



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: February 8, 2018  
MAHS Docket No.: 17-014685  
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 18, 2017, from Lansing, Michigan.

Petitioner, accompanied by his wife, [REDACTED], both personally appeared and testified. The Department of Health and Human Services (Department), was represented by Eligibility Specialist, Renee Jones. Ms. Jones testified on behalf of the Department. The Department submitted Exhibit A, pages 1-280, which was admitted into evidence.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. On December 26, 2017, an Interim Order Extending the Record was issued giving the Department 30 days to submit additional evidence on behalf of Petitioner from his emergency room visit. On January 12, 2018, and January 16, 2018, additional evidence was received in this matter and submitted as Department's Exhibit B, pages 1-45; and Department's Exhibit C, pages 1-15 respectively. The record was closed on January 25, 2018.

**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 competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], 2016, Petitioner filed an application for SDA benefits alleging disability.
2. On October 25, 2017, the Medical Review Team (MRT) denied Petitioner's application for SDA. [Dept. Exh. A, pp 7-13].
3. On November 1, 2017, the Department issued Petitioner a Notice of Case Action informing him that his application for SDA had been denied from February 1, 2017, ongoing. [Dept. Exh. A, pp 3-4].
4. On November 3, 2017, Petitioner filed a request for a hearing to contest the Department's negative actions. [Dept. Exh. A, p 2].
5. Petitioner was appealing the denial of Social Security disability benefits at the time of the hearing.
6. Petitioner alleges disability on the basis of chronic back pain radiating down the left leg, high blood pressure, depression, and the need of a cane.
7. On April 29, 2016, Petitioner's lumbar spine MRI revealed spinal stenosis at L4-L5 with a central disc protrusion that contacts the traversing L5 nerve roots; spinal stenosis at L2-L3, without compression of the traversing nerve roots; lesser severity constriction of the thecal sac at L3-L4; bilateral L5-S1 neural foramen narrowing that may affect the exiting L5 nerve roots; less severe neural foramen narrowing at L3-L4 and L4-L5; and facet osteoarthritis from L2-L3 through L5-S1. [Dept. Exh. A, pp 218-219].
8. On June 11, 2017, Petitioner presented to the emergency department complaining of abdominal discomfort. Petitioner reported he had been in discomfort for two days with nausea, constipation and vomiting. Petitioner had a history of cardiac disease, depression, hypertension, possibly a new diagnosis of hyperlipidemia and was previously diagnosed with a heart murmur. Petitioner's acute abdominal series revealed a possible pulmonary nodule. His electrocardiogram was abnormal. Petitioner was diagnosed with epigastric abdominal pain and mild anemia. The final impression was that the chest and upper abdominal pain were resolved. He was scheduled for a stress echocardiogram and discharged in stable condition. [Dept. Exh. B, pp 5-35].
9. On June 12, 2017, Petitioner's stress echocardiogram (ECG) resulted in a maximal asymptomatic exercise stress test without ECG or echo findings to indicate stress induced ischemia. [Dept. Exh. B, pp 36-38].

10. On June 14, 2017, Petitioner underwent a psychological assessment on behalf of the Department. Petitioner was observed to walk slowly and carefully with a cane. Petitioner was diagnosed with Panic Disorder; Persistent Depressive Disorder with Mixed Features, with Intermittent Major Depressive Episodes, Moderate; and Generalized Anxiety Disorder. The psychologist opined that Petitioner did not appear able to manage his own funds. He was noted to have difficulty carrying out one-step instructions. His ability to respond appropriately to changes in work routines and to maintain standards of safety issues would be presumably poor primarily due to his medical issues that were complicated by his psychological issues. [Dept. Exh. A, pp 17-20].
11. On September 19, 2017, Petitioner underwent an internal medicine examination. Petitioner reported a 2-year history of low back pain with radiation to the left foot, which he stated had been treated with multiple nerve blocks with some mild temporary relief. The independent physician noted that Petitioner ambulated with a normal gait, which was not unsteady, lurching or unpredictable. He was using a single prong cane which was prescribed two years ago. Petitioner could walk on his toes, but not on his heels. He was unable to perform a tandem gait and refused to squat or bend due to his back pain. The physician's impression was that Petitioner had chronic low back pain with radiation to the left foot of undetermined etiology; chronic anxiety, treated with therapy, and hypertension. The physician opined that Petitioner had some mild limitation in the lumbar spine and was reluctant to squat or bend. The physician opined that Petitioner's ability to perform work-related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying, and traveling as well as pushing and pulling heavy objects was mildly impaired. [Dept. Exh. A, pp 40-47].
12. On October 20, 2017, the Department received a letter from Petitioner's treating physician. The physician diagnosed Petitioner with chronic back pain, left knee degenerative joint disease, depression, and arthritis. The treating physician opined that Petitioner "is unable to work due to pain. He has been prescribed pain medication that may sometime cause drowsiness." [Dept. Exh. A, p 5].
13. Petitioner is a 55-year-old man, born on March 1, 1962. He is 5'10" tall, and weighs 170 lbs. He has a high school education and last worked in 2014.
14. 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 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 he has not worked since 2014. 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 chronic back pain radiating down his left leg, high blood pressure, depression, and the need of his cane.

