[redacted]
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Date Mailed: April 8, 2019
MAHS Docket No.: 18-013661
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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. A hearing was scheduled for January 28, 2019, and a snow weather emergency was declared and the matter was adjourned. After due notice, a telephone hearing was held on February 21, 2019, from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Tamika Harris, Assistance Payments Supervisor, and Tiffany Brooks, Assistance Payments Worker, Eligibility Specialist, and Sandrine Revol, Assistance Payments Worker. At the rescheduled Hearing, Corliss Tripp-Watson, Assistance Payments Supervisor, also appeared with Tiffany Brooks and Sandrine Revol.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. Exhibit C, letters from Unum Insurance regarding Petitioner's short term disability claim, was received (at hearing) and marked into evidence; Exhibit D, consisting of EMG testing [redacted], 2018, [redacted]; Exam records of [redacted], [redacted] treatment records; MRIs of the thoracic spine and cervical spine dated [redacted] 2017; psychiatric exam by [redacted] were received and marked as evidence.

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:

1. On September 20, 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On November 20, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, p. 408).

3. On November 20, 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. 13-16).

4. On December 26, 2018, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 4-6).

5. Petitioner alleged disabling impairment due to no feeling in his right arm and fingers. C1 -CT radiculopathy with diminished grip strength. Numbness in his toes and legs and sciatic nerve pain. Carpal tunnel syndrome in his wrist and pain in his shoulders and arms.

6. On the date of the hearing, Petitioner was [redacted] years old with an [redacted], birth date; he is [redacted]" in height and weighs about [redacted] pounds.

7. Petitioner is a high school graduate.

8. At the time of application, Petitioner was not employed.

9. Petitioner has an employment history of work as performing manual labor lifting 55- to 75-pound bags of chemical into a mixer placing about 1,000 pounds of material on a conveyer belt.

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 1

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, s/he is not ineligible under Step 1, and the analysis continues to Step 2.

Step 2

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, *and in response to the interim order,* was reviewed and is summarized below.

An EMG examination was conducted on [redacted] 2018, by a Board Certified Neurologist of Petitioner's upper extremities. The Impression was this is an abnormal study. There is electrodiagnostic evidence of right C5-C6 cervical radiculopathy affecting the right upper extremity. In addition, here is a presence of bilateral median mononeuropathy at

the wrist (carpal tunnel syndrome) with involvement of motor and sensory components with mildly ongoing denervation. There is no evidence of any other mononeuropathy or plexopathy affecting the upper extremities at this time. Clinical correlation is recommended.

The Petitioner participated in an independent psychiatric evaluation on [redacted] 2019. At the time of the examination, Petitioner had never sought mental counseling in the past and was on no psychotropic medications. The Petitioner described irritability, difficulty concentrating, relaxing, low self-esteem, stubbornness, excitability in action seeking behavior. The Petitioner presented as intense but engaging. There was some psychomotor agitation at the beginning of the interview, no evidence of psychosis. Petitioner denied any thoughts of wanting to harm himself or others and denied hallucinations or delusions. At the conclusion of the examination, the summary/diagnosis was adjustment disorder with mixed emotional features, mild not considered disabling. The GAF score was 75. Notes indicate the exam was a mildly abnormal mental status exam for a man who is upset and feels he was not treated fairly by his employer, [redacted].

The Petitioner was seen by [redacted] for left shoulder pain on [redacted] 2017, at which time the doctor reviewed shoulder x-rays. Based on the x-ray alone, the impression was unremarkable cervical spine radiograph. At that time, the Petitioner was prescribed pain relief including Norco and Flexeril. The doctor further ordered MRIs of the cervical and thoracic spines. The notes indicate that Petitioner had been seen on previous occasions due to injuries associated with his job including pulling 70-pound bags off a mixing conveyor as well as lifting heavy items. At the time he was seen on [redacted] 2017, he reported arm pain and bad spasms, tingling down both arms and low right calf left shin. At the time, pain was reported 10/10 with severe arm spasm, neck pain and inability to lift groceries. On examination, there was tenderness with palpation of C4-C2 and pain down bilateral arms with palpation of C7-C8. Paraspinous muscle spasm also noted bilaterally the impression was left shoulder pain with cervicalgia, radiculopathy, and numbness and tingling. The same symptoms were reported by Petitioner on [redacted] 2017, at his employer's clinic. Notes indicate cervical pain left shoulder, left paraspinous region with radiation to the left hand and associated numbness. At that time, the neurological exam was abnormal noting thoracic paraspinous spasm and point tenderness. The Petitioner was seen again on [redacted] 2017, with complaints of continuing neck pain with radiation down both arms, pain was 6/10. There was an MRI report available which noted no acute displaced fracture, traumatic or malignant changes. Multiple degenerative changes resulting in varying degrees of neural foraminal and central canal narrowing worsened at C4-C5 since prior study. An MRI of the thoracic spine was also available which noted multilevel degenerative changes resulting in varying degrees of central canal narrowing most pronounced with mid thoracic spine from T6-T8. No significant neural foraminal narrowing. The impression and plan were cervicalgia radiculopathy and noted elevated blood pressure. The Petitioner was referred for chiropractic care evaluation and

treatment. Physical therapy was also recommended with a referral to an orthopedic surgeon if symptoms have not improved with chiropractic care.

