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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]

Date Mailed: October 29, 2019
MOAHR Docket No.: 19-009699
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on October 2, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED] Eligibility Specialist/Lead Worker.

ISSUE

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In a September 2, 2016 decision, a Social Security Administration (SSA) administrative law judge found Petitioner disabled and approved him for Supplemental Security Income (SSI) benefits with an October 15, 2013 disability onset date (Exhibit C).
2. On November 22, 2017, Petitioner was incarcerated.
3. In December 2017, Petitioner's SSI benefits stopped (Exhibit C).
4. On January 29, 2019, Petitioner was released from prison.
5. On February 4, 2019, Petitioner reapplied for SSI.

6. On April 2, 2019, Petitioner submitted an application to the Department seeking SDA cash assistance on the basis of a disability.
7. On June 10, 2019, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 2-8).
8. On July 24, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit B, pp. 9-13).
9. On August 21, 2019, the Department received Petitioner's timely written request for hearing, disputing the Department's finding that he was not disabled and ineligible for SDA (Exhibit B, pp. 3-4).
10. Petitioner alleged disabling impairment due to anxiety; fatigue; and neck, back, and knee pain.
11. On the date of the hearing, Petitioner was [REDACTED] old with a [REDACTED] birth date; he is [REDACTED] in height and weighs about [REDACTED] pounds.
12. Petitioner is a high school graduate with some college education.
13. At the time of application, Petitioner was not employed.
14. Petitioner has an employment history of work in the last 15 years as a general laborer, irrigation hose laborer, and strapped picket bundle worker.
15. Petitioner has a pending disability claim with SSA. Effective October 2019, Petitioner was approved for retirement-based Retirement, Survivors, and Disability Insurance (RSDI) benefits and would receive his first RSDI payment in November 2019. (Exhibit C.)

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.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), p. 1. An individual automatically qualifies as disabled

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

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity 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 One

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

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

Step Two

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

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

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

Included in Petitioner's file were notes from January 2, 2018 to January 28, 2019 from the health care services provider during Petitioner's imprisonment. Notes throughout show treatment for neck and back pain with ibuprofen or Tylenol; a physical examination of Petitioner's lumbar spine and knees showed limited restrictions or pain (Exhibit A, pp. 214-215, 248, 253, 256, 260, 264-265). At the September 20, 2018 visit, he indicated that his neck, back, and knee pain was tolerable as long as he did stretching and took ibuprofen (Exhibit A, pp. 278-280). Notes from a January 28, 2019 consultation showed that Petitioner was cured of his hepatitis C virus infection (Exhibit A, pp. 298-300). Before his release, he was diagnosed and treated for sinusitis (Exhibit A, pp. 301-303).

On April 16, 2019, Petitioner participated in a physical examination with an independent registered nurse at the Department's request. Petitioner complained of anxiety, fatigue and back, neck, and knee problems. He indicated he has had anxiety for several years and had taken Valium in the past but was not currently on any medication. He addressed his fatigue by trying not to take naps and using caffeine. He had back, neck and knee pain due to prior jobs involving lots of heavy lifting and a number of motor vehicle accidents. He was observed to not use an assistive device or walk with a limp and to ambulate with a steady gait. He reported sometimes having problems getting dressed but was able to do the rest of his activities of daily living on his own. He also reported that he could walk about one mile without pain and sit for 20 to 30 minutes

without pain. He stated he could lift roughly five pounds on his left and ten pounds on his right. His pain was much improved with the use of ibuprofen, heat and rest and made worse by turning and twisting motions. He had slightly decreased range of motion of the cervical and lumbar spine and the bilateral knees. His strength was 4/5 in the bilateral lower extremities; he had normal grip strength in the hands and upper arms at 5/5. His straight-leg test was negative in the seated and supine position. He was unable to go up on his toes and would lose his balance. He could sit, stand, carry, push, pull, button clothes, dress and undress, dial a phone, open a door, make a fist, pick up a coin and pencil and write, get on and off the examination table, and climb stairs. The doctor was unable to evaluate his ability to bend, stoop or squat because Petitioner stated it was too painful.

Based on a physical examination, the nurse concluded that Petitioner addressed his fatigue by drinking caffeine throughout the day and avoiding naps. She found that he had decreased range of motion of the lumbar spine, cervical spine, and bilateral knees and crepitus of the bilateral knees. She noted he had a negative straight-leg raise test in the seated and supine positions and negative paraspinal muscle spasms. (Exhibit A, pp. 150-154, 160-164.)

An April 16, 2019 thoracic spine x-ray showed degenerative disc disease and degenerative changes at multiple levels (Exhibit A, pp. 155, 165). An April 16, 2019 cervical spine x-ray showed mild degenerative disc disease at C5-C6 (Exhibit A, pp. 156, 166). An April 16, 2019 right knee x-ray showed mild degenerative changes, and a left knee x-ray showed mild to moderate degenerative changes. (Exhibit A, pp. 157, 167.)