Petitioner's medical records reveal that he has been diagnosed with spinal stenosis with a central disc protrusion that contacts the traversing nerve roots, bilateral neural foramen narrowing that may affect the exiting nerve roots, facet osteoarthritis, degenerative joint disease, hypertension, anemia, panic disorder, major depressive disorder, and generalized anxiety disorder.

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 medical evidence establishing that he has physical limitations on his ability to perform basic work activities, based on lumbar spine diagnoses. In addition, Petitioner had noted difficulty carrying out one-step instructions and his ability to respond appropriately to changes in work routines and to maintain standards of safety issues would presumably be poor primarily due to his medical issues complicated by his psychological issues

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 been diagnosed with spinal stenosis with a central disc protrusion that contacts the traversing nerve roots, bilateral neural foramen narrowing that may affect the exiting nerve roots, facet osteoarthritis, degenerative joint disease, hypertension, anemia, panic disorder, major depressive disorder, and generalized anxiety disorder.

Petitioner has the burden of establishing his disability. The record evidence was insufficient to meet a listing. While there was evidence of degenerative lumbar and nerve root contact and possible constriction of nerve roots, there was no evidence that Petitioner's back and leg problems were 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 does not have 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.

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

Next, the Administrative Law Judge must determine at step four whether Petitioner has the residual functional capacity to perform the requirements of her 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.

Petitioner's past relevant employment was as a welder. The demands of Petitioner's past relevant work exceed the residual functional capacity. As a result, the analysis continues.

The fifth, and final, step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g). See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once Petitioner reaches Step 5 in the sequential review process, Petitioner has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 735 F2d 962 (6<sup>th</sup> Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that Petitioner has the residual functional capacity for substantial gainful activity.

The medical information indicates that Petitioner suffers from spinal stenosis with a central disc protrusion that contacts the traversing nerve roots, bilateral neural foramen narrowing that may affect the exiting nerve roots, facet osteoarthritis, degenerative joint disease, hypertension, anemia, panic disorder, major depressive disorder, and generalized anxiety disorder.



Petitioner credibly testified that he cannot drive, cook, grocery shop, and he struggles to walk. He has a severely limited tolerance for physical activities and is unable to walk or stand for any long periods of time without the use of his cane. Further, his wife credibly testified that she has to help him in the shower, because he is unable to bathe himself completely. She also stated that she cooks, cleans and reminds him to take his medications.

Petitioner's treating physician opined on October 20, 2017, that Petitioner has chronic back pain and is unable to work due to the pain. Because Petitioner's treating physician's opinion is well supported by medically acceptable clinical and laboratory diagnostic techniques, it has controlling weight. 20 CFR 404.1527(d)(2).

Petitioner is 55 years old and has a high school education. Petitioner's medical records are consistent with his testimony that he is unable to engage in even a full range of sedentary work on a regular and continuing basis. 20 CFR 404, Subpart P. Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986).

Petitioner's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Petitioner has been found "disabled" for purposes of MA, he must also be found "disabled" for purposes of SDA benefits.

**DECISION AND ORDER**


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 Petitioner's November 29, 2016, SDA application, and shall award him all benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The Department shall review Petitioner's medical condition for improvement in February of 2019, unless his Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review.

**It is SO ORDERED.**

VLA/bb



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**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**

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**Petitioner**

