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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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

Date Mailed: May 30, 2019
MOAHR Docket No.: 19-004363
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 May 28, 2019, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Brad Reno, Eligibility Specialist/Hearings Facilitator.

Respondent's Exhibit a pages 1-325 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] [REDACTED] 2019, Petitioner filed an application for SDA benefits alleging disability.
- (2) Petitioner receives Medical Assistance (MA) benefits and Food Assistance Program (FAP) benefits.
- (3) On March 18, 2019, the Medical Review Team denied Petitioner's application stating that Petitioner could perform other work.
- (4) On March 18, 2019, the Department caseworker sent Petitioner notice that his application was denied.

- (5) On April 26, 2019, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On May 8, 2019, the Michigan Office of Administrative Hearings received the Hearing Summary and attached documentation.
- (7) On March 28, 2019, the hearing was held.
- (8) Petitioner is a ■-year-old man whose date of birth is ■■■■■■■■■■, 1972. He is ■" tall and weighs ■ pounds. He has a master's degree in Health Information.
- (9) Petitioner last worked in 2017 for Blue Cross as a Database developer. He has also worked as a flight attendant.
- (10) Petitioner alleges as disabling impairments: migraines (3 per month); severe spinal stenosis (C5-C6). Petitioner wears a cervical collar which is prescribed by his doctor.

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 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 CRF 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 October 2018. 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 with his father and has no income. He receives MA and FAP benefits. Petitioner does have a driver's license but does not drive. He takes the city bus two to three times per week. Petitioner cooks in the microwave and make soup and frozen dinners. Petitioner grocery shops. He walks two blocks to the store and then carries two to three bags of groceries back to his apartment two to three times per week. Petitioner does do chores but they're difficult because of his neck condition. He does do laundry. Petitioner testified he can stand with limits and can sit for about an hour. Petitioner can walk half a mile. He's able to squat, shower,

dress himself, tie his shoes, and touch his toes. He is able to bend at the waist. His back and knees are fine. His hands, arms, legs and feet are fine. His level of pain on a scale from 1 to 10 without medication is a five to ten. With medication his pain is a five. The heaviest weight Petitioner can carry is 10 pounds because of his severe spinal stenosis in the cervical area. Petitioner alleges that he was hit with a cinder block when he was seven years old and sustained a head injury. Petitioner alleges that he could work with raised screens, but he would need to miss about three days per month. He needs to keep his head up. Petitioner testified he could work from home because there he would be allowed to wear his neck brace.

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

Medical documentation indicates a non-severe condition:

A physical residual functional capacity assessment dated [REDACTED] [REDACTED] 2019, indicates that Petitioner can occasionally lift 20 pounds and frequently lift or carry 10 pounds. He is able to stand, walk or sit about six hours in an eight-hour workday. He can push or pull in unlimited fashion. Petitioner's only postural limitation is that he can occasionally climb ladders, ropes or scaffolds. He can frequently climb ramps or stairs, balance, stoop, kneel, crouch or crawl. Petitioner has no manipulative limitations, no visual limitations, no communicative limitations. His only environmental limitations are to avoid concentrated exposure to wetness and to vibration. Petitioner has limitations from a confirmed MDIs and examinations that are otherwise unremarkable. The prescribed accommodations as detailed in the residual function capacity permit sustained activities of an eight-hour workday that minimize the risk of injury. (Pages 30 to 37)

A mental residual functional capacity assessment indicates that Petitioner is not significantly limited in most areas and moderately limited in the areas of the ability to understand and remember detailed instructions; the ability to carry out detailed instructions; the ability to maintain attention and concentration for extended periods; the ability to interact appropriately with the general public and; the ability to respond appropriately to changes in the work setting. Petitioner can sustain simple, low stress, routine tasks. (Pages 38-40)

A [REDACTED] [REDACTED] 2018, patient record indicates that Petitioner had an x-ray of the cervical spine which concluded that Petitioner has degenerative disc disease at the C5 – C6 level. (Pages 69-70)

A [REDACTED] [REDACTED] 2018, CT of the cervical spine indicates that Petitioner has spondylosis. No acute pathology. No fracture or subluxation is seen. There are mild degenerative changes of the lower cervical spine with the disk space narrowing and spurring from levels of C4/C5 - C6/C7. There's no canal stenosis. Degenerative changes cause mild to moderate bilateral neural foramen encroachment at these levels. There's moderate canal stenosis at the level of C5/C6. The surrounding soft tissues are normal. (Page 299)