On May 29, 2019, at the Department's request, Petitioner participated in a psychiatric/psychological evaluation before a licensed psychologist, who prepared a medical report. The psychologist indicated that Petitioner had driven himself to the evaluation and arrived unaccompanied. He complained of anxiety due to his current situation and fears about his finances, housing, and health. He explained that his last employment in 2016 was at a cherry packing plant but only lasted for one month because of his pain and fatigue. He reported living on his own and enjoying walking in the woods, hiking, fishing, and camping. During the day, he indicated that he cleaned the house, went to the library, and walked around; he did all his own cooking and cleaning. The psychologist noted that Petitioner's posture and gait was unremarkable, clothing was clean, hygiene was good, mood was normal, and mannerisms were cooperative. He appeared to be in contact with reality and, when asked how he felt about himself, he replied, "I feel pretty good." His thoughts were spontaneous and well-organized. He denied the presence of any auditory or visual hallucinations, delusions, obsessions, persecutions or unusual powers. His emotional reaction appeared normal. He did not appear to have a tendency to minimize or exaggerate symptomology.

The psychologist concluded that the results of the mental status examination revealed no abnormalities in mental capacity. He found that Petitioner's ability to relate and interact with others, including coworkers and supervisors, was fair; his ability to

understand, recall, and complete tasks and expectations did not appear to be significantly impaired; his ability to maintain concentration was fair; and he appeared able to deal with normal workplace stressors appropriately. Petitioner was diagnosed with adjustment disorder, with anxiety and cannabis use disorder in sustained remission. His prognosis was fair. (Exhibit A, pp. 141-145.)

A May 29, 2019 cervical spine x-ray showed no fracture or subluxation and C4-C5 and C-5-C6 degenerative disc disease and spondylosis with mild narrowing of the C4-C5 disc spaces (Exhibit A, p. 147).

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

Step Three

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

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint (due to any cause)), 1.04 (disorders of the spine), and 12.06 (anxiety and obsessive-compulsive disorders) were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 20 CFR 416.967(a). 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 the light 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 involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember,

or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3). A five-point scale is used to rate the degree of limitation in each area: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner alleges both exertional and nonexertional limitations due to his impairments. Petitioner testified that he could stand and walk about 20 to 30 minutes, but his spine would be adversely affected if he stood too long or walked more than 30 minutes. He could not lift more than 15 pounds without problem. He could not squat and he had problems getting up from bending. He lived in the basement of a friend's house. He could bathe, take care of his personal hygiene, dress himself, cook, clean, do laundry, drive if he had a car, and take the bus when he had tokens. He tries to get out on the weekend, if able, to fish, camp or hike. His bathroom has grab bars for assistance.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

With respect to Petitioner's exertional limitations, Petitioner alleges restrictions with respect to his ability to stand, walk and lift. He testified to receiving injections but testified that he had not yet noted any improvement in his pain. However, he lives alone and admits that he is able to do most of his activities of daily living. His medical record includes x-rays that show mild degenerative disc disease of the cervical and thoracic spines, mild degenerative changes of the right knee and mild to moderate degenerative changes of the left knee. It is found based on a review of the entire record that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(b).

Petitioner also alleged nonexertional limitations due to anxiety, testifying that he had difficulty with concentration and being around people. The psychologist who evaluated Petitioner at the Department's request concluded that Petitioner had adjustment disorder, with anxiety and cannabis use disorder in sustained remission. Based on his mental status examination, he found that Petitioner had no abnormalities in mental capacity; had a fair ability to relate and interact with others, including coworkers and supervisors; did not have a significantly impaired ability to understand, recall, and complete tasks and expectations; had a fair ability to maintain concentration; and appeared able to deal with normal workplace stressors appropriately. Petitioner disputed the evaluator's conclusions, arguing that his evaluation lasted less than 10 minutes. However, due to the fact that he had not sought medical treatment for his condition and was not on any medication for treatment, he did not have any medical evidence to dispute the evaluator's findings. The medical evidence in the records from

Petitioner's incarceration did not show that Petitioner had pursued any treatment since January 2016, at which time his self-reported anxiety was found to be inconsistent with behavioral observations. Based on the medical record presented, as well as Petitioner's testimony, it is found that Petitioner has limitations on his mental ability to perform basic work activities as follows: none to mild limitations in ability to understand, remember or apply information; mild to moderate limitations in ability to interact with others; mild limitations in ability to concentrate, persist, or maintain pace; and none to mild limitations in ability to adapt or manage oneself. His nonexertional RFC is also affected by limitations on his ability to bend, stoop or squat due to pain.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). Substantial work activity is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). Gainful work activity is work activity that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).


Petitioner identified a work history in the 15 years prior to the application as a general laborer, installer assistant, irrigation hose laborer, and worker strapping picket bundles. His employment strapping picket bundles required standing most of the day and lifting not more than five pounds at a time. His employment as a general laborer with a temp agency required standing 8 hours of an 8-hour day and regularly lifting 15 pounds. Based on his characterization of the tasks of the job, both jobs are categorized as light work. Based on the RFC analysis above, Petitioner's exertional RFC limits him to no more than light work activities. As such, Petitioner can perform past relevant work. His nonexertional RFC would not preclude him from being able to engage in past employment. Accordingly, Petitioner is not disabled at Step 4, and the assessment ends.

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.

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

ACE/tlf



Alice C. Elkin
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan 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 Email:

MDHHS-Mecosta-Hearings
BSC3 Hearing Decisions

[REDACTED]

MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]

[REDACTED]

[REDACTED]