



GRETCHEN WHITMER
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: October 23, 2019
MOAHR Docket No.: 19-006032
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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, an in-person hearing was held on July 31, 2019, at the Genesee County Department of Health and Human Services (Department), in Flint, Michigan. Petitioner was represented by Authorized Representative Donita Hendricks. The Department was represented by Hearing Facilitator, April Nemec.

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 competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner applied for SDA on [REDACTED], 2019. [Hearing Summary].
2. On May 30, 2019, the Medical Review Team denied Petitioner's application for SDA. [Dept. Exh. 6-12].
3. On June 4, 2019, the Department issued Petitioner a Notice of Case Action informing him that his application for SDA had been denied. [Dept. Exh. 245-248].
4. On June 17, 2019, Petitioner submitted a Request for Hearing regarding his SDA denial. [Dept. Exh. 2].
5. Petitioner has been diagnosed with depression, anxiety, chronic intractable epilepsy, seizures, headaches, dehydration, insomnia, hypertension, an upper respiratory infection, and back pain.

6. On November 3, 2009, [REDACTED]-year-old Petitioner was diagnosed with chronic intractable epilepsy which was believed to have a left temporal focus. Petitioner's seizures began at the age of three. He had had seizures ever since with no period of control. Petitioner was having seizures 2-3 times a week. Petitioner was admitted to the University of Michigan for medically refractory complex partial seizures. Petitioner underwent a left frontotemporal craniotomy for placement of subdural grid electrodes. On November 13, 2009, Petitioner underwent placement of additional subdural grids. On November 17, 2009, while Petitioner was awake, he again underwent left frontotemporal craniotomy for anterior temporal lobectomy and amygdalohippocampectomy with intraoperative electrocorticography. Petitioner was discharged on November 20, 2009. [Petitioner Exh. A, 11-73].
7. On June 1, 2018, Petitioner was admitted to [REDACTED] emergency department for seizures that occurred while at work. Petitioner reported that he was on three antiepileptics that he is compliant with. He was diagnosed with a breakthrough seizure. [Dept. Exh. 118-165].
8. On June 1, 2018, after Petitioner was discharged from [REDACTED], he had another seizure in the car banging his head on the side of the car. Petitioner was pulled out of the car postictal. On arrival at [REDACTED], tachycardia was present. He was alert but not oriented and intermittently following commands. It was reported that over the last few months his seizures had become more frequent. A CT of his head showed no acute intracranial bleed and stable encephalomalacia changes in the left temporal lobe. Laboratory studies were consistent with recent seizure activity. Petitioner was kept overnight for observation. On June 2, 2018, Petitioner was back to baseline and discharged. [Dept. Exh. 170-198].
9. On June 6, 2018, Petitioner followed up with his primary care physician following his emergency department visits for seizures. Petitioner was still very tired and somewhat confused. Petitioner was diagnosed with insomnia with associated symptoms of an increased amount of seizures. He was also diagnosed with uncontrolled hypertension for the first time with associated symptoms that included, anxiety, headaches and malaise/fatigue. [Dept. Exh. 92-94].
10. On September 25, 2018, Petitioner followed up with his primary care physician after a seizure at a Lions game. Petitioner lost consciousness and was found by other fans on the floor of the bathroom. He was having a continued headache, slowness and drowsiness. He hit his head and was in need of a CT scan due to unknown trauma and change in personality. He appeared lethargic. [Dept. Exh. 78-81].
11. On October 4, 2018, Petitioner followed up with his primary care physician after a seizure at work the night before. Petitioner was under a lot of stress a half an hour before the seizure. He fell face first into concrete, had a facial laceration, abrasions on the right side of his chest was extremely confused. Petitioner was instructed to go to the emergency department due to his head trauma. The seizures are a chronic problem. The current episode started two days ago. The

problem has been gradually worsening. There were 2 to 3 seizures. Petitioner appeared lethargic. His primary care physician recommended he go to the emergency department. [Dept. Exh. 75-77].

