



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: October 11, 2018
MAHS Docket No.: 18-007651
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 August 28, 2018, from Lansing, Michigan. The Petitioner was represented by himself and his Case Manager, [REDACTED], from Bridgeway. The Department of Health and Human Services (Department) was represented by Adam Slate, Hearing Facilitator.

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

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

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 was approved for SDA by an Administrative Law Judge decision with a medical review in December 2016.
2. On June 15, 2018, the MRT denied the Petitioner's medical review for SDA stating that the Petitioner has had medical improvement.

3. On June 19, 2018, the Department Caseworker sent the Petitioner a notice that he was denied for SDA because he had had medical improvement.
4. On July 16, 2018, the Department received a hearing request from the Petitioner, contesting the Department's negative action.
5. The Petitioner is a 47-year-old man whose date of birth is [REDACTED], 1971. The Petitioner is 6' 4" tall and weighs 235 pounds. He has completed the 8th grade of school. He was special education in all subjects. The Petitioner can read and write and perform basic math except for multiplication and division. The Petitioner was last employed as a painter at the medium to heavy level in 2014, which is his pertinent work history.
6. The Petitioner's alleged impairments are type II diabetes, agoraphobia, COPD, clavicle out of place, schizoaffective disorder, shoulder accident in 2007, anxiety disorder, and bipolar disorder I.
7. The Petitioner was seen by his treating physician at the [REDACTED] on [REDACTED], 2018. He was seen for a follow up and a medication refill. For his diabetes, he was running between 240-270 for the past 2 weeks. He was trying to watch his carbohydrates. He was positive for fatigue. Musculoskeletally, he was positive for arthralgia, back pain, myalgias, neck pain and stiffness. Neurologically, he was positive for weakness and numbness. He was positive for behavioral problems and dysphoric mood, psychiatrically. His blood pressure was slightly elevated at 120/90. In his back, he had decreased range of motion. The Petitioner has diabetes mellitus without complication. He has smoked cigarettes for over 26 years. He had an essentially normal physical examination. Department Exhibit 1, pgs. 1309-1312.
8. On [REDACTED], 2018, the Petitioner was seen by his treating physician at the [REDACTED]. He was seen for an office follow-up and medication refill. The Petitioner was seen for review and renewal of his chronic pain medication. He is on hydrocodone. He states that he is doing better in the last several weeks. He is starting to walk a little more particularly when the weather is nice. The Petitioner does get some shortness of breath when he starts to exercise, but he does still smoke cigarettes. His pain runs from 6 to 4 out of 10. Fifty percent of his pain is controlled by medications, which has made a significant difference in his life. Musculoskeletally, he exhibited tenderness. He exhibits decreased range of motion, tenderness, crepitus, pain, and spasm in the right shoulder. In his back, he had decreased range of motion. he has chronic right should pain and bilateral low back pain without sciatica. He has been doing a little better where he is exercising. It was recommended that he take 2 puffs of albuterol for stressed exercise asthma even though he is still smoking. Department Exhibit 1, pgs. 1316-1320.

9. On [REDACTED], 2018, the Petitioner was seen by his treating psychiatrist at [REDACTED] for a medication review. He found the medications ineffective. He had a problem falling asleep and staying asleep. The Petitioner did not appear in any acute physical or emotional distress. He remains anxious and suspicious. He admitted to hearing voices reinforcing his belief that people are out to harm or hurt him. He denied any suicidal or homicidal ideation intent or attempt. His cognitive functions were intact. He will be maintained on his current medications. His clinical impression was schizoaffective disorder. His secondary diagnosis was agoraphobia with panic disorder and alcohol induced anxiety disorder with moderate or severe use disorder. Department Exhibit 1, pgs. 1352-1355.

CONCLUSIONS OF LAW

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.

The Department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. BEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, 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).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.

- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); or
 - .. not attending under an IEPC approved plan but has been certified as a special education student and is attending a school program leading to a high school diploma or its equivalent and is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit BEM, Item 261, pp. 1-2.

"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.

...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.

...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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...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).

...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).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

Medical history.

Clinical findings (such as the results of physical or mental status examinations);

Laboratory findings (such as blood pressure, X-rays);

Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...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 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).

In general, Petitioner has the responsibility to prove that he/she is disabled. Petitioner's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the petitioner has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the

individual's ability to work are assessed. Review may cease, and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

Step 1

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the Petitioner is not engaged in substantial gainful activity and has not worked since 2014. Therefore, the Petitioner is not disqualified from receiving disability at Step 1.

Step 2

In the second step of the sequential consideration 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. This Administrative Law Judge finds that the Petitioner's medical record will not support a finding that Petitioner's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the Petitioner's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the Petitioner is disqualified from receiving disability at Step 2.

Step 3

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the Petitioner was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Petitioner's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the Petitioner's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

In the instant case, the Petitioner was seen by his treating physician at the [REDACTED] [REDACTED] on [REDACTED] 2018. He was seen for a follow up and a medication refill. For his diabetes, he was running between 240-270 for the past 2 weeks. He was trying to watch his carbohydrates. He was positive for fatigue. Musculoskeletally, he was positive for arthralgia, back pain, myalgias, neck pain and stiffness. Neurologically, he was positive for weakness and numbness. He was positive for behavioral problems and dysphoric mood, psychiatrically. His blood pressure was slightly elevated at 120/90. In

his back, he had decreased range of motion. The Petitioner has diabetes mellitus without complication. He has smoked cigarettes for over 26 years. He had an essentially normal physical examination. Department Exhibit 1, pgs. 1309-1312.

