



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: December 4, 2019
MOAHR Docket No.: 19-011380
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 November 26, 2019, from Lansing, Michigan. The Petitioner was represented by Attorney, Robert McCall (P78736). Petitioner, [REDACTED], appeared and testified. The Department of Health and Human Services (Department or Respondent) was represented by Assistant Attorney General, Meghan Schaar (P78736). Brad Reno, Eligibility Specialist, appeared and testified as a witness for the Department.

Respondent's Exhibit A pages 1-1614 and Petitioner's Exhibit 1-4 were admitted as evidence.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of 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], 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 July 28, 2019, the Medical Review Team denied Petitioner's application stating that Petitioner could perform other work.

- (4) On July 12, 2019, the Department caseworker sent Petitioner notice that his application was denied.
- (5) On October 11, 2019, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On October 11, 2019, the Michigan Office of Administrative Hearings and Rules received the Hearing summary and attached documentation.
- (7) On November 26, 2019, the hearing was held.
- (8) Petitioner is a 48-year-old man whose date of birth is [REDACTED], 2019. He is 5'10" tall and weighs 195 pounds. He is a high school graduate.
- (9) Petitioner last worked in 2017 as a power coder on an assembly line.
- (10) Petitioner alleges as disabling impairments: 60% hearing loss in both ears, sciatica, headaches, frozen bone in the neck, heart palpitations, arthritis, numbness in the right arm, nerve pain in the left leg, anxiety, depression and Attention Deficit Hyperactive Disorder.

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 Michigan Office of Administrative Hearings and Rules (MOAHR) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.

- For FAP only, the current level of benefits or denial of expedited service. BAM 600 (April 1, 2017), pp 3-4.

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. BAM 600, page 6

Note: Unless otherwise stated elsewhere, computation of time for the purposes of administrative hearings is determined as follows:

- Time is measured in calendar days.
- The computation of time begins on the day after the act, event, or action occurs. (The day on which the act, event, or action occurred is not included.)
- The last day of the time period is included, unless it is a Saturday, Sunday, State of Michigan holiday, or day on which the State of Michigan offices are closed. (In such instances, the last day of the time period is the next business day.)
- The last day of the time period runs through the normal close of business. (BAM 600, page 7)

In this case, October 10, 2019 would be the 90th day from date of Notice (July 12, 2019). Thus, Petitioner's Request for hearing is untimely and must be **DISMISSED**. In the alternative:

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 CFR 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 2017. Petitioner is not disqualified from receiving disability at Step 1.

This Administrative Law Judge did consider the entire record in making this decision. The subjective and objective medical evidence on the record indicates:

Petitioner testified that he lives in a house and is single with no income and no children under 18. He receives Medical Assistance and Food Assistance Program benefits. He does have a driver's license but has no car. He uses the microwave. He grocery shops two times per month. He cleans the sink, bathrooms and does laundry. He reads and watches television sometimes. He can stand and sit for 10-15 minutes at a time. He alleges that he cannot walk. He can shower and dress himself but needs help putting on his pants. He cannot squat or bend at the waist. His level of pain is always 9 out of 10. He can carry five pounds. He smokes two packs of cigarettes per month and is not in smoking cessation.

A July 28, 2019, Physical Residual Functional Capacity Assessment indicates that Petitioner can occasionally carry 20 pounds, frequently carry 10 pounds or less. He can stand, walk or sit about eight hours in an 8-hour day. He has unlimited ability to push or pull. Petitioner can occasionally climb, stoop, kneel, crouch or crawl and frequently balance. Petitioner has no manipulative, visual, communicative or environmental limitations. (Respondent's Exhibit A Pages 40-47)

On April 8, 2019, Petitioner had a minimally invasive left L5 – S1 transforaminal lumbar interbody fusion with pedicle screw fixation L5 – S1 (Pages 592-593)

An April 3, 2019 chest view indicated no significant cardiovascular, high lower medial last dental abnormality is identified. No acute cardiopulmonary disease. A loop recorder is embedded in the soft tissues of the anterior chest wall of the midline. The lungs are free of localizable infiltration or consolidation. There is no evidence of pleural effusion or pneumothorax. Pulmonary vascularity is normal. Mild anterior wedging in at least two lower thoracic vertebral bodies. (Page 105)

