Petitioner has a high school diploma.
9. Petitioner testified that he has no income.
10. Petitioner is not currently working. Petitioner last worked in 2017 as a forklift driver. Petitioner's work history is in construction jobs and production work.
11. Petitioner alleges disability based on physical and mental impairments, including systemic mastocytosis, myelofibrosis resulting in 'brain fog', depression, and osteosclerosis.
12. A [REDACTED] [REDACTED] 2018, MRI of the C Spine without and with IV contrast concluded: 1) multilevel cervical spine degenerative changes with severe right foraminal stenosis at C5-C6, and moderate to severe right foraminal stenosis, C4-C5 and C6-C7, with potential for impingement of existing nerve roots, which will cause dull constant arm pain; 2) diffuse bone marrow signal abnormality consistent with diagnosis of myelofibrosis. Claimant Exhibit I.1.
13. A February 7, 2018, A-B Bone Marrow biopsy concluded moderately severe myelofibrosis. Claimant Exhibit I.2.
14. On [REDACTED] [REDACTED] 2019, Petitioner's family physician stated that Petitioner does not have the physical or emotional capacity to maintain employment directly related to his diagnosis of systemic mastocytosis with secondary myelofibrosis and mild cognitive impairment and chronic pain from osteosclerosis. Claimant Exhibit I.3.
15. On [REDACTED] [REDACTED] 2018, [REDACTED], MD with [REDACTED], stated that Petitioner's diagnosis is systemic mastocytosis with secondary myelofibrosis, and that Petitioner does not have the cognitive functioning to maintain employment directly related to diagnosis of chronic pain related to bony lesions limiting physical capacity.
16. On [REDACTED], 2018, [REDACTED], MD stated that Petitioner has systemic mastocytosis with secondary myelofibrosis with cognitive impairment and chronic pain from osteosclerosis.

17. On [REDACTED] 2018, the intake worker with the DHHS made the following notes with regard to her observations: difficulties observed with allegories, hearing, memory, seeing, signs of fatigue, signs of pain and distress, skin condition, writing, right hand difficulty.
18. Petitioner's prognosis is poor.
19. Petitioner has difficult engaging in activities of daily living (ADL).

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.

For the SDA program, the State of Michigan follows the general guidelines with regards to 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). If no, 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 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 --

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).

In this case, this ALJ finds that Petitioner cannot return to past relevant work based on the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g).

After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Petitioner meets statutory disability on the basis that Petitioner could not do a full range of sedentary work on the basis of medical vocational grid rule 201.00(h).

In reaching this conclusion it is noted that Petitioner has severe medical diagnoses with a very poor prognosis. There is no evidence that Petitioner's condition will improve. A number of different treating physicians, both primary and specialists, have indicated that Petitioner does not have the ability to engage in SGA due to his physical diagnoses, which as a secondary problem have triggered confusion, 'brain fog', and depression. Petitioner's ability to sustain an SGA level of concentration is compromised.

Further, Petitioner's symptoms are consistent with the medical diagnoses, and collaborated by the medical documentation as required by 20 CFR 416.928. In addition, Petitioner's accounts of pain meet the statutory requirements found at 20 CFR 416.929.

The medical evidence does not support finding that Petitioner can do other work under the medical vocations grids pursuant to 20 CFR 416.920(f).

Petitioner's complaints of symptoms are recognized as statutorily disabling pursuant to 20 CFR 416.929. Claimant has met 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).

Based on the record established in this matter and the applicable law, statutory disability is shown, and thus, the Department's denial cannot be upheld.

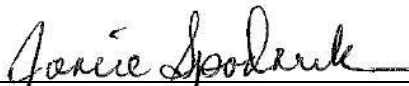
DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Open an SDA case pursuant to Petitioner's application date as permitted under policy and procedure, if eligibility otherwise exists, and
2. Issue any supplemental benefits to which Petitioner may be entitled, and
3. Review this case in one year from the date of this decision and order.

JS/dh



Janice Spodarek
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

