



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: March 19, 2018
MAHS Docket No.: 17-016028
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, an administrative hearing was held on 1/25/18, with the Administrative Law Judge (ALJ) initiating a conference call from Lansing, Michigan. Petitioner was represented by Attorney Jason O'Brien, of Grand Rapids, Michigan. Petitioner and his counsel appeared in-person at the Kent County Department of Health and Human Services (Department or Respondent). The Department was represented by Assistant Attorney General Jennifer Walker who appeared by conference telephone. Jessica Powell, Eligibility Specialist and Elsie Colbert, Family Independence Manager appeared as witnesses in-person at the Kent County hearing office.

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] Petitioner applied for SDA, a cash benefit program based on disability, with the Michigan Department of Health and Human Services.
2. Petitioner is a beneficiary of the Medicaid program and receives medical benefits under the Healthy Michigan Plan (HMP).

3. On 10/3/17, the Medical Review Team (MRT) denied Petitioner's application. On 10/5/17, the Department issued notice, and on 12/18/17 Petitioner filed a timely hearing request.
4. Petitioner has an SSI application pending with the Social Security Administration, with an [REDACTED] application date, and an alleged onset date of disability of 3/1/09.
5. As of the date of application, Petitioner was a 52-year-old, standing 5' 11" tall and weighing 265 pounds. Petitioner's Body Mass Index (BMI) is 37, classifying Petitioner as obese under the BMI.
6. Petitioner testified that he had an alcohol issue in his 30's but does not currently have any alcohol/drug abuse problems.
7. Petitioner does not smoke. Petitioner testified that he has no income except when he donates plasma on occasion by testimony.
8. Petitioner does have a driver's license and can drive a motor vehicle.
9. Petitioner has a GED level of education, and 20 credits of college classes.
10. On 1/25/17, Petitioner completed a Medical Social Questionnaire and a Work History Questionnaire stating that he was alleging anxiety disorder, onset 2011 and DDD; lumbar radiculopathy with 2011 onset dates; Petitioner last worked in 2008 doing production mold injection work, full time; worked as CNC operator; Petitioner left the functional questions blank; Petitioner grocery shops, reads; naps when he is 'extra tired or bored'; has back pain; fixes his own meals; works around the house; enjoys fishing and 'outdoors stuff' which he does not do often due to his back; goes to church. Exhibit A.28-38.
11. Petitioner separated from work in 2009 due to injuring himself lifting a heavy object. Petitioner was advised to have surgery but declined. Petitioner testified that he did not have insurance. Petitioner has had HMP Medicaid but to date, has not had the recommended surgery. Exhibit A.68; Testimony.
12. A Medical Consultative exam conducted on behalf of the State of Michigan by Dr. [REDACTED] D.O. on [REDACTED] concludes that Petitioner's chronic lumbar back pain with right sided radiculopathy, herniated lumbar disc, DDD and anxiety concluded mild to moderate difficulty with some of the orthopedic maneuvers; digital dexterity intact; no assistive device used. Exhibit A.67-70.
13. On [REDACTED] a State of Michigan DDS psychological evaluation was conducted by [REDACTED] Ed.D. concluded that Petitioner's depression and anxiety are secondary to medical condition and not debilitating, and that the primary obstacles are medical status; disability should be assessed in terms of medical factors. Exhibit A.75. This assessment is consistent with a Mental Residual Functional

Capacity Assessment not containing any markedly limited categories and only 3 out of 20 moderately limited. Exhibit A.129-130.

14. The MRT findings and conclusions state that Petitioner has the RFC that allows him to do light, simple, unskilled work activity, finding DVD primary and mental impairment(s) secondary.
15. The MRT findings are adopted and incorporated by reference herein.
16. Petitioner did not present evidence of severe impairments that interfere with the ability to engage with activities of daily living (ADL).
17. Petitioner testified to the ability to fix food, do light housework, laundry.
18. Petitioner testified that he does not need any assistance with his bathroom and grooming needs.

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 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.

As to the disability assessment, the State of Michigan follows the general guidelines with regards 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 not 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). Monthly income limit for 2017 presumptive SGA for non-blind individuals is \$1,170.00. If the applicant is not engaged SGA or presumptive SGA, 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:

- (1) 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.
- (c) **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;
- (d) **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 --

- (1) 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.

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).

In this case, this ALJ finds that Petitioner cannot return to past relevant work based on 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 pursuant to his residual functional capacity. Exhibit A.401.

In reaching this conclusion it is noted that based on the medical evidence of record, Petitioner's primary impairment(s) is physical/exertional. Thus, the grid is applicable.

It is also noted that Petitioner's obesity and/or smoking is the "individual responsibility" types of behaviors reflected in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6th Cir 1988) decision. In *Sias*, the Petitioner was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised Petitioner to reduce his body weight. The court said in part:

...The Petitioner's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening situation. The Petitioner admitted to the ALJ he was at least

40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the Petitioner in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *Sias*, supra, p. 481.

In *Sias*, the Petitioner was found not truly disabled because the secretary disregarded the consequences resulting from the Petitioner's unhealthy habits and lifestyles—including the failure to stop smoking. *Awad v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6th Cir 1984).

Petitioner was not a good historian as a witness at the administrative hearing. It was not clear why Petitioner continues to refrain from surgical recommendations now that he has medical insurance as a recommended treatment. To this extent, the issues and considerations found at 20 CFR 416.930 are indicated. In addition, in response to the Department's questions, at times, Petitioner testified that the medical evidence of record is false. At the same time, the bulk of the medical evidence submitted by the Department as well as by Petitioner did not show with credible and substantial medical evidence statutory disability as defined under federal and state law.

This ALJ wishes to note that the Department's argument that Petitioner's medical packet is not admissible is not supported by BAM 600, which allows the submission by Petitioner, and in many cases requires such to support the claim. However, a review of these documents, some of which are duplicates, do not change the overall medical evidence of record used by the MRT in making its decision.

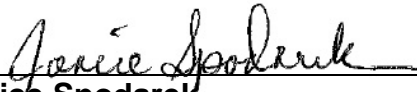
Petitioner's conditions and symptoms result in some limitations on his ability to perform work related activities. However, Petitioner's complaints and descriptions of symptoms are not consistent with the great weight of the objective medical evidence pursuant to the requirements found at 20 CFR 416.9139(b), .913(d), and .913(e). The evidence does not support that Petitioner's conditions are severe enough to keep him from have the RFC to do other work. While Petitioner may not be able to return to past relevant work, based on the evidence of record, the medical vocational considerations requires a finding that Petitioner can adjust to other work.

Based on the record established in this matter and the applicable law, and for the reasons set forth herein, 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



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

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