



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 9, 2019
MAHS Docket No.: 18-011678
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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; and 45 CFR 205.10. After due notice, a telephone hearing was held on December 10, 2018, from Detroit, Michigan. Petitioner appeared on behalf of himself. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit 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] 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On October 1, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 818-824).
3. On October 11, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 842-844).
4. On November 16, 2018, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 2).

5. Petitioner alleged disabling impairment due to degenerative disc disease; schizophrenia; and anxiety.
6. On the date of the hearing, Petitioner was [REDACTED] with an [REDACTED] birth date; he is [REDACTED] in height and weighs about [REDACTED]
7. Petitioner is a high school graduate.
8. At the time of application, Petitioner was not employed.
9. Petitioner has not worked since 2003.
10. Petitioner has a pending disability claim with the Social Security Administration.

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 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.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, 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).

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he is not ineligible under Step 1, and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have

more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the de minimis standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. Id.; SSR 96-3p.

The medical evidence presented at the hearing was reviewed. Many of the medical records provided were more than two years prior to the date of the application. Of significance was an MRI conducted on June 2, 2016 of Petitioner's lumbar spine which revealed moderate to severe disc space narrowing which was noted at L4-L5 and L3-L4 with minimal spurring. Pages 572 through 618 were blank. Petitioner's most recent medical records are summarized below.

On [REDACTED] [REDACTED] 2017, Petitioner was seen for a consultative mental health examination. Petitioner complained of mental difficulties and back issues. Petitioner indicated that he was diagnosed with schizophrenia because he had hallucinations and loses track of reality. Petitioner reported that his last employment was helping a friend with his garbage service a few months prior to the examination for 6 to 8 hours a day. Petitioner was residing in a homeless shelter at the time of the evaluation. It was noted that there was significant indication of loose associations, tangential thinking or pressure of speech. The medical source statement indicated that based on the results of the examination, Petitioner's level of confusion and poor reality testing is such that it is doubtful that he would be able to complete even simple repetitive tasks for any length of time without frequent prompts and reminders. Additionally, the medical source statement indicated that Petitioner's described functioning seemed to be variable and it would appear that it would be worst at times when he is actively hallucinating. Petitioner's prognosis was listed as poor. (Exhibit A, pp. 423-427).

On [REDACTED] [REDACTED] 2017, Petitioner was seen for a consultative examination with a chief complaint of mental difficulties and back issues. Petitioner reported that his back pain began around 1983 or 1984. Petitioner stated that he was a passenger in the rear of the car with his father being the driver and another car struck the driver's door. Petitioner's father died in an accident. Petitioner suffered a mild concussion but there

were no fractures. Petitioner noted that he had a chipped disc but had never been seen by a chiropractor. Petitioner stated that he was told that he has arthritis. Petitioner denied any surgeries. Petitioner did not walk with an assistive device. Petitioner stated that he could sit for 30 minutes; stand for 10 to 15 minutes; walk one half of a mile; and lift 20 to 30 pounds. Following the examination, it was noted that Petitioner could button, zip, tie, write legibly, pick up a coin, and open a jar with his dominant hand. Petitioner was noted to walk with a slow and antalgic gait. Petitioner was able to squat 70% and had full range of motion of his lumbar spine as he was able to bend forward all the way down to actually tie his shoes. It was noted that Petitioner had real good mobility of his back. Petitioner straight raised test was positive in the supine position bilaterally both at 20°. His strength and deep tendon reflexes were symmetric and intact. (Exhibit A, pp. 681-685).

On [REDACTED] [REDACTED] 2017, Petitioner was seen at [REDACTED] with a complaint of back pain. Petitioner noted that the severity was 8/10. Petitioner noted his pain to be moderate at the time. Petitioner indicated that symptoms are aggravated by standing and twisting. Stiffness is present all day. Petitioner indicated that the problem occurs 2 to 4 times per day. Petitioner's diagnosis relating to his back included degeneration of intervertebral disc of lumbar region. (Exhibit A, pp. 555-559).

On [REDACTED] [REDACTED] 2017, Petitioner underwent general surgery to repair an umbilical and right inguinal hernia. Petitioner's past surgical history included back surgery after being stabbed five times with a knife. (Exhibit A, pp. 555-571).