The Petitioner was again seen at [redacted]health services on [redacted] 2017, with complaints of bilateral shoulder pain and neck pain. Reports of intermittent episodes of numbness tingling down both arms throughout the day but not constant as before. At the time of the visit, Petitioner was requesting a return to work. The examination noted minor tenderness with palpation at C5-C7. Moderate tenderness with palpation of bilateral rhomboid muscles. Large muscle spasm noted by lateral rhomboid. At that time, the Petitioner was cautioned not to push himself as he could re-injure or worsen his symptoms. On [redacted] 2017, the Petitioner reported for reevaluation of neck pain and bilateral shoulder pain noting neck pain was almost gone with some residual pain in right shoulder stating he would like to go back to work. The impression/diagnosis remain the same with a note of improvement.

On [redacted] 2017, the Petitioner underwent an MRI for the thoracic spine. The impression was no acute displaced fracture or traumatic male alignment. Multilevel degenerative changes resulting in varying degrees of central canal narrowing most pronounced within the mid thoracic spine from T6-T8. No significant neural for a mental narrowing. Diffuse hypo intense bone marrow signal alteration may relate to read marrow reconversion. At T6-T7, there is posterior disc osteophyte effacing the ventral's CS F space with mass effect on the ventral aspect of the spinal cord. At T7-T8 level, there is a broad-based posterior disc osteophyte complex asymmetric within the right paracentral region resulting in moderate mass effect upon the right ventral aspect of the spinal cord with flattening with no neural foraminal narrowing.

On [redacted] 2017, an MRI of the cervical spine was conducted. There was a comparison with an MRI from March 2016. The results indicate that the spinal cord was normal in signal and intensity as well as morphology aside from level CIV-C5 where it appears compressed. Pre-vertebral and paraspinal soft tissues are grossly unremarkable possible mucosal retention cyst. At C4-C5, there is a broad-based posterior disc osteophyte complex and bilateral uncontrovertebral and facet joint hypertrophy with large central disc protrusion measuring 1.3 cm in medical lateral dimension and .6 cm in anterior posterior dimension exerting mass effect upon and compressing the spinal cord central canal measures 0.5 cm at this level. At C5-C6, there is a broad-based posterior disc osteophyte complex and bilateral facet joint hypertrophy resulting in severe left and moderate right neural foraminal narrowing and near-complete effacement of the ventral CSF space without significant mass effect. For comparison, see MRI March 16, 2016. (Exhibit B, p. 568.)

On [redacted] 2019, the Petitioner was diagnosed with bilateral carpal tunnel syndrome by [redacted]. His diagnosis was based on an EMG and nerve conduction test done by a board-certified neurologist dated [redacted] 2018. The doctor noted that the diagnosis was likely work-related. The doctor recommended surgical

decompression of both wrists. If he was currently working, he would need work restrictions with no repetitive wrist movement.

In [redacted] 2015, the Petitioner injured himself at work and was restricted to no lifting, pulling, pushing or overhead work involving weight more than 10 pounds noting right shoulder trapezius strain. The Petitioner worked for many years since 1993 at [redacted] as a mixing tech lifting multiple times a day bags of chemicals weighing between 50 and 75 pounds. The company produced plastic and rubber expandable products. The notes further indicate he pulled bags off a 6-foot-high skid and carried it 4 to 6 feet weighing between 75 and 50 pounds. He frequently lifted repetitively 55-pound bags up to two thirds of his workday.

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 3

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, listing 1.04 Disorders of the Spine was considered. The medical evidence presented and reviewed above does 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, the medical evidence shows that Petitioner's impairment of cervical degenerative disc disease with spinal cord compression diagnosis meets or is equal in severity to the criteria in Appendix 1 of the Guidelines to be considered as disabled. Accordingly, Petitioner **is disabled** and no further analysis is required.

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.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Reregister and process Petitioner's September 20, 2018, SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;

2. Supplement Petitioner for loss benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;

3. Review Petitioner's continued eligibility in April 2020.

LMF/jaf

Lynn M. Ferris
Administrative Law Judge
for Robert Gordon, 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

DHHS

Renee Swiercz
MDHHS-Oakland-4-Hearings

Petitioner

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[redacted] MI [redacted]

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