An [REDACTED] [REDACTED] 2018, MRI of the cervical spine indicates that C3–C4 there's marked right and moderate left foraminal stenosis with no central canal stenosis. C4-C5 moderate bilateral foraminal stenosis. C5-C6 is a severe right and moderate left foraminal stenosis with moderate anterior effacement of the thecal sac. (Page 267)

A [REDACTED] [REDACTED] 2018, disability determination services report indicates that the impression was a cervical spine injury. Degenerative disc disease and migraines. Petitioner's stance, posture and ambulation was normal. He was not using any ambulatory aid. He was able to squat and was able to walk on heels and toes. He was able to get on and off the examination table without difficulty. In dexterity he was fine and grosse dexterity in both upper extremities and the grip in both hands were normal. Of the joints in the upper as well as a lower extremity were normal. There was no edema in the ankle. The cervical spine was tender with diminished movements on passive movements. The thoracolumbosacral spine was normal with no limitation of movements. There was no motor or sensory deficit. Normal reflex and coordination. The Romberg sign is negative. (Page 228)

Petitioner has a normal lumbosacral spine. (Page 72)

A [REDACTED] 27, 2018, patient consultation indicates that Petitioner is assessed with radiculopathy of the cervical region, cervicalgia, headache paresthesia of the skin on the right arm. Petitioner has no weakness. He has no chest pain or tightness. No swelling of the legs. No varicose veins. No leg pain at rest. No leg pain with exertion. In the respite rate and pulmonary area Petitioner had no wheezing, no shortness of breath, no bloody sputum, no excess of daytime sleepiness. And the musculoskeletal area Petitioner did have muscle pain in the neck. He had no back or arm pain nor pain down his legs. He did have stiff painful joint in the neck. He had no redness of any joints. In the neurological area, he had headaches, no seizures. No blackouts. No dizziness, some double vision (Pages 82-83)

A [REDACTED] [REDACTED] 2018, neurosurgery and neuroscience consultation indicates that Petitioner has a history of neck pain secondary to spinal stenosis. His pain has been severe at times, but he has been having good relief with the cannabis use. He has been consuming 2 to 3 grams of cannabis material per week. He has been doing this by inhalation.

An [REDACTED] [REDACTED] 2018, medical report indicates that Petitioner was [REDACTED] feet [REDACTED] inches tall and weighed [REDACTED] pounds. His blood pressure was 137/88. His temperature was 97°Fahrenheit. His pulse oximetry on room air was 100%. He had a three of 10 numeric pain intensity scale. The pain was in his neck. His BMI was 25.0. He had a normal physical evaluation. He was diagnosed with anxiety, depression, hyperlipidemia and neck pain. He was given encouragement and exercise. (Pages 124-129)

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 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 no disabling mental impairments.

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 a mental residual functional capacity assessment in the record. Petitioner was oriented x3 at all psychiatric evaluations. 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.

Listing 1.04, the disorders of the spine was considered and is not supported by medical evidence. Petitioner does not have a compromise of the nerve root, or the spinal cord. He does not have evidence of nerve root compression, atrophy with associate of muscle weakness, or muscle weakness. He is not diagnosed with a disabling condition. He retains the ability to ambulate effectively. He does not have spinal arachnoiditis which is confirmed by an operative or pathology report or tissue biopsy.

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 Petitioner has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

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 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 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 sedentary work. Thus, he does not currently retain the capacity to perform prior work at Step 4.

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

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

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 sedentary work even with his impairments. **Under the Medical-Vocational guidelines (Medical Vocational Rule 201.21), a younger person (age 46), master's degree education and an unskilled work history who is limited to sedentary or light work is not considered disabled.**

Careful consideration has been given to Petitioner's allegations and symptoms. Petitioner has established that his physical and mental condition could cause problems with daily and work functioning. However, the totality of the evidence does not support total disability. Petitioner's medically determinable impairments could reasonably be expected to produce alleged symptoms, but Petitioner's statements concerning the intensity, persistence and limiting effects of these symptoms are not entirely credible when compared to the limitations suggested by the objective medical evidence contained in the file.

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 based upon disability and because the evidence of

record does not establish that Petitioner is unable to work for a period exceeding 90 days, Petitioner does not meet the disability criteria for SDA 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 sedentary work even with his impairments. The Department has established its case by a preponderance of the 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 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 Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Tamara Morris
125 E. Union St 7th Floor
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Genesee County (Union), DHHS

BSC2 via electronic mail

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Petitioner

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