



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

Date Mailed: February 6, 2018  
MAHS Docket No.: 17-016017  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Janice Spodarek**

**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 January 23, 2018, from Lansing, Michigan. Petitioner was not represented. The Department of Health and Human Services (Respondent Department) was represented by Brenda Drwenicki, Hearings Facilitator.

**ISSUE**

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) 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], 2017, Petitioner applied for SDA with the Michigan Department of Health and Human Services.
2. On November 30, 2017, the Medical Review Team (MRT) denied Petitioner's application.
3. On December 6, 2017, the Department issued a notice.
4. On December 12, 2017, Petitioner filed a timely hearing request.

5. Based on a 12/28/17 SOLQ, Petitioner was denied SSI by the SSA pursuant to a 10/7/16 application date, making his denial of code N32 within one year of his June 13, 2017, SDA application.
6. As of the date of application, Petitioner was a ■-year-old male, standing 5 feet 9 inches tall and weighing 178 pounds. Petitioner's BMI of 26.3 classified Petitioner as overweight on the BMI scale.
7. Petitioner testified that he does not have an alcohol/drug abuse problem or history.
8. Petitioner testified that he does not smoke.
9. Petitioner does not have a driver's license.
10. Petitioner has a bachelor's degree in computers, 16 years of education.
11. Petitioner testified that he has no income.
12. Petitioner is not currently working. Petitioner last worked approximately 1 year ago in construction. Petitioner's work history is "construction and printing." (Testimony of Petitioner.)
13. Petitioner failed to specify his alleged onset date. Petitioner's SOLQ indicates an onset date of 8/31/16.
14. Petitioner alleges a disability onset date of back issues, diabetes, blurry vision, heart failure and HBP. (Exhibit A.20.) Petitioner testified that he has a deviated septum due to a car accident. Petitioner testified that his discs are "on the verge of being herniated."
15. The MRT findings and conclusions are adopted and incorporated by reference herein.
16. Petitioner testified that he can fix his own food and does light housework.
17. Petitioner testified that he does not need any assistance with his bathroom and grooming needs but may need assistance with getting in and out of the shower.
18. Petitioner did not present evidence that he exercises.
19. Petitioner could not identify any exhibits as medical evidence to support his claim that he cannot work.
20. The Department witness made the following observations: Petitioner remained seated throughout the hearing, did not appear to be in any discomfort, and was well groomed. Petitioner appeared to be tired.

## **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.

For the SDA program, the State of Michigan follows the general guidelines with regards to to the MA program to show SDA statutory disability with one major exception: duration for the SDA program is due to a disability which has lasted or can be expected to last for a continuous period of ot less than 90 days. Unless otherwise noted below, the MA regulations, policy and law are followed.

Relevant federal guidelines provide in pertinent part:

Disability" is:

...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.

Federal regulations require that several considerations be analyzed in sequential order:

We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past

work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required.

These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f).
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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends, and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application, Petitioner has the burden of proof:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required to establish statutory disability. Statements alone made by the applicant and/or the applicant's physician are not sufficient. Rather, regulations require laboratory or clinical

medical reports that corroborate an any applicant's or physicians' statements regarding disability. These regulations state in part:

...Medical reports should include:

Medical history;

- (2) Clinical findings (such as the results. of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms) ... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques.

**Psychiatric signs** are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated;

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.),

roentgenological studies (X-rays), and psychological tests.  
20 CFR 416.928.

It must allow us to determine --

The nature and limiting effects of your impairment(s) for any period in question;

- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927.

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug and alcohol addiction. This removal reflects the view of a strong behavioral component. In addition, these behavioral driven impairments are not considered to fall within the category of diseases under consideration of statutory disability under the social security disability program.

First, it must be noted that Petitioner failed to bring forth sufficient evidence to establish a current pending application with SSA. As noted in the Findings of Fact, Petitioner was denied SSI within 1 year of his current SDA application. Under general jurisdictional rules, a denial within 1 year without a current pending reapplication can bar jurisdiction. However, as the evidentiary record does not contain evidence of the same, this ALJ will continue with a substantive review.

Applying the sequential analysis herein, Petitioner is not ineligible at the first step as Petitioner is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a de minimis standard. Ruling any ambiguities in Petitioner's favor, this Administrative Law Judge (ALJ) finds that Petitioner meets both. The analysis continues.

The third step of the analysis looks at whether an individual meet or equals one of the Listings of Impairments. 20 CFR 416.920(d). Petitioner does not. The analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Petitioner in the past. 20 CFR 416.920(f).

[n this case, this ALJ finds that Petitioner cannot return to past relevant work on the basis of the medical evidence. 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). After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge concurs with the MRT in finding that the medical vocational grids require a finding of not disabled.

In reaching this conclusion, it is noted that Petitioner is “closely approaching advanced age” at ■ years old at application. Petitioner has 16 years of education. Under medical vocation grid rule 201.15, Petitioner is not disabled.

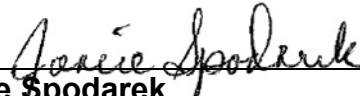
It is noted that Petitioner received the entire copy of his medical exhibits—A.649. Petitioner failed to indicate which exhibits supported his claim that he has medical evidence to show that he cannot work. Petitioner’s claim that his disks are “on the verge of being herniated” are not statutorily recognized as disabling. Claimant failed to meet his burden of proof required by 20 CFR 416.912(c) as required by the sufficiency requirements found at 20 CFR 416.913(b), and .913(d), and .913(e), as well as the corroboration requirements found at 20 CFR 416.927(a)(1).

Based on the record established in this matter and the applicable law, statutory disability is not shown, and thus, the Department’s denial must be upheld.

### **DECISION AND ORDER**

Accordingly, the Department’s determination is **AFFIRMED**.

JS/hb

  
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**Janice Spodarek**  
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**

Tolisha Bates  
21885 Dunham Road  
Clinton Twp., MI 48036

Macomb County (District 12), DHHS

BSC4 via electronic mail

L. Karadsheh via electronic mail

**Petitioner**

[REDACTED]