A March 5, 2019 medical examination report indicates that Petitioner had blood pressure of 122/68. His weight was 195 pounds. His height was 70.5 inches. BMI was 27.58. His physical examination was not in acute distress his HEENT was unremarkable. His neck had no JVP, good carotid upstroke and volume bilaterally with no bruit. The chest was clear. CVS examination was normal S1 and S2, no murmur or gallop. Abdomen was benign. The extremities 2+ peripheral pulses, no edema. He had recurrent atypical angina pain with negative stress test for ischemia. (Pages 61-62)

A February 18, 2019, Electrodiagnostic study indicates that Petitioner has motor strength 5/5 throughout. Sensory was intact to pin and light touch. Reflexes intact 2+. The impression is a normal study. There is no evidence of neuropathy or radiculopathy as the history suggests. (Page 54)

A December 3, 2018, MRI of the lumbar spine (Pages 510-513) indicates an impression of no evidence of acute osseous pathology of the lumbar spine. Posterior central and left paracentral disc herniation seen at the level of L4 with suggestion of exiting neural foramen impingement. Spondylosis of L5 with grade 1 spondylolisthesis noted. Fairly advanced degenerative disc disease with vacuum disc phenomenon seen at the level of L5 interspace.

An August 24, 2018, MRI of the cervical spine indicates minimal anterolisthesis of C5 over C6. Multilevel spondylotic changes with multilevel neuroforaminal narrowing. No evidence of significant spinal stenosis in the cervical spine. No evidence of abnormal signal in the cervical cord. At C2-C3 level, no spinal stenosis. Mucosal thickening in the bilateral maxillary sinuses. At C4-5, there is a disc osteophyte complex effacing anterior CSF space. There is moderate bilateral neuroforaminal narrowing. At C5-6, there is moderate left and mild right neuroforaminal narrowing. There are uncovertebral degenerative changes and facet degenerative changes. At C6 – 7 level there is a broad-based disc osteophyte complex effacing anterior CSF space. There is moderate to

severe bilateral neuroforaminal narrowing. There are uncovertebral degenerative changes and facet degenerative changes. C7 – T-1 level is unremarkable. (Page 55)

A March 30, 2018 CT of the brain indicates no evidence of acute intracranial abnormality. (Page 926) A CT of the chest indicates no acute process. The heart is not enlarged and there is no evidence of pulmonary vascular congestion. (Page 928) Petitioner was diagnosed with a closed head injury. (Page 959)

A February 12, 2018 medical examination report from Flint cardiovascular consultants indicates that Petitioner was assessed with palpitations, status post placement of implantable loop recorder and a body mass index of 27.0 to 27.9. (Page 66)

A January 26, 2018, MRI of the lumbar spine indicates an impression of grade one spondylolisthesis of L5 over S1 from bilateral spondylosis. There is moderate to severe bilateral neuroforaminal narrowing from the spondylolisthesis noted on the right than the left unchanged. Moderate right and mild left neuroforaminal narrowing at L4 – 5 level from asymmetric circumferential disc bulge to the right, facet degenerative changes and ligament some flavor on hypertrophy. Mild left neuroforaminal narrowing at L2 – 3 level unchanged. (Pages 57-58)

The heart is normal size. Lungs are clear. Iliar structures are within normal limits. Bony thorax appears intact. No evidence of acute cardiopulmonary disease. (Page 929)

An October 16, 2017 cardiovascular report indicates that Petitioner underwent selective right and left coronary angiography. The left main, left anterior descending, left circumferance were large and geographically normal. Right coronary artery was moderate in size and geographically normal. Left ventricular systolic function was normal. LV systolic pressure is normal. LV and diastolic pressure are normal. There are no wall motion abnormalities in the left ventricles. The outflow tract is normal. Petitioner experience a cardiac perforation during the procedure. Petitioner was hemodynamically is stable. No complaints. Echocardiogram showed no pleural effusion. (Pages 69-71)

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 the 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 depression, anxiety and Attention Deficit Hyperactive Disorder as 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 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.

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 201.18), a younger person (age 48), with a high school 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. The Petitioner's medically determinable impairments could reasonably be expected to produce alleged symptoms, but the 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.

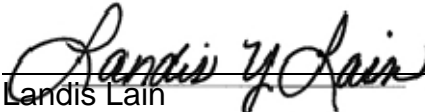
DECISION AND ORDER

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. The Request for Hearing is **DISMISSED** as untimely.

It is so **ORDERED**.

LL/nr



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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
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