



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: February 28, 2020
MOAHR Docket No.: 20-000557
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 February 27, 2020, from Lansing, Michigan. Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Brad Reno, Eligibility Specialist/Hearing Facilitator.

Respondent's Exhibit A pages 1-167 were admitted as evidence.

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 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 December 26, 2019, the Medical Review Team denied Petitioner's application stating that Petitioner could perform other work.
- (4) On January 3, 2020, the Department caseworker sent Petitioner notice that his application was denied.

- (5) On January 23, 2020, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On January 30, 2020, the Michigan Office of Administrative Hearings received the Hearing Summary and attached documentation.
- (7) On February 27, 2020, the hearing was held.
- (8) Petitioner is a [REDACTED]-year-old man whose date of birth is [REDACTED], 1967. He is [REDACTED]" tall and weighs [REDACTED] pounds. He has a high school diploma.
- (9) Petitioner last worked in 2017 as a janitor. Petitioner worked as a forklift driver for 30 years. He also worked lawn care and refurbishing apartments.
- (10) Petitioner alleges as disabling impairments: Arthritis, erectile dysfunction, diabetes mellitus, hypertension, vertigo, swelling in knees, neuropathy in the feet, gout, sleep apnea, depression, anxiety, hand cramps, plate in the head, and neck and back problems.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

Department policies are contained in the following Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least 90 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.

The subjective and objective medical evidence on the record indicates:

Petitioner testified on the record that he lives alone. He is about to be homeless because he cannot pay bills. He has been unable to work since he had back and neck surgery. Petitioner does not cook, grocery shop or do chores. He has no hobbies. Petitioner alleges that he can stand for 10 minutes and sit for 20-30 minutes. He can

walk less than a block. He can shower and dress himself, but it takes him a long time. He can carry a gallon of milk. It is hard to turn his head because of the pain. Petitioner watches television.

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

Medical documentation indicates:

A December 23, 2019, physical residual functional capacity assessment (Pages 19-26) indicates that Petitioner can occasionally lift or carry 20 pounds, frequently lift or carry 10 pounds. He can stand, sit or walk about six hours in an eight-hour workday. He has unlimited ability to push or pull. He does walk with a limping gait and reduced range of motion of the shoulders which reduces his ability to push, pull, lift and carry. He can occasionally climb ramps or stairs, stoop, kneel, crouch or crawl. He can frequently balance and can never climb ladders, ropes or scaffolds. He is limited with reaching in all directions and handling gross manipulation. He is unlimited with fine manipulation and feeling. Overhead use and handling are limited due to grip weakness of 4/5 in both hands and reduced range of motion of shoulders. He has no visual limitations. He has no communicative limitations. He has no environmental limitations except he is not to work on heights or hazardous machinery due to reduced grip strength.

A December 4, 2019, medical examination report indicates that Petitioner's blood pressure was 150/100. His pulse was 72 and regular. Respiration was 18. Weight 249 pounds. Height 72 inches. The patient was cooperative throughout the exam. He appeared depressed. Hearing appears normal and speech is clear. The patient had mild difficulty with getting on and off the exam table and moderate difficulty heel and toe walking and squatting. The patient does not use an assistive device for ambulation. He has a mild left sided limp. There are no lesions appreciated nor their cyanosis or clubbing on the skin. Visual acuity on the right eye is 20/20 and left eye 20/25 without glasses. The sclera are not icteric nor is there any conjunctival pallor. Pupils are equal and reactive to light and accommodation. The fundus appears normal. The neck was supple with no thyroid masses or goiter. No bruits are appreciated over the carotid arteries. There is no lymphadenopathy. The chest AP diameter is grossly normal. Lungs are clear to auscultation without any adventitious sounds. The heart has normal S1 and S2 heard. No murmurs or gallops are appreciated. The heart does not appear to be enlarged clinically. The PMI is not displaced. The abdomen is flat and nontender without distention. There are no masses felt, nor is there enlargement of the spleen or liver. (Page 55) There are no obvious bony deformities. Peripheral pulses are easily palpated and symmetrical. There is no edema. There is no evidence of varicose veins. There is no tenderness, erythema or effusion of any joint. Grip strength is 4/5 bilaterally has tested grossly. Digital dexterity is intact. Straight leg raising was negative bilaterally in the seated and supine positions. There was no paravertebral muscle spasm noted. Range of motion was decreased in the cervical spine, lumbar spine and bilateral shoulders. It is full in all other joints. Neurologically motor strength is 5/5 in all four extremities. Sensory function remains intact. Reflexes are present and symmetrical. Romberg testing was negative. No orientation noted. (Page 56) The conclusion was

chronic pain of the cervical spine likely secondary to degenerative disc disease and osteoarthritis with a history of cervical spinal fusion. The patient did have some mild to moderate difficulty completing and performing orthopedic maneuvers due to the pain problems he is experiencing. He had full motor strength in all four extremities. He had full active range of motion in all major joints outside of his cervical lumbar spine and bilateral shoulders. He had decreased grip strength in both hands but maintained full dexterity in both hands and he had the ability to use his fingers in both hands for fine manipulation tasks. He walked with a mild left sided limp but did not use an assistive device to ambulate. The patient's cardiovascular and pulmonary examination appeared to be normal outside of an elevated blood pressure. He was counseled regarding diastolic blood pressures over 100. He was advised to follow up with his primary physician or local emergency department or urgent care center with regards to such an elevated finding. (Page 57)

