[redacted]

Date Mailed: May 16, 2019
MAHS Docket No.: 19-002867
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 April 18, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Haysem Hosney, Hearings Coordinator.

ISSUE

Did the Department properly determine 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. On October 30, 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On December 19, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 47-91).

3. On January 8, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 3-6).

4. On January 17, 2019, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 2).

5. Petitioner alleged disabling impairment due to ankle fracture, plantar fasciitis, carpal tunnel syndrome (CTS), osteoarthritis in the knee, chronic obstructive pulmonary

disease (COPD), obstructive sleep apnea (OSA), attention deficit disorder (ADD), attention-deficient/hyperactivity disorder (ADHD), social anxiety, and depression.

6. On the date of the hearing, Petitioner was [redacted] old with a [redacted] birth date; he is [redacted] in height and weighs about [redacted]

7. Petitioner attended the 8th grade and has difficulties with reading comprehension and writing.

8. At the time of application, Petitioner was not employed.

9. Petitioner has an employment history of work as a repossession agent and construction laborer.

10. Petitioner has a pending disability claim with the Social Security Administration.

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 impariment 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.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration

that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity (RFC) to perform past relevant work; and (5) has the RFC and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he is not ineligible under Step 1, and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and

aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The medical evidence presented at the hearing was reviewed and is summarized below.

The medical records showed that Petitioner suffered a right comminuted pylon, distal tibia and fibula fracture in July 2017 following a fall from a ladder. He was hospitalized from July 26, 2017 to August 4, 2017, during which time he underwent a temporary ex-fix (external fixation) placement and was restricted to nonweight-bearing of the lower right extremity. Because of issues with infection at the surgical site, he underwent multiple incisions and debridements. The ex-fix was removed in December 2017. (Exhibit A, pp. 280-281, 402-427, 430-529, 607-689).

On January 31, 2018, an ORIF (open reduction internal fixation) surgery with TTC (tibiotalocalcaneal) arthrodesis was performed on Petitioner's right leg and ankle. (Exhibit A, pp. 266-272, 689-748, 755-782). He was hospitalized from January 31, 2018 to February 5, 2018 (Exhibit A, pp. 280396).

From January 19, 2018 to September 21, 2018, Petitioner visited his orthopedic surgeon for follow-up visits following the right ankle fusion surgery to the femur. The doctor noted that x-rays of the right ankle demonstrated evidence of successful bony fusion with appropriate positioning of hardware and noted that Petitioner continued to improve. At the June 29, 2018 visit, the doctor recommended continued weight-bearing as tolerated, with no restrictions. In a letter dated July 27, 2018, Petitioner's orthopedist indicated that Petitioner had been under his care since a July 26, 2017 injury that made him unable to bear weight on his right leg and caused him to be wheelchair-bound since the injury and unable to work; the letter noted that Petitioner's condition would be reevaluated on August 24, 2018 (Exhibit A, p. 27). At the August 24, 2018 visit, it was observed that Petitioner was walking in the cam boot with some discomfort; the doctor ordered continued weight-bearing activities as tolerated and indicated that Petitioner could wean off the boot and into normal shoes as tolerated. At the September 21, 2018 visit, Petitioner stated he was benefiting from water therapy but complained of right knee and low back pain, which he considered his main limitations for ambulation. He stated that an injection into his right great toe and foot arch had helped relieve chronic discomfort in those areas. (Exhibit A, pp. 192-207, 755-782).

From August 31, 2018 to September 18, 2018, Petitioner visited a podiatrist in response to his complaints of stiffness of the right first metatarsophalangeal joint. The podiatrist noted at the initial meeting that Petitioner participated in physical therapy multiple times per week and had been approved by his orthopedic surgeon to transition out of his cam walker and into a regular tennis shoe. A physical exam showed that Petitioner had limited range of motion of the right first metatarsophalangeal joint, pain and palpitation to the plantar front fascia of the right foot, no range of motion to the ankle joint or subtalar joint status post arthrodesis, and obesity with a BMI of 30-39.9. Petitioner was diagnosed with plantar fasciitis and hallux rigidus of the right foot. There was a noted history of alcohol abuse, but Petitioner reported no ongoing alcohol use. At the September 18, 2018 office to the podiatrist, Petitioner stated he was doing well and denied any foot pain. He complained about low back pain due to limb length discrepancy after the fusion and was prescribed a heel lift. Conservative treatment was recommended with potential endoscopic plantar fasciotomy and surgical intervention for the great toe in the future, but the notes indicated that this would be considered after Petitioner completed therapy and was walking without assistance. (Exhibit A, pp. 115-121.)

On September 25, 2018, Petitioner was evaluated for right anterior knee crepitation and pain. Petitioner stated that he had started to go to physical therapy and learn to walk and had slowly become more active and worked on improving his gait. A physical exam showed negative straight leg raise; decreased hip flexibility bilaterally; full extension of the knee and active flexion of 120 degrees; some anterior knee crepitation; and ability to bear weight with slight limp at baseline. X-rays showed mild tricompartmental degenerative changes but good range of motion and strength was observed and no mechanical symptoms or surgical indications were advised at the time. Petitioner stated he was currently in aquatic therapy ordered by his orthopedic surgeon and it was helping in general. (Exhibit A, pp. 130-132.)

