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GOVERNOR

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

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DIRECTOR

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Date Mailed: July 30, 2019
MOAHR Docket No.: 19-004888
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 June 13, 2019, from ██████████ Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Brad Reno, Eligibility Specialist and Hearing Facilitator.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. The requested documents were not received. *The record closed on July 23, 2019, and the matter is now before the undersigned for a final determination based on the evidence presented.*

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 December 26, 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On April 25, 2019, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 7-13).

3. On April 29, 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. 213-214).
4. On May 13, 2019, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 3-5).
5. Petitioner alleged disabling impairment due to degenerative disc disease in his lumbar spine, congestive heart failure. The Petitioner uses a cane and a walker. The Petitioner alleges osteoarthritis in his knees, and hips and limitation of use of his right arm due to metal rods with pins in his right forearm due to gunshot wound. The Petitioner has HIV; however, the disease is controlled with medications. The Petitioner also has a diagnosis of diabetes with no complications noted. The Petitioner alleged no mental impairments.
6. -On the date of the hearing, Petitioner was ■ years old with an ■, birth date; he is ■" in height and weighs about ■ pounds.
7. Petitioner is a high school graduate.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work having last worked in 2004 as an auto painting and auto body repair.
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 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.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), 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 90 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 to perform past relevant work; and (5) has the residual functional capacity 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 1

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 2

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 individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimis* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., 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. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

The medical evidence presented at the hearing, *and in response to the interim order*, was reviewed and is summarized below.

On [REDACTED] 2019, the Petitioner underwent an independent medical examination. The examination revealed a moderate left-sided limp. At the time of the exam, the Petitioner weighed [REDACTED] pounds and was [REDACTED]". The Petitioner was unable to complete range of motion testing of the hips due to pain with limited range of motion of the lumbar spine and by lateral shoulders listed. He had full dexterity of his hands bilaterally with 5/5 grip strength. The examiner concluded history of chronic pain of the lumbar spine, bilateral hips and knees requiring follow-up with his position as needed and use of pain medication as directed. During the examination, the patient was able to complete all tasks with mild-to-severe difficulty due to pain and limited range of motion as noted above. The cane is probably helpful to reduce pain and assist on uneven terrain due to a moderate left-sided limp.

The Petitioner was seen as a new patient on [REDACTED] 2018, at Insight Neurosurgery and Neural Science for treatment due to lumbar pain with radiation into the left lower extremity. The physical exam noted straight leg raising was positive bilaterally, and range of motion of the lumbar spine was limited on flexion due to pain including extension and lateral bending the assessment noted radiculopathy lumbar region as the primary concern. An imaging study was ordered and neurosurgery consultation also recommended. At the conclusion of the evaluation, the Petitioner was scheduled for a bilateral L3-L4 transforaminal epidural steroid injection. The records also note morbid severe obesity with a body mass index of 39.0-39.9.

The Petitioner was seen on [REDACTED] 2018, at Insight Imaging, and x-rays of his low back were taken. X-rays noted disk space narrowing at L5-S1. Borderline Anterolisthesis L4 on L5. The impression was mild spondylosis. An EMG nerve conduction study of the bilateral extremities was ordered. A selective nerve block at left L4-L5 steroid injection was performed. Notes indicate he is a fairly poor candidate for surgery due to morbid obesity; and due to long-standing weakness, notes indicate he may be a poor candidate for surgery and may not improve. The doctor also prescribed physical therapy to determine whether that would result in any improvement; if not, interventional measures will be taken. Throughout the period of treatment, the Petitioner was seen at least biweekly most months.

On [REDACTED] 2019, the Petitioner continued to exhibit left lower extremity pain with proximal weakness on the left. He underwent an EMG of the bilateral extremities which showed mild and chronic L4-L5 and L5-S1 nerve root irritation. The EMG also demonstrated evidence of diffuse neuropathy, sensory and motor consistent with diabetic neuropathy. Notes indicate spinal stenosis lumbar region without neurogenic claudication and inter-vertebral disc disorders with radiculopathy lumbar region. The notes indicate the EMG findings were concordant with the MRI imaging.

A review of an MRI at an exam on [REDACTED] 2018, notes multifocal moderate-to-severe for a mental stenosis L3-L4 through L5-S1; most severe level is L4-L5 on the left secondary to broad-based disc bulging. There is no Frank canal stenosis. There is multiple nerve root impingement at the areas described above. The MRI was performed on this date, and notes the following: at L2-L3 a circumferential disc bulge and mild facet and ligamentum flavum hypertrophy of the central canal; there is moderate-to-severe left neural foraminal narrowing with compression of the exiting left L2 nerve root. At L3-L4, there is a circumferential disc bulge and facet hypertrophy throughout and narrowing of the central canal with severe left and moderate right neural foraminal narrowing with compression of the exiting left L3 nerve root. At L4-L5, there is a circumferential disc bulge and marked facet hypertrophy; the central canal is patent; and there is bilateral neural for a mental narrowing with compression of the exiting bilateral L4 nerve roots. At L5-S1, there is a mild disc bulge and marked facet and ligamentum flavum hypertrophy; there is moderate bilateral neural for a mental narrowing with effacement of the exiting bilateral L5 nerve roots. Severe left neural foraminal narrowing at L2-three and L3-four with compression of the exiting L2 and L3 nerve roots. Severe bilateral neural for a mental narrowing at L4 with compression of

the exiting L4 nerve roots. The findings of MRI imaging of the lumbar spine demonstrate multiple focal moderate to severe foraminal stenosis L3-L4 through L5-S1 most severe level is L4-L5 on left secondary to broad-based disc bulging there is multiple nerve root impingement at the areas described above. Exhibit A, pp. 160-161.

The Petitioner was seen at Hamilton Healthcare Clinic on [REDACTED] 2018, due to knee pain. X-rays were taken and a 1 cm metaphysis region. There is mild medial narrowing of the knee joint space with no fracture or dislocation or joint effusion. The impression was small medial metaphyseal exostosis with mild degenerative changes of the medial compartment of the knee. At the examination, the right knee demonstrated crepitus; the range of motion was full with tenderness in the quad, patellar, medial, lateral ligaments and pain on interior and exterior rotation. A physical therapy consult was recommended.

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 3

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 1.04 Disorders of the Spine was considered. The medical evidence presented demonstrated evidence of nerve root compression characterized by neural anatomic distribution of pain, limitation of range of motion of the spine in the lumbar region with positive straight leg raising testing sitting as well as MRI evidence of compromise of nerve root endings at multiple levels. Therefore, the medical evidence shows that Petitioner's impairment of *diagnosis meets or is equal in severity to the criteria in Appendix 1 of the Guidelines to be considered as disabled. Accordingly, Petitioner **is disabled** and no further analysis is required

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.

DECISION AND ORDER

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 the Petitioner's December 26, 2018, SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for loss benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;
3. Review Petitioner's continued eligibility in July 2020.

LMF/jaf



Lynn M. Ferris

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

Via First Class Mail
Petitioner

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

Via Electronic Mail
DHHS

Tamara Morris
MDHHS-Genesee-UnionSt-Hearings

L Karadsheh