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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: March 13, 2019
MAHS Docket No.: 19-000542
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 March 5, 2019, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Susan Trebilcock, Eligibility Specialist.

Respondent's Exhibit A pages 1-1554 were admitted as 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 [REDACTED] 2018, Petitioner filed an application for State Disability Assistance (SDA) benefits alleging disability.
2. Petitioner receives Medical Assistance (MA) and Food Assistance Program (FAP) benefits.
3. On December 14, 2018, the Medical Review Team denied Petitioner's application stating that Petitioner could perform other work.
4. On December 17, 2018, the Department caseworker sent Petitioner notice that his application was denied.

5. On January 22, 2019, Petitioner filed a request for a hearing to contest the Department's negative action.
6. On February 7, 2019, the Michigan Administrative Hearing system received a copy of the Hearing Summary and attached documents.
7. Petitioner is a [REDACTED] year-old man whose date of birth is [REDACTED], 1983. He is [REDACTED]" tall and weighs [REDACTED] lbs. He is a high school graduate. Petitioner can read and write.
8. Petitioner last worked in 2016 as a dishwasher. He has also worked flipping burgers and in security. He was in prison for felonious assault and finished parole in 2019.
9. Petitioner alleges as disabling impairments: anxiety, depression (diagnosed 2008), agoraphobia, four psychiatric admissions in five years, bipolar disorder, post-traumatic stress disorder; kidney stones, slipped disc in lower back; joint and hip pain.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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 person claiming a physical, or mental, disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913.

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 416.920(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? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(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. 20 CFR 416.920(e).
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? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Petitioner is not engaged in substantial gainful activity and has not worked since 2016. Petitioner is not disqualified from receiving disability at Step 1.

The subjective and objective medical evidence on the record indicates:

Petitioner testified on the record: that he lives in a motel room which his father pays for. He is single with no children under 18. He has no income. He received Food Assistance and Medical Assistance Program benefits. He has a driver's license. His father takes him where he needs to go. He has not driven since 2013. Petitioner cooks every few days. He makes lasagna, spaghetti, tacos and pizza. He grocery shops twice a month with no help needed. He sweeps, washes dishes, cleans the bathroom and does laundry at the laundromat. Petitioner plays video games 3-4 hours per day. He watches television 6-9 hours per day and sleeps a lot because of his medication. Petitioner can stand for 20-30 minutes and sit with no limits. He can walk ½ mile. Petitioner can shower, dress himself, tie his shoes and touch his toes. He cannot squat. The heaviest weight he can carry is 25-30 pounds for a short time. His hands, arms, legs and feet are fine.

This Administrative Law Judge did consider the entire record in making this decision.

Medical documentation indicates a non-severe physical condition as Petitioner alleges no physical limitations or impairments.

A [REDACTED] [REDACTED] 2018, a Disability Determination Explanation indicates that Petitioner has non-severe impairments. A mental residual functional capacity assessment indicates that Petitioner is either not significantly limited or only moderately limited in all areas. He should be given simple, routine tasks. He would have trouble completing complex tasks on a sustained basis. Most recent evidence indicates some improved functioning. Marked limitations are not supported by evidence. Petitioner is able to perform simple, routine tasks on a sustained basis in low stress environment with minimal contact with others. Petitioner is not disabled pursuant to Medical Vocational rule 201.28. (Respondent's Exhibit A pages 1534-1538)

A [REDACTED] [REDACTED] 2018 Disability Determination Explanation indicates that Petitioner initially claimed for disability the following illnesses: Asperger's Disorder, bipolar disorder, back problems, post-traumatic stress disorder, fear of public places, and depression. Petitioner's ability to relate and interact with others, including coworkers and supervisors, is markedly impaired. His depression/distress could affect his interpersonal relationships in the workplace. His ability to understand, recall and complete tasks and expectations does not appear to be significantly impaired. His ability to maintain concentration is moderately impaired. As a result of his emotional state he may often be distracted; his effectiveness and performance will likely be limited and slowed. His ability to withstand the normal stresses associated with the work place setting is markedly impaired. Marks limitations are not supported per overall evidence. Petitioner is able to perform simple routine tasks on a sustained basis in low stress environment with minimal contact with others. Physical health problems are not severe. Petitioner demonstrates the maximum sustained were capability for heavy/very heavy work. He is not disabled pursuant to medical vocational rule 204.00. Petitioner can adjust to other work. (Respondent's Exhibit A pages 440-452)

A [REDACTED] [REDACTED] 2018 mental status report showed that Petitioner has diagnosis of cannabis use disorder, moderate; unspecified bipolar and related disorder; obsessive compulsive personality disorder and alcohol use disorder. His mood, affect, thought process, orientation, behavior, functioning, medical condition and substance abuse were unremarkable. He reported no suicidal or homicidal ideation. (Respondent's Exhibit A page 1493)