On October 3, 2018, Petitioner was evaluated for low back pain. He reported being nonweight-bearing on the right leg since the injury and felt this contributed to his low back pain issues. He reported pain in the right lower back that sometimes radiated down the posterior right leg that was worse when sitting or standing for prolonged periods of time. It was observed that Petitioner's gait was still off and he primarily used a walker to ambulate. The doctor reported that Petitioner was positive for obesity, COPD, hypertension and hyperlipidemia, GERD, back pain, foot/ankle pain, knee pain, gait problems, depression. The doctor noted negative straight leg raise in bilateral lower extremities when seated. An MRI and SI joint steroid injection was ordered. (Exhibit A, pp. 133-135).

An October 19, 2018 MRI of Petitioner's lumbar spine showed multilevel degenerative changes of the lumbar spine, the most severe central canal and neuroforaminal stenosis from L3-S1. Specifically, L3-L4 showed mild bilateral neural foraminal stenosis, L4-L5 showed moderate to severe right greater than left neural foraminal

stenosis, and L5-S1 showed moderate to severe foraminal stenosis with severe right greater than left neural foraminal stenosis. Petitioner was referred for the MRI for chronic right-sided low back pain with right-sided sciatica. (Exhibit 1; Exhibit A, pp. 137-138.)

Medical records show that Petitioner participated in therapy at [redacted] to address his anxiety and depression from April 2018 to November 2018. (Exhibit A, pp. 148-186).

The discharge summary printed March 1, 2019 from Petitioner's physical therapy concluded that his right weight-bearing remained limited due to severe pain in the right foot and ankle from multiple surgeries, infections, and ultimately fusion. It noted that Petitioner was wheelchair dependent for distance and his sitting time remained limited to one hour. (Exhibit 3).

A March 7, 2019 pulmonary function test showed reduced FVC and FEV1, with a moderately reduced FEV1/FVC ratio. The impression was moderate to severe obstructive pulmonary defect with partial response to bronchodilator. (Exhibit 2.)

On March 21, 2019, Petitioner underwent electromyogram and nerve conduction studies that showed left moderate carpal tunnel syndrome (CTS) without muscle membrane irritability/axion loss and right mild CTS without muscle membrane irritability/axion loss. There were no electrodiagnostic findings for right or left cervical radiculopathy, brachial plexopathy or ulnar neuropathy. (Exhibit 4.)

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint), 1.03 (reconstructive surgery or surgical arthrodesis of a major weight-bearing joint), 1.04 (disorders of the spine), 3.02 (chronic respiratory disorders), 12.04 (depressive, bipolar and related disorders), and 12.06 (anxiety and obsessive-compulsive disorders) were considered. The medical evidence presented does not

show that Petitioner's impairments meet or equal the required level of severity of a listing under 1.02, 1.04, 3.02, 12.04, or 12.06.

The criteria for meeting or equaling a listing under 1.03 requires reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, with inability to ambulate effectively, as defined in 1.00B2b , and return to effective ambulation did not occur, or is not expected to occur, within, for SDA purposes, three months of onset. Inability to ambulate effectively means "an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities" and "is defined generally as having insufficient lower extremity functioning to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities." Listing 1.00B2b. The individual's ability to ambulate with and without an assistive device provides information as to whether, or the extent to which, the individual is able to ambulate without assistance. Listing 1.00J.

Petitioner's January 31, 2018 surgery established that there was a surgical arthrodesis of a major weight-bearing joint, namely, his ankle. At issue is whether the medical evidence established that Petitioner had an inability to ambulate effectively. Petitioner appeared at the hearing in a wheelchair, as confirmed by the Department worker. While Petitioner's medical evidence showed improvement in gait and weight-bearing, with Petitioner using a cam boot at one point, the doctor at the October 3, 2018 visit observed that Petitioner's gait was still off and he primarily used a walker to ambulate. Even if Petitioner was not entirely reliant on a wheelchair, as he indicated at the hearing, his use of a walker would limit the functioning of both upper extremities and, as such, would result in ineffective ambulation as defined in listing 1.00J. This limitation, which is referenced in the October 3, 2018 medical notes, has lasted more than three months. The ensuing back issues, as shown in the October 19, 2018 MRI, further support limitations on Petitioner's ability to ambulate effectively without an assistive device. Although it is anticipated that Petitioner's ability to ambulate effectively may improve with continued therapy, because Petitioner is currently unable to ambulate effectively, his impairment meets or equals a listing under 1.03. Thus, Petitioner is disabled under Step 3.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner **disabled** for purposes of the SDA benefit program.

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. Reregister and process Petitioner's October 30, 2018 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;

2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;

3. Review Petitioner's continued eligibility in November 2018.

AE/tm

Alice C. Elkin
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 [redacted]

Petitioner [redacted]

cc: SDA: [redacted]
AP Specialist Macomb County