[REDACTED] [REDACTED] 2018, Petitioner was seen for a mental status examination. During the interview Petitioner indicated that he had last worked four or five months ago at a gas station. Petitioner indicated that he was unable to work due to leg and back problems, disc issues, hernia, and mental health issues. Petitioner stated that he sees things and believes that the television is talking to him. Petitioner indicated that he was at a party and believes someone slipped a Mickey in his drink. Petitioner indicated he received disability income prior to his incarceration. The medical source statement indicated that Petitioner showed no limitations with his immediate memory and ability to apply what he knows. There were moderate limitations with concentration and task persistence. The medical source statement indicated that Petitioner may require rest periods or not be able to complete multi-step instructions. It was noted that Petitioner's social interaction was moderately limited so long as he was maintained on his medication. The medical source statement indicated that the medication made a difference in reducing hallucinations and delusions. (Exhibit A, pp. 360-363).

Petitioner is currently receiving Case Management services through [REDACTED]. Petitioner had previously been receiving services with [REDACTED] from 2010-2013. Petitioner was incarcerated from 2014-2016. Petitioner returned to his Case Management services through [REDACTED] once he was released from incarceration. The progress notes make reference to Petitioner's willingness to seek psychiatric care once per month; however, no medical records relating to ongoing psychiatric care were

received. The progress notes also reference that Petitioner received mental health treatment during his period of incarceration.

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 1.04 (disorders of the spine) and 12.03 (schizophrenia spectrum and other psychotic disorders) were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 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 the light 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. 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. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3). For the first three functional areas, a five-point scale is applied (none, mild, moderate, marked, and extreme). 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner testified that he could dress/undress himself, bathe/shower himself; use the bathroom; complete chores; and reach. Petitioner indicated that he was unable to prepare meals if it required prolonged standing. Although Petitioner's 2017 medical records indicated that he could squat and bend at his waist to the point of tying his shoes, at the hearing, he stated that he could not squat or bend at his waist due to his back pain; could not walk longer than one mile without taking a break; could not kneel due to pain; and could not climb stairs due to back pain. The June 2016 MRI supports Petitioner's testimony of severe back pain and inability to squat and bend at his waist.

At the hearing, Petitioner stated that he experiences frequent hallucinations and talks to himself often. Petitioner's day consists of limited activity such as watching television; taking a shower; taking a short walk; and taking out the garbage. Further, Petitioner indicated that he had an inability to remember; concentrate; and complete tasks as a result of his car accident and a substance he believes was placed in his drink during his time in college.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(a).

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has moderate to marked limitations on his mental ability to perform basic work activities. Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Although Petitioner's medical records make reference to work he performed for a limited period in 2016 and a few months in 2017, it does not appear that this work lasted for any sustained period of time and is further unclear how much, if any, Petitioner was paid for his services. At the hearing Petitioner reported that he has not worked since 2003. Based on the RFC analysis above, Petitioner's exertional RFC limits him to no more than light work activities. Petitioner also has moderate to marked limitations in his mental capacity to perform basic work activities. Petitioner cannot be found disabled or not disabled at Step 4 as it must be determined whether Petitioner can adjust to other work. Thus, the assessment continues to Step 5.

Step 5

If an individual is incapable of performing past relevant work, Step 5 requires an assessment of the individual's RFC and age, education, and work experience to determine whether an adjustment to other work can be made. 20 CFR 416.920(a)(4)(v); 20 CFR 416.920(c). If the individual can adjust to other work, then there is no disability; if the individual cannot adjust to other work, then there is a disability. 20 CFR 416.920(a)(4)(v).

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(c)(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was ■ years old at the time of application and ■ years old at the time of hearing, and, thus, considered to be advanced age (age 55 and over) for purposes of Appendix 2. He is a high school graduate with no significant work history in the past 15 years. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform light work activities and has no skilled/semi-skilled work that is transferable. In this case, the Medical-Vocational Guidelines result in a disability finding based on Petitioner's exertional limitations.

Further, Petitioner also has impairments due to his mental condition. As a result, he has a nonexertional RFC imposing moderate to marked limitations in the ability to understand, remember, or apply information; moderate to marked limitations in the ability to interact with others; the ability to concentrate, persist or maintain pace; and moderate to marked limitations in the ability to adapt and manage himself. The Department has failed to present evidence of a significant number of jobs in the national

and local economy that Petitioner has the vocational qualifications to perform in light of his nonexertional RFC, age, education, and work experience. Therefore, the evidence is insufficient to establish that Petitioner is able to adjust to other work. Accordingly, Petitioner is found disabled at Step 5 for purposes of the SDA benefit program.

DECISION AND ORDER

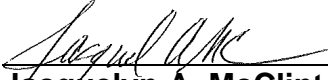
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner **disabled** for purposes of the SDA benefit program.

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. Reregister and process Petitioner's [REDACTED] 2018 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;
3. Review Petitioner's continued eligibility in July 2018.

JAM/tlf



Jacquelyn A. McClinton
Administrative Law Judge
for Farah Hanley, Acting Director
Department of Health and Human Services