On [REDACTED] 2018, the Petitioner was seen by his treating physician at the [REDACTED]. He was seen for an office follow-up and medication refill. The Petitioner was seen for review and renewal of his chronic pain medication. He is on hydrocodone. He states that he is doing better in the last several weeks. He is starting to walk a little more particularly when the weather is nice. The Petitioner does get some shortness of breath when he starts to exercise, but he does still smoke cigarettes. His pain runs from 6 to 4 out of 10. Fifty percent of his pain is controlled by medications, which has made a significant difference in his life. Musculoskeletally, he exhibited tenderness. He exhibits decreased range of motion, tenderness, crepitus, pain, and spasm in the right shoulder. In his back, he had decreased range of motion. he has chronic right shoulder pain and bilateral low back pain without sciatica. He has been doing a little better where he is exercising. It was recommended that he take 2 puffs of albuterol for stressed exercise asthma even though he is still smoking. Department Exhibit 1, pgs. 1316-1320.

On [REDACTED] 2018, the Petitioner was seen by his treating psychiatrist at [REDACTED] for a medication review. He found the medications ineffective. He had a problem falling asleep and staying asleep. The Petitioner did not appear in any acute physical or emotional distress. He remains anxious and suspicious. He admitted to hearing voices reinforcing his belief that people are out to harm or hurt him. He denied any suicidal or homicidal ideation intent or attempt. His cognitive functions were intact. He will be maintained on his current medications. His clinical impression was schizoaffective disorder. His secondary diagnosis was agoraphobia with panic disorder and alcohol induced anxiety disorder with moderate or severe use disorder. Department Exhibit 1, pgs. 1352-1355.

This Administrative Law Judge finds that the Petitioner should be able to perform at least light work. He is taking pain medication for his low back and right shoulder pain. He is increasing his exercise level. The Petitioner does have shortness of breath but continues to smoke a pack a day of cigarettes. His doctor recommended he takes 2 breaths of albuterol before he works out for stressed exercise asthma. The Petitioner does see a psychiatrist for mental impairment medications. There was no evidence of a severe thought disorder or risk factors. He did admit to hearing voices.

At Step 3, this Administrative Law Judge finds that the Petitioner does have medical improvement and his medical improvement is related to the Petitioner's ability to perform substantial gainful activity. The Administrative Law Judge finds that Petitioner is capable of performing work at least simple, unskilled, light work. He has continuing issues with his right shoulder and back pain. As a result, the Petitioner is able to perform simple and unskilled, light work. Therefore, the Petitioner is disqualified from receiving disability at Step 3.

Step 4

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to Petitioner's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been medical improvement where he can perform work at the simple, unskilled, light level.

At Step 4, the Petitioner testified that he does perform some of his daily living activities. However, the objective medical evidence on the record does support that level of impairment. The Petitioner does feel that his condition has worsened because he feels people are watching him more. He is taking medications for his mental impairments but is not in therapy because he needs a therapist to come to his home. The Petitioner smokes less than a pack of cigarettes a day where he started 3 days ago. He stopped drinking 1 1/2 years ago, where before he drank a 6 pack a day. He does not or has ever used legal and illicit drugs. Petitioner did not feel there was any work he could do.

This Administrative Law Judge finds that the Petitioner's has had medical improvement related to his ability to do work. This Administrative Law Judge finds that the Petitioner does have medical improvement and his medical improvement is related to the Petitioner's ability to perform substantial gainful activity. The Administrative Law Judge finds that Petitioner is capable of performing work. He has continuing issues with his back and right shoulder. As a result, the Petitioner is able to perform simple and unskilled, light work. Therefore, the Petitioner is disqualified from receiving disability at Step 4 where the Petitioner can perform simple and unskilled, light work. If there is a finding of medical improvement related to Petitioner's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

Step 6

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the Petitioner's current impairment(s) is not severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a Petitioner's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds Petitioner can perform work. See Steps 3 and 4. He has continuing issues with his back and right shoulder. He is taking medications for his mental impairment. There was no evidence of a severe thought this order. As a result, the Petitioner is able to perform work. Therefore, the Petitioner is not disqualified from receiving disability at Step 6 where the Petitioner passes for severity.

Step 7

In the seventh step of the sequential evaluation, the trier of fact is to assess a Petitioner's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to

assess the Petitioner's current residual functional capacity based on all current impairments and consider whether the Petitioner can still do work he has done in the past. At Step 7, the Petitioner was last employed as a painter at the medium to heavy level in 2014. In this case, this Administrative Law Judge finds that Petitioner cannot perform his past, relevant work. See Steps 3 and 4. Therefore, the Petitioner is not disqualified from receiving disability at Step 7 where the Petitioner is not capable of performing his past, relevant work.

Step 8

The objective medical evidence on the record is sufficient that the Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The Petitioner's testimony as to his limitation indicates his limitations are exertional and non-exertional.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the Petitioner can do any other work, given the Petitioner's residual function capacity and Petitioner's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon the Petitioner's vocational profile of a younger aged individual, with a limited education and more, and a history of unskilled and skilled work, SDA is denied using Vocational Rule 202.18 as a guide.

This Administrative Law Judge finds that Petitioner does have medical improvement in this case and 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 proposed to close the Petitioner's SDA case based upon medical improvement. Because the Petitioner does not meet the disability criteria for SDA, he has had medical improvement making him capable of performing simple and unskilled, light work.

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 medical review program. The Petitioner could perform simple and unskilled, light work and that the Petitioner does not meet the definition of disabled under the SDA program for medical review.

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

Carmen G. Fahie

CF/nr

Carmen G. Fahie
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) 763-0155; 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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Petitioner

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