



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 9, 2017
MAHS Docket No.: 16-009192
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in-person hearing was held on September 29, 2016, from Port Huron, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Cheryl Howell, Family Independence Manager.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) 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. The Petitioner applied for MA on [REDACTED], 2014.
2. On November 17, 2015, the Medical Review Team (MRT) determined that the Petitioner was not disabled and capable of performing other work.
3. On June 20, 2016, the Department denied the Petitioner's application for MA by Notice of Case Action.
4. The Petitioner requested a timely hearing on J [REDACTED] 2016, disputing the denial of SDA benefits.
5. The Petitioner completed a GED and attended special education classes. At the time of the hearing, the Petitioner was [REDACTED] years of age with a birth date of [REDACTED].

██████████ 2016. The Petitioner is not 48. The Petitioner weighed ██████ pounds and was ██████ in height.

6. The Petitioner's past work experience included working construction building modular homes, and constructing drywall, roofing, plumbing, maintenance work and worked as a security guard work. The Petitioner last worked in 2008. The Petitioner also installed headers on busses for a short time but could not continue to perform this work after two months.
7. The Petitioner has alleged degenerative disc disease involving chronic lumbar and thoracic spine pain with difficulty sleeping due to pain, and receives spinal injections and takes pain medications with sciatica. The Petitioner also has alleged physical impairments including, bilateral knee pain (chondromalacia) of the patella), Gastroesophageal Reflux Disease (GERD), high blood pressure, and steatosis of the liver, fatty liver and irregular heartbeat.
8. The Petitioner has alleged mental impairments, which included ADD and depression although has not received ongoing treatment.
9. The Petitioner's impairments have lasted or are intended to last for 12 months or more.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

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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). 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 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).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Petitioner is not involved in substantial gainful activity, and therefore, is not ineligible for disability benefits under Step 1.

The severity of the Petitioner's alleged impairment(s) is considered under Step 2. The Petitioner 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 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).

The Petitioner has alleged physical disabling impairments which include chronic low back lumbar pain and thoracic pain with spinal injections and pain medications including morphine to control pain. A summary of the relevant medical evidence presented in this case follows.

The Petitioner's treating doctor completed a Medical Examination Report dated [REDACTED], 2016. The doctor has treated the Petitioner since August 2010. The current diagnosis was degenerative thoracic and lumbar disc disease, bilateral knee pain, Gerd and hypertension. The doctor imposed the following limitations which were expected to last 90 days or more. The Petitioner could lift less than 10 pounds occasionally, could stand and or walk less than 2 hours in an 8-hour work day and sit less than 6 hours in an 8-hour work day. The doctor also determined that the Petitioner could not reach or push pull with either hand/arm but could simple grasp and was capable of fine manipulation. The Petitioner could not operate foot controls with either foot/leg. The doctor based the limitation based on the physical exam which demonstrated decreased range of motion of lumbar spine and decreased strength in the legs. The treating doctor evaluated the Petitioner as capable of standing 15 minutes at on time and sitting 30 minutes at one time. The Petitioner could lift 5 pounds occasionally, with no lifting on a frequent basis. The Petitioner could bend, stoop, with need to elevate his legs occasionally during an 8-hour work day and was rated with moderate pain.

An MRI of the thoracic spine was performed on [REDACTED], 2014, and noted the following impression: there are disc protrusions at T6-T7, T8-T9, and T10-T11. At the T10-T11 site there does appear to be left Para median cord contact incident to small focal protrusion. At T10-T11, there is a paramedical protrusion to the left of midline which effaces the CSF ventral to the cord and produces cord contact with slight cord tilt approximately 4mm in AP diameter. An MRI of the lumbar spine showed productive changes at the posterior elements at L4 and diffuse bulge minimally encroach upon the canal without high grade central later recess or forminal stenosis.

The medical evidence also demonstrated that the Petitioner has had multiple steroid injections since 2011 with the last injection in 2015 in the lumbar spine and continues to experience pain in both the thoracic and lumbar spine. Earlier MRI studies were also presented that confirmed spinal canal contact in the thoracic spine area.

During the hearing, the Petitioner also credibly testified that he experienced several limitations including walking 2 blocks, standing 30 minutes at one time and sitting 30

minutes at one time and could lift only 5 pounds. The undersigned also notes that Petitioner had to relieve himself from sitting during the hearing as it became uncomfortable for him to continue sitting. The Petitioner testified that he could not squat and could bend at the waist with pain. On days when his pain is extreme, he stays in bed most of the day and has difficulty sleeping due to pain and has a chore provider in the home to assist him.

As previously noted, the Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Petitioner has presented objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, the Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on the Petitioner's basic work activities. Further, the impairments have lasted continuously for 90 days and more than 12 months; therefore, the 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 Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

The Petitioner has alleged physical disabling impairments which include chronic low back lumbar pain and thoracic pain with spinal injections and pain medications including morphine to control pain. Listing 1.04 of the spine was reviewed to determine if the Petitioner met the specific requirements of the listing. The listing provides:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

Based upon the MRI evidence provided and the clinical findings based upon the Petitioner's long-standing treating doctor's medical treatment notes it is determined that the Petitioner has met the requirements of Listing 1.04 A and thus, is found disabled with no further analysis required.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program at Step 3.

DECISION AND ORDER

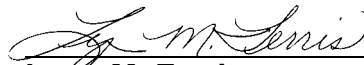
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled/not disabled for purposes of the MA benefit program.

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 the Petitioner's [REDACTED], 2014, MA application and determine if all non-medical eligibility requirements are met.
2. A review of this case shall be conducted in January 2018.

LMF/jaf



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

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

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

DHHS

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Petitioner

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Via email

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