



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 9, 2018
MAHS Docket No.: 17-013874
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on December 11, 2017, from Lansing, Michigan. Petitioner, and his girlfriend, [REDACTED], personally appeared and testified. Petitioner submitted four exhibits which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Assistance Payment Supervisor, Diana Weyhmler, and Eligibility Specialist, Kylee Mueller. Ms. Weyhmler and Ms. Mueller testified on behalf of the Department. The Department submitted 259 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. On December 2, 2016, Petitioner underwent a Qualified Mental Health Professional Evaluation on behalf of the parole board on. Petitioner reported being in special education in school for an emotional impairment and learning disability. It was noted that although Petitioner attributed his alcohol addiction and mental health as major factors influencing poor decisions, he had a history of being prescribed medications due to suicide

attempts, then later stopping taking the medications, which then resulted in self-medicating with alcohol and marijuana. It was noted that Petitioner had no history of mental health treatment during his 2.5 years of incarceration for his current offense. [Dept. Exh. 226-230].

2. On [REDACTED], 2017, Petitioner filed an application for SDA benefits alleging disability.
3. On May 10, 2017, a physician assistant at [REDACTED] wrote a letter to the Friend of the Court indicating Petitioner was being treated for schizoaffective disorder and was disabled and unable to work. [Dept. Exh. 192].
4. On June 22, 2017, Petitioner underwent a Medical Evaluation on behalf of the Department. Petitioner complained of scoliosis, glaucoma, and hearing loss in his right ear. Petitioner last drove in the 1990's. He was independent in his activities of daily living. During the examination, Petitioner's mood, affect, dress, and effort seemed appropriate, without obvious cognitive impairment. His hearing appeared normal and his speech was clear. His gait was stable and within normal limits. He did not use an assistive device for ambulation. Scoliosis along the coronal plane was not appreciated. Dexterity appeared unimpaired. He demonstrated no difficulty getting on and off the examination table, heel and toe walking, squatting and arising, balancing or performing the tandem walk. Motor and sensory function appeared intact. [Dept. Exh. 187-189].
2. On July 13, 2017, 2017, the Medical Review Team (MRT) denied Petitioner's application for SDA. [Dept. Exh. 13-19].
3. On August 11, 2017, Petitioner was administered an Intelligence Test on behalf of the Department. Petitioner presented appropriately during the session. He seemed to be well motivated and appropriately focused. He adequately comprehended directions. His visual and auditory capabilities were within normal limits. The results of the WAIS-IV were considered to be a somewhat lower representation of Petitioner's current level of intellectual functioning. The psychologist administering the Intelligence Test noted that Petitioner's earlier school reports indicated Petitioner had a learning disability. Petitioner was in a number of special education classes. He terminated his formal education half way through his senior year when he was expelled from school due to behavioral problems. School reports indicated that Petitioner was behind his same age peers in all academic areas. [Dept. Exh. 178-179].
4. On August 11, 2017, Petitioner underwent a Mental Status Evaluation on behalf of the Department. Petitioner stated he had difficulty concentrating and had poor memory. He reported he was often depressed and had

periods of uncontrolled anger with alternating periods of being very quiet and withdrawn. Petitioner noted he had a habit of burning himself and showed the psychologists his scars where he had burned himself. The psychologist indicated that the scars were hardly noticeable. Petitioner reported he last burned himself a couple of days prior to the assessment, but again the psychologist noted the burn marks were barely noticeable. Petitioner reported being in jail his whole life due to behavior problems involving anger, getting in fights, once blowing up a house, stealing, and violating parole. The psychologist indicated that Petitioner seemed to make an effort to convey his problems, but it did seem like he very possibly was exaggerating his problems. Petitioner's general demeanor throughout the session was quite friendly, pleasant, and he interacted appropriately. He conversed in a pleasant and engaging manner, frequently interspersing the conversation with appropriate laughter. The psychologist noted that Petitioner seemed to be exaggerating his problems, as his general behavior and evidence offered to substantiate his problems seemed rather sparse in content and nature. Prognosis was guarded. The psychologist opined that Petitioner was absolutely convinced that he suffered from some disorder that specifically prevents him from working and contends that he has been told this by a medical doctor. However, Petitioner could not recall the name of the disorder and the psychologist did not see any reason that his diagnoses would have been given was such a nature that he could not work because of them. Petitioner had never held a full or part time job, in part due to spending a considerable time of his life in jail or prison. Petitioner was noted to have a somewhat dependent characteristic and seemed to have capabilities and potential that would make him an employable worker in any number of work activities. [Dept. Exh. 180-185].

