[redacted], MI [redacted]

Date Mailed: June 28, 2019
MOAHR Docket No.: 19-003693
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 May 9, 2019, from Lansing, Michigan. Petitioner was represented by himself and his mother, [redacted]. The Department of Health and Human Services (Department) was represented by Christine Ross, Eligibility Specialist and Amanda Fields, Hearing Facilitator. The record was left open for additional medical records, which were received on May 29, 2019, and the record was closed.

ISSUE

Whether the Department properly determined 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 [redacted] 2018, the Petitioner applied for SDA.

2. On March 5, 2019, the Medical Review Team (MRT) denied Petitioner's application for SDA per BEM 261 because the nature and severity of Petitioner's impairments would not preclude work activity at the above stated level for 90 days and is capable of performing other work under Medical Vocation Grid Rule 204.00 per 20 CFR 416.920(f).

3. On March 11, 2019, the Department Caseworker sent Petitioner a notice that his application was denied.

4. On March 26, 2016, the Department received a hearing request from Petitioner, contesting the Department's negative action.

5. Petitioner is a [redacted]year-old man whose date of birth is [redacted] 1996. Petitioner is [redacted]" tall and weighs [redacted] pounds. Petitioner completed High School. Petitioner can read and write and do basic math. Petitioner was last employed as an office cleaner in March 2018. He has also been employed as a stocker, prep cook, and fast food delivery.

6. Petitioner's alleged impairments are schizophrenia, depression and anxiety.

7. Petitioner was seen by his treating physician on [redacted] 2019. His chief complaint was a follow-up to his schizophrenia and his darkened urine. His urologist would like him to decrease his soda intake drastically and replace it with water. The treating urologist seems to think he was getting some irritation from the amount of soda that he consumes. He has been trying to comply with these orders from last week. He is due to follow up with urology in the next two to three months. He stopped taking his Effexor for his schizophrenia. It made his depression worse, but he tapered this off over the last one to two months. He would like to stay off this medication for now. He admitted to drinking one to two times per week. He stated that starting January 31, 2018, that he was employed part-time as a cleaner for [redacted]. He had an essentially normal physical examination. He declined starting new medication for his schizophrenia today because he wants his insurance to work out prior to further treating schizophrenia. Department Exhibit 1, pgs. 173-177.

8. On [redacted] 2019, the Petitioner's Psychotherapist from [redacted] submitted a letter on his behalf. He has been in treatment from [redacted] 2017 to present. He is prescribed methadone for opiate replacement therapy. His current dose is 37 mgs. Department Exhibit 1, pg. 112.

9. On [redacted] 2018, Petitioner's treating licensed psychologists submitted a progress report and his behalf. His date of admission was [redacted], 2018. The Petitioner is a [redacted]year-old single, unemployed white male seeking assistance with what is described as slight hallucinations as well as difficulty coping with loss, medication difficulties, and is currently taking methadone. He reports that he's only coming here to address mental health difficulties. Petitioner reports that he feels he is losing many friends from the past. He does report that he has a close family, but none of his old friends anymore. He participated in five months of intermittent individual therapy to develop social skills and anxiety coping skills. Motivational interviewing and problem solving also addressed the delicate interplay between Petitioner's use of methadone and his history of psychotic symptoms. He reported notable increases in confidence and increase engagement in community resources. Petitioner reported developing a clear plan for transitioning out of his methadone and gradually coping more with his psychotic symptoms. He reported disappointment that he was not able to attain

disability assistance when addressing his history of symptoms corresponding with schizophrenia. He demonstrated increased functionality upon developing coping skills for social anxiety. His reason for discharge/transition was that his treatment plan goals and objectives were met. He was diagnosed with schizophrenia with a secondary diagnosis of opioid use disorder, moderate. Department Exhibit 1, pgs. 166-168.

CONCLUSIONS OF LAW

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

The Department conforms to State statute in administering the SDA program.

> 2000 PA 294, Sec. 604, of the statute states:
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> 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 exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:
>
> (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
>
> (b) A person with a physical or mental impairment which meets federal supplemental security income 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.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. 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 are 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

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, Appendix 1, 12.00(C).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual’s current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are

evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Petitioner does not have a severe medically determinable impairment or combination of impairments, the Petitioner is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Petitioner's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the trier must consider all of the Petitioner's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of his past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner has the residual functional capacity to do past relevant work, then the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Petitioner has satisfied requirements as set forth in steps one and two of the sequential evaluation. However, Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for step 3. Therefore, vocational factors will be considered to determine Petitioner's residual functional capacity to do relevant work and past relevant work.

