



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: March 11, 2019
MAHS Docket No.: 19-000607
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 February 26, 2019, from Lansing, Michigan. Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Kimberly Williams, Eligibility Specialist.

Respondent's Exhibit A pages 1-521 were admitted as evidence.

ISSUE

Whether the Department properly determined 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 filed a review application for State Disability Assistance (SDA) benefits alleging disability.
- (2) Petitioner receives Medical Assistance and Food Assistance Program benefits. Petitioner was receiving SDA based upon disability.
- (3) On November 29, 2018, the Medical Review Team denied Petitioner's application stating that Petitioner could perform other work.
- (4) On January 14, 2019, the Department caseworker sent Petitioner notice that his application was denied.

- (5) On January 14, 2019, Petitioner filed a request for a hearing to contest the Department's negative action.
- (6) On February 26, 2019, the hearing was held.
- (7) Petitioner is a 48-year-old man (date of birth: [REDACTED] 1970). He is 5'11" inches tall and weighs 157lbs. He has a no GED and attended 9th grade.
- (8) Petitioner last worked in 2016 in landscaping. He had been receiving SDA to support himself.
- (9) Petitioner alleges as disabling impairments: type I insulin dependent diabetes; gunshot to the leg, pacemaker, slipped disc in the back; advanced cardiac heart failure; hernia repair on the right side, right hip pain; chronic back and leg pain, depression (daughter died 2016); and lack of concentration.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

Department policies are contained in the following Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and 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. 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 Medical Assistance (MA) benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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 blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

The person claiming a physical, or mental, disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913.

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
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 416.920(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? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(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. 20 CFR 416.920(e).
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? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Petitioner is not engaged in substantial gainful activity. Petitioner is not disqualified from receiving disability at Step 1.

Petitioner testified that he lives alone and is behind on his rent. He is single and has no income. He received Medical Assistance and Food Assistance Program benefits. He does not have a driver's license. He uses medical transportation to get where he needs to go. He cooks one time per day and makes soup and baked foods. He does dishes and his friend helps him with chores. He grocery shops one time per month and his friend helps him. He spends time with his grandson as a hobby. Petitioner testified that

he can stand for 20 minutes and sit for 30 minutes. He can walk one block. He cannot squat or bend at the waist. His hands, arms and knees are fine. He has arthritis in his leg and uses a cane which is not prescribed by a doctor. He received a pacemaker April 30, 2018.

This Administrative Law Judge did consider the entire record in making this decision.

Specific sampling of 521 pages of the Medical documentation indicates Petitioner's condition:

A March 16, 2018, medical report indicates that Petitioner's blood pressure was 90/64. His pulse was 83; respiration 18. He was 5'8" tall and weighed 154 pounds. His BMI was 23.55 and oxygen saturation was 97%. Petitioner has an abscess in his groin that is drained every month. He had no edema and no calf tenderness. S1, S2 normal, no murmur, rub or gallop, regular heart rate and rhythm. No carotid bruit; respiration was clear to auscultation bilaterally, no wheezes, no rales and no rhonchi, no accessory muscle use noted; no conversational dyspnea noted. He was alert and oriented x4. Calm, cooperative, follows commands, good eye contact. Attention span, memory and judgment were grossly intact during encounter. (Page 313) Ejection fraction was estimated to be 16%. Severely reduced LV ejection fraction. Left ventricle cavity size is severely decreased. LV wall thickness is normal. Spectral doppler shows restrictive pattern of LV diastolic filling (grade 3). Mildly enlarged right ventricle and severely reduced global RV systolic function. Severely dilated left atrium. Estimated PA pressure is 55mmHg. Moderately elevated pulmonary artery systolic pressure. Moderately dilated right atrium. Moderate tricuspid regurgitation. There is no evidence of pericardial effusion. The assessment was Stage C chronic heart failure due to non-ischemic cardiomyopathy with severe LV systolic dysfunction. He is currently NYHA functional class II based on his report of symptoms. He appeared euvolemic and well-perfused by exam. His blood pressure and renal