3. On October 10, 2017, the Department issued Petitioner a Notice of Case Action informing him that his application for SDA had been denied from June 1, 2017 ongoing. [Dept. Exh. 7-11].
4. On October 19, 2017, Petitioner filed a request for a hearing to contest the Department's negative action. [Dept. Exh. 2-4].
5. Petitioner was appealing the denial of Social Security disability benefits at the time of the hearing.
6. Petitioner is a 38-year-old man, born on [REDACTED], 1979. He is 5'9" tall and weighs 213 lbs. He completed the eleventh grade and has never held a job. He also does not have a driver's license.
7. Petitioner alleges disability on the basis of schizoaffective disorder, depression, bipolar disorder, a learning disability, emotional impairment, loss of hearing, scoliosis, and glaucoma.

8. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

CONCLUSIONS OF LAW

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

The 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.

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

Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

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

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

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2014).

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 (90 days for SDA). 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity;

the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and testified that he has never held full or part time employment. Therefore, he is not disqualified from receiving disability benefits under Step 1.

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

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. *Id.*

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

In the present case, Petitioner alleges disability due to schizoaffective disorder, depression, bipolar disorder, learning disability, emotional impairment, loss of hearing, scoliosis, and glaucoma.

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

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Petitioner has alleged mental impairments, loss of hearing, scoliosis, and glaucoma.

Petitioner has the burden of establishing his disability. The record evidence was insufficient to meet a listing. While there was evidence of a learning disability, there

was no evidence that his learning disability was severe enough to meet a listing. Therefore, the analysis continues to Step 4.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine Petitioner's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of Petitioner's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Based on the record evidence, Petitioner has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a). In making this finding, the Administrative Law Judge considered all Petitioner's symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence.

Petitioner testified that he has schizoaffective disorder and a learning disability. He said he had been told that he was unable to work based on his schizoaffective disorder. There was a record presented addressed to the Friend of the Court by a physician assistant indicating Petitioner was disabled and unable to work due to his schizoaffective disorder. There was no other substantiating evidence of Petitioner's claim or to support the letter to the Friend of the Court.

After considering the evidence of record, the Administrative Law Judge finds that Petitioner's medically determinable impairments might reasonably be expected to produce the alleged symptoms, however Petitioner's statements concerning the intensity, persistence and limiting effects of these symptoms are partially credible.

Next, the Administrative Law Judge must determine at step four whether Petitioner has the residual functional capacity to perform the requirements of his past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as Petitioner actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for Petitioner to learn to do the job and have been substantial gainful activity (SGA). (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If Petitioner has the residual functional capacity to do her past relevant work, Petitioner is not disabled. If Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

In this case, Petitioner has never worked, therefore the analysis continues.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether Petitioner is able to do any other work considering his/her residual functional capacity, age, education, and

work experience. If Petitioner is able to do other work, he/she is not disabled. If Petitioner is not able to do other work and meets the duration requirements, he/she is disabled.

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 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 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). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 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. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the burden of proof shifts to the Department to establish that Petitioner does have residual function 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. See discussion at Step 2 above.

In this case, Petitioner alleged schizoaffective disorder, depression, bipolar disorder, learning disability, emotional impairment, loss of hearing, scoliosis, and glaucoma.

However, the disabled and unable to work based on the schizoaffective disorder diagnosis was from a physician's assistant, in a letter to the Friend of the Court. Not a finding found in Petitioner's medical records. Moreover, the independent psychologist opined that Petitioner was exaggerating his symptoms because Petitioner believed he was unable to work.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Petitioner has the residual functional capacity to perform other work. 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. Under the Medical-Vocational guidelines, a younger individual aged 18 – 44 (Petitioner is 38 years of age), with limited education (Petitioner completed the

eleventh grade) and no work history who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.27.

Petitioner has not presented the required competent, material, and substantial evidence which would support a finding that Petitioner has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Petitioner has cited medical problems, the clinical documentation submitted by Petitioner is not sufficient to establish a finding that Petitioner is disabled. There is no objective medical evidence to substantiate Petitioner's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. Accordingly, Petitioner is not disabled for the purposes of the Medical Assistance disability (MA) program.

The Department's Bridges 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 program 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 State Disability Assistance (SDA) benefits.

Therefore, 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 SDA.

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**.

VLA/bb



Vicki Armstrong

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

Theresa Ergang
121 Franklin SE
Grand Rapids, MI 49507

Kent County (District 1), DHHS

BSC3 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]