12. On October 4, 2018, Petitioner was admitted to the emergency department for convulsions, ongoing personality change and headache. He reported falling yesterday and hitting the concrete after a seizure at work. He complained of a headache to the frontal area since the fall, of feeling cloudy and his vision was blurred. He reported he had another seizure last night while at home. He stated that he usually feels poorly the day after a seizure but today was worse than usual. Petitioner appeared uncomfortable. His mood was dysphoric with flat affect. His discharge diagnoses were anxiety, depression, dehydration, insomnia and seizures. [Dept. Exh. 199-212].
13. On December 14, 2018, Petitioner saw his neurologist for a re-evaluation after having a total of five seizures from November 8, 2018 through November 10, 2018. An EEG was performed and was essentially normal. [Dept. Exh. 61].
14. On December 16, 2018, Petitioner presented to the emergency department. His mother reported that Petitioner had had two seizures lasting approximately two minutes, then postictal about 15-20 minutes. Petitioner complained of a sore throat, chills and a cough. He was a bit diaphoretic in the room, having just seized. He was also tachycardic. After five hours of no additional seizures, Petitioner was discharged with diagnoses of upper respiratory infection and seizures. [Dept. Exh. 213-226].
15. On January 23, 2019, Petitioner followed up with internal medicine for his seizures. The physician noted seizures are a chronic problem for Petitioner. The current episode started two days again. Associated symptoms include headaches. Characteristics include loss of consciousness and bit tongue. The episode was witnessed. There was no sensation of an aura present. Possible causes include sleep deprivation. Past surgical history includes brain surgery. Petitioner appeared lethargic. [Dept. Exh. 70-74].
16. On January 30, 2019, Petitioner was admitted to the emergency department for convulsions. Petitioner had two seizures that happened an hour before arriving at the emergency department. Petitioner hit his head on a dresser during the last seizure. The seizure lasted 3-5 minutes. He was postictal for 20 minutes. Petitioner had another generalized seizure while in the emergency department lasting less than 5 minutes. He was given Ativan and admitted for observation overnight. He was discharged on January 31, 2019 with diagnoses of poorly controlled grand mal seizures, epilepsy, abrasion of the head, and an abrasion of the scalp. [Dept. Exh. 227-244].
17. On March 1, 2019, Petitioner followed up with his neurologist regarding his seizures. His last seizures were on January 30, 2019, when he went to the emergency department after having three seizures. Petitioner was complaining

that since increasing the dosage of Lamictal he had been suffering from double vision which increased his anxiety of having more seizures. [Dept. Exh. 58; Petitioner Exh. 3-5].

18. On April 15, 2019, Petitioner underwent a vagus nerve stimulator implant. Petitioner has a history of 3 craniotomies secondary to seizure control. He was diagnosed with intractable epilepsy with partial complex seizures, without status epilepticus. [Petitioner Exh. C].
19. On May 20, 2019, Petitioner presented to his neurologist for VNS interrogation and programming. He tolerated the procedure well and was diagnosed with epilepsy, presence of other specified devices and vagal nerve stimulator in situ. [Petitioner Exh. B, 1-2].
20. Petitioner is a [REDACTED]-year-old man born on [REDACTED], 1993. He is [REDACTED]' [REDACTED]" and weighs [REDACTED] pounds. He has a high school equivalent education and has never held a full-time job.
21. Petitioner was appealing the denial of Social Security disability at the time of the hearing.
22. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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 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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

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 exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI 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.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

A person is disabled for SDA purposes if he or she:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2015).

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 **or 90 days for the SDA program**. 20 CFR 416.905(a). 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 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and testified that he has not worked since October 2018. He has never held a job for a year. Therefore, he is not disqualified from receiving SDA benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples 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. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleges disability due to depression, anxiety, chronic intractable epilepsy, seizures, headaches, dehydration, insomnia, hypertension, upper respiratory infection and back pain.

Medical records show he was first diagnosed with left temporal epilepsy at the age of three. At age 16, he underwent a left frontotemporal craniotomy for anterior temporal lobectomy and amygdalohippocampectomy with intraoperative electrocorticography. In April 2019, Petitioner underwent the implant of a vagus nerve stimulator in his brain.

Petitioner explained that he has memory impairments from the seizures and/or brain surgery. He described having an aura prior to a seizure. Anxiety will also cause his seizures. Testing while sleeping also shows the seizures.

Petitioner reported that he does not always remember his seizures and he is unaware of anything during a seizure. After a seizure, he has a headache, he's tired, dizzy, and has double-vision which can last all day.

Petitioner credibly testified that since the implant of the valgus nerve stimulator he continues to have 4-5 seizures a week. He is unable to work and unable to drive. He complained that his medications were not working.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that he does have physical limitations on his ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Petitioner has alleged physical disabling impairments due depression, anxiety, chronic intractable epilepsy, seizures, headaches, dehydration, insomnia, hypertension, upper respiratory infection and back pain.

Listing 11.00 (Neurological - Adult) was considered in light of the objective evidence. Based on the Listing 11.02, Petitioner's impairments are severe, in combination, if not singly, (20 CFR 404.15.20 (c), 416.920(c)), in that Petitioner is significantly affected in his ability to perform basic work activities (20 CFR 404.1521(b) and 416.921(b)(1)).

Listing 11.02B requires dyscognitive seizures occurring at least once a week for at least 3 consecutive months despite adherence to prescribed treatment. As indicated by Petitioner during his testimony, and supported by medical evidence, Petitioner has had seizures for more than 3 consecutive months that all required emergency department intervention.

Accordingly, this Administrative Law Judge finds that Petitioner's impairments meet or equal Listing 11.02(B) and concludes Petitioner is disabled for purposes of 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, 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. The Department shall process Petitioner's January 7, 2019 application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in October 2020, unless his Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, neurologist, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

It is SO ORDERED.

VLA/nr



Vicki L. Armstrong
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

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