A psychiatric medical report dated [REDACTED] [REDACTED] 2018, indicates that Petitioner appeared to be in contact with reality. His thoughts were spontaneous and well organized. There were no problems in pattern or content of speech. He denied the presence of any auditory or visual hallucinations, delusions, obsessions, persecutions or unusual powers. He reported feelings of worthlessness and daily suicidal ideation. He was oriented times three. He correctly stated the current year and his current address. He was able to recall five digits forwards and four digits backward. He was able to recall two of three objects after a 3-minute interval. He named the current president as Donald Trump and the previous presidents as Obama and Bush. He correctly stated his birthday. He was diagnosed with major depressive disorder, recurrent, severe without psychotic features; unspecified personality disorder; cannabis use disorder, in sustained remission. Intellectually he has the ability to manage funds. However, because of his history of struggles with substance abuse they should be carefully considered. (Respondent's Exhibit A pages 1297-1300)

An [REDACTED] [REDACTED] 2018, mental status evaluation indicates that Petitioner was a [REDACTED]-year-old [REDACTED] male. He was casually and appropriately dressed. He was calm, cooperative and agreeable to interview. Patient was alert, oriented and maintained poor eye contact. When he was telling the story about prison, his eyes were looking at the floor and not at interviewer. No abnormal movements noted. Patient seated throughout duration of interview. Speech was normal amount, volume, rate and rhythm. Patient denies suicidal or homicidal ideation/plan or intent. He denies auditory, visual or tactile hallucinations. Thought process was linear and coherent. No paranoia or delusion is noted. Patient's mood was depressed. His affect was dysphoric and coherent with mood/ thought/setting. Cognitive functioning was grossly intact. Insight and judgment were fair. (Respondent's Exhibit A page 1443)

A case management note dated [REDACTED] [REDACTED] 2017, indicates that Petitioner was clinically assessed with axis one anxiety, cannabis abuse, and personality disorder. His latest five global assessment of functioning was 55. (Respondent's Exhibit A page 1152)

An [REDACTED] [REDACTED] 2016, progress note indicates that Petitioner's global assessment of functioning was 60. He was talkative at times but no pressured speech. The patient's speech was appropriate throughout the interview. He denied homicidal ideation, plan or intent. He reported periodic thoughts of suicide but denied a plan, intent or means. He reported visual hallucinations of figures, reports paranoia. Thought processes linear and incoherent. Patient's mood was this dysthymic, affect somewhat labile, normal

intensity, somewhat expansive. Cognitive function was grossly intact. He has nil to ferry insight; his judgment is poor – fair. (Respondent's Exhibit A pages 501-503)

At Step 2, Petitioner has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Petitioner suffers a severely restrictive physical or mental impairment.

This Administrative Law Judge finds that Petitioner has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by Petitioner. There are no laboratory or x-ray findings listed in the file. The clinical impression is that Petitioner is stable. There is no medical finding that Petitioner has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, Petitioner has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Petitioner has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that Petitioner has a severely restrictive physical impairment.

Petitioner alleges as disabling mental impairments: Asperger's Syndrome, depression, anxiety, bipolar disorder, agoraphobia, post-traumatic stress disorder and suicidal ideation.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating Petitioner suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was oriented to time, person and place during the hearing. Petitioner was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that Petitioner suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Petitioner has failed to meet his burden of proof at Step 2. Petitioner must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If Petitioner had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Petitioner's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

At Step 3, the medical evidence of Petitioner's condition does not give rise to a finding that Petitioner would meet a statutory listing in the code of federal regulations. This Administrative Law Judge finds that Petitioner's medical record does 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. At Step 3 Petitioner does not meet Social Security Disability Listings for mental disorders 12.00 series.

If Petitioner had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that Petitioner is unable to perform work in which he has engaged in, in the past. Therefore, if Petitioner had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Petitioner has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

Per Disability Determination Explanation, Petitioner's condition results in some limitations in his ability to perform work-related activities. Disability Determination has determined that Petitioner's condition is not severe enough to keep him from working. Considering Petitioner's age, education and medical documentation it has been determined that Petitioner can adapt to other work.

At Step 5, the burden of proof shifts to the Department to establish that Petitioner does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Petitioner has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Petitioner's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments. Petitioner has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. Petitioner's testimony as to his limitations indicates that he should be able to perform heavy, medium, light or sedentary work. Thus, he retains the capacity to perform prior work and he is found not disabled at Step 4.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was able to answer all the questions at the hearing and was responsive to the questions. Petitioner was oriented to time, person and place during the hearing. Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to Petitioner's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that Petitioner has no residual functional capacity. 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 light or sedentary work even with his impairments. **Under the Medical-Vocational guidelines, a younger person with a high school education and an unskilled work history who is limited to light work is not considered disabled.**

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because Petitioner does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Petitioner is unable to work for a period exceeding 90 days, the Petitioner does not meet the disability criteria for State Disability Assistance benefits.

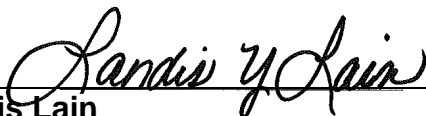
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Petitioner was not eligible to receive State Disability Assistance based upon disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied Petitioner's application for State Disability Assistance benefits. Petitioner should be able to perform a wide range of light or sedentary work even with his impairments. The Department has established its case by a preponderance of evidence.

Accordingly, the Department's decision is **AFFIRMED** based upon the substantive information contained in the file.

LL/hb



Landis Lain
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

Karen Painter
388 Keith Wilhelm Dr.
Coldwater, MI 49036

Branch County, DHHS

BSC3 via electronic mail

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Petitioner

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