



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 30, 2019
MOAHR Docket No.: 19-002798
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, a hearing was held on April 16, 2019, from Lansing, Michigan. Petitioner personally appeared and testified and was unrepresented. The Department of Health and Human Services (Department) was represented by Christin Gougeon, ES Worker.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of 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. Petitioner is a resident of ██████████ Michigan.
2. On ██████████ 2018, Petitioner applied for SDA based on disability with the Michigan Department of Health and Human Services (Department or DHHS).
3. Petitioner has the Healthy Michigan Plan, and is eligible for Medicaid.
4. On February 26, 2019, the Medical Review Team (MRT) denied Petitioner's application.
5. On February 26, 2019, the Department issued a notice of denial.

6. On March 1, 2019, Petitioner filed a timely hearing request.
7. Petitioner has been denied SSI by the Social Security Administration. Petitioner filed a timely appeal.
8. As of the date of application, Petitioner was a ■-year-old male, standing ■ tall and weighing ■ pounds. Petitioner's BMI is ■, classifying Petitioner as "normal weight" under the BMI index. Petitioner testified that his prior weight was ■ pounds, which would classify Petitioner as overweight under the BMI index.
9. Petitioner does not have an alcohol/drug abuse problem or history. Petitioner has a medical marijuana card.
10. Petitioner smokes a pack of cigarettes a day. Petitioner has a nicotine addiction.
11. Petitioner does have a driver's license and can drive a motor vehicle.
12. Petitioner has two years of college.
13. Petitioner is not currently working. Petitioner last worked at ■ for a "few weeks." Petitioner worked as a machinist from 2008-2016, and a "licensed builder." for jobs by self-report "under the table."
14. Petitioner lists his impairments on his application as physical only. At the administrative hearing, Petitioner stated that he alleges disability on the basis of physical and mental impairments.
15. Petitioner's alleged physical impairments are listed as: migraine headaches, DDD, left knee derangement, and right arm nerve and muscle damage. Exhibit A.41. DDS adds bipolar to Petitioner's alleged impairments. Exhibit A.
16. Medical evidence is summarized by DDS on Exhibit A.3. Petitioner has had multiple and numerous normal or nonsignificant studies, including ROM, heart sounds, extremities no calf tenderness, chest x-ray, x-ray of pelvis and bilateral hips. Abnormal findings include left knee tear in medial meniscus; small tear in anterior body of lateral meniscus; mild knee joint effusion; possible partial tear of ACL; osteoarthritis of left knee; sinus rhythm electrocardiogram; complaints of chronic pain; weakness in shoulder girdles. Exhibit A.3.
17. Psychiatric evaluation states MDD, recurrent episode, moderate, PTSD, cannabis use disorder, antisocial behavior.
18. ADLs reported sleep varies, can prepare meals, difficulty falling to sleep due to chronic pain and headaches, shops for food, drives, watches TV, listens to music, does not need any assistance with bathroom or grooming needs.

19. The MRT concluded that alleged physical impairments can be correlated to the alleged symptoms and effect on functioning but intensity of symptoms and impact on functioning are not consistent with the preponderance of the evidence in the file. Denied per 202.21. Exhibit A.4.
20. MRT concluded that Petitioner's alleged impairments do not meet a Listing and are mild or moderate. On the mental residual functional capacity assessment Petitioner is not significantly limited in 14/20 categories, and moderately limited in 6/20 categories. Severity is not met; disability not shown. Exhibit A.21-35.
21. The MRT findings and conclusions are adopted and incorporated by reference herein.

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 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:

Medical history;

- (2) Clinical findings (such as the results. of physical or mental status examinations);
- (3) Laboratory findings (such as sure, 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.

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 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 minimus standard. Petitioner

was noted to walk with a limp. 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). DDS did a very thorough analysis of the Listings of Impairments and did not find that Petitioner met severity sufficient to meet or equal a listing. The undersigned adopts and incorporates these finding herein. Petitioner does not meet disability at Step 3. 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 the DDS' conclusion that Petitioner can return to past relevant work despite his mental impairments is supported by credible and substantial evidence of record. Thus, Petitioner is not disabled on the basis of his alleged mental impairments based on the medical evidence of record. Thus, the analysis stops at Step 4 with regard to Petitioner's alleged mental impairment. The analysis will continue regarding Petitioner's exertional, or alleged physical impairments.

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 the MRT finding that on the basis of medical vocational grid Rule 202.21, a finding of not disabled is required is supported by the credible and substantial evidence of record.

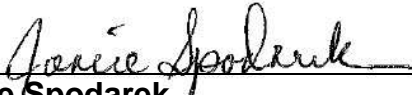
In reaching this conclusion, it is noted that while Petitioner has some physical restrictions, the restrictions are not such that they rise to the level to impair Petitioner's ability to engage in work as required by the considerations found at 20 CFR 416.913(b), (d), and (e), as well as under 416.929. Under 20 CFR 416.912, Petitioner has not met his burden of proof. Here, Petitioner has not brought forth substantial and credible evidence to show that he meets statutory disability as defined under the social security act with the exception of the 90-day requirement sufficient to rise to statutory SDA disability. The MRT ruling is supported by credible and substantial evidence of record.

Thus, the Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, does not find that Petitioner meets statutory disability, and thus, the MRT denial is upheld.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.

JS/dh



Janice Spodarek
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

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

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

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

DHHS

Kim Cates
1399 W. Center Road
Essexville, MI 48732

Bay County, DHHS

BSC2 via electronic mail

L. Karadsheh via electronic mail

Petitioner

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