An August 28, 2019, examination report indicates that Petitioner was diagnosed with benign paroxysmal vertigo in the left ear and obstructive sleep apnea. (Pages 63-64)

An August 26, 2019, emergency department report indicates that Petitioner presented to the emergency department for neck pain for 5 to 6 days. Left sided cervical muscle spasms and tenderness on examination. Limited range of motion of the left-sided rotation. Sensation and strength were intact in the upper extremities. No other abnormal neurological symptoms. No other infectious symptoms concerning for meningitis. Consistent with musculoskeletal strain. X-ray of the cervical spine showed postoperative and degenerative changes, but no acute fracture or dislocation. Patient's pain is improving following Toradol and Valium in the emergency department. Petitioner was discharged home with prescriptions for Naproxen and Flexeril also, sedating side effects of Flexeril discussed. (Page 81)

A March 13, 2019, MR cervical spine without contrast indicates severe neck pain and left sided radiculopathy. The impression was anterior cervical fusion of C3, C4 and C5. Mild spinal canal narrowing at C-5 – C6 with mild bilateral, left more than right neuroforaminal stenosis. Mild bilateral neuroforaminal stenosis at C3 – C4 and C4 – C5. (Page 52)

An April 6, 2018, electromyography indicates that the study is considered abnormal; there is a minimal delay of the peak sensory latency of the left median nerve. If correlated with appropriate symptoms could be supported for suspicion of mild or incipient carpal tunnel syndrome. (Page 71) No proximal abnormality such as cervical radiculopathy, plexopathy or myopathy is identified in this study. (Page 71)

This Administrative Law Judge finds that Petitioner has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by Petitioner. There are laboratory or x-ray findings listed in the file. The clinical impression is that Petitioner is stable. There is no medical finding that Petitioner has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, Petitioner has restricted himself

from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Petitioner has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that Petitioner has a severely restrictive physical impairment.

Petitioner alleges no disabling mental impairments.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living; social functioning; concentration; persistence, or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating Petitioner suffers severe mental limitations. There is a mental residual functional capacity assessment in the record. Petitioner was oriented x3 at all psychiatric evaluations. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was oriented to time, person and place during the hearing. Petitioner was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that Petitioner suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that Petitioner has failed to meet his burden of proof at Step 2. Petitioner must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If Petitioner had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Petitioner's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

At Step 3, the medical evidence of Petitioner's condition does not give rise to a finding that Petitioner would meet a statutory listing in the code of federal regulations. This Administrative Law Judge finds that Petitioner's medical record does not support a finding that Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A.

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

If Petitioner had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant

work. There is no evidence upon which this Administrative Law Judge could base a finding that Petitioner is unable to perform work in which he has engaged in, in the past. Therefore, if Petitioner had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether Petitioner has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

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

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Petitioner has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do sedentary tasks if demanded of him. Petitioner's activities of daily living do not appear to be very limited and he should be able to perform sedentary work even with his impairments. Petitioner has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. Petitioner's testimony as to his limitations indicates that he should be able to perform sedentary work. Thus, he does not currently retain the capacity to perform prior work at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether 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.

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 202.10), a person approaching advanced age (age 53), with a high school diploma and an unskilled work history who is limited to sedentary or light work is not considered disabled.**

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

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because Petitioner does not meet the definition of disabled under the MA based upon disability and because the evidence of record does not establish that Petitioner is unable to work for a period exceeding 90 days, Petitioner does not meet the disability criteria for SDA benefits.

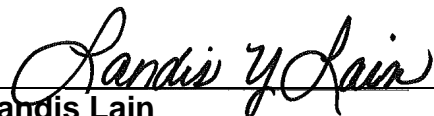
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was not eligible to receive State Disability Assistance based upon disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, decides that the Department has appropriately established on the record that it was acting in compliance with department policy when it denied Petitioner's application for State Disability Assistance benefits. Petitioner should be able to perform a wide range of sedentary work even with his impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is **AFFIRMED** based upon the substantive information contained in the file.

LL/hb



Landis Lain
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Genesee County (Union) via electronic mail

BSC2 via electronic mail

L. Karadsheh via electronic mail

Petitioner

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