In the present case, Petitioner was seen by his treating physician on [redacted] 2019. His chief complaint was a follow-up to his schizophrenia and his darkened urine. His urologist would like him to decrease his soda intake drastically and replace it with water. The treating urologist seems to think he was getting some irritation from the amount of soda that he consumes. He has been trying to comply with these orders from last week. He is due to follow up with urology in the next two to three months. He stopped taking his Effexor for his schizophrenia. It made his depression worse, but he tapered this off over the last one to two months. He would like to stay off this medication for now. He admitted to drinking one to two times per week. He stated that starting [redacted] 2018 that he was employed part-time as a cleaner for [redacted]. He had an essentially normal physical examination. He declined starting new medication for his schizophrenia today because he wants his insurance to work out prior to further treating schizophrenia. Department Exhibit 1, pgs. 173-177.

On [redacted] 2019, Petitioner's Psychotherapist from [redacted] submitted a letter on his behalf. He has been in treatment from [redacted] 2017, to present. He is prescribed methadone for opiate replacement therapy. His current dose is 37 mgs. Department Exhibit 1, pg. 112.

On [redacted] 2018, Petitioner's treating licensed psychologists submitted a progress report and his behalf. His date of admission was [redacted] 2018. Petitioner is a [redacted]year-old single, unemployed white male seeking assistance with what is described as slight hallucinations as well as difficulty coping with loss, medication difficulties, and is currently taking methadone. He reports that he's only coming here to address mental health difficulties. Petitioner reports that he feels he is losing many friends from the past. He does report that he has a close family, but none of his old friends anymore. He participated in five months of intermittent individual therapy to develop social skills and anxiety coping skills. Motivational interviewing and problem solving also addressed the delicate interplay between Petitioner's use of methadone and his history of psychotic symptoms. He reported notable increases in confidence and increase engagement in community resources. Petitioner reported developing a clear plan for transitioning out of his methadone and gradually coping more with his psychotic symptoms. He reported disappointment that he was not able to attain disability assistance when addressing his history of symptoms corresponding with schizophrenia. He demonstrated increased functionality upon developing coping skills for social anxiety. His reason for discharge/transition was that his treatment plan goals and objectives were met. He was diagnosed with schizophrenia with a secondary diagnosis of opioid use disorder, moderate. Department Exhibit 1, pgs. 166-168.

This Administrative Law Judge finds that Petitioner is capable of performing work. Petitioner did admit to hearing voices. He was taking medication and still is in therapy for his mental impairments. He had slight hallucinations. Petitioner developed coping skills for his anxiety and lack of confidence. He has a high school diploma with no special education. There was no evidence of a severe thought disorder or risk factors.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that Petitioner testified that he does perform most of his daily living activities. Petitioner does feel that his condition has worsened because he hears voices constantly with an increase in depression and anxiety. Petitioner stated that he does have mental impairments where he is in therapy with Community Mental Health where he is waiting for his medications. Petitioner just vapes now where he stopped smoking 1 ½ years ago where before he smoked ½ a pack of cigarettes a day. He rarely drinks alcohol of one beer. He stopped using illegal and illicit drugs of psychedelics and opiates two years ago. Petitioner did not feel there was any work he could do.

At Step 4, this Administrative Law Judge finds that Petitioner has not established that he cannot perform any of his prior work. He was previously employed as an office cleaner in March 2018. He has also been employed as a stocker, prep cook, and fast food delivery. Petitioner is in therapy and waiting for new prescription for medication for his mental impairments. There was no evidence of a severe thought disorder or risk factors. Therefore, Petitioner is disqualified from receiving disability at Step 4. Petitioner is capable of performing his past work. However, the Administrative Law Judge will still 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.

The objective medical evidence on the record is insufficient that Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in him previous employment or that he is physically unable to do any tasks demanded of him. Petitioner's testimony as to his limitation indicates his limitations are non-exertional.

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).

In the instant case, Petitioner testified that he has schizophrenia, depression, and anxiety. Petitioner is in therapy for his mental impairments and waiting for a change in his medication. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors.

In the final step of the analysis, the trier of fact must determine if the Petitioner's impairment(s) prevent the Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner's:

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 Petitioner could perform despite her limitations. 20 CFR 416.966.

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).
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> **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).
>
> **Medium work.** Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).
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> **Heavy work.** Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects

> weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, Petitioner can meet the physical requirements of work, based upon Petitioner's physical abilities. Under the Medical-Vocational guidelines, a younger aged individual with a high school education, and an unskilled work history, who is limited to work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 204.00. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as schizophrenia, depression, and anxiety. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to Petitioner's mental and physical impairments, the Administrative Law Judge finds that Petitioner could perform work and that Petitioner does not meet the definition of disabled under the SDA program.

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 not disabled for purposes of the SDA benefit program. Petitioner could perform work and that Petitioner does not meet the definition of disabled under the SDA program.

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

Carmen G. Fahie

CF/hb

Carmen G. Fahie
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

Renee Olian
322 Stockbridge
Kalamazoo, MI 49001

Kalamazoo County, DHHS

BSC3 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[redacted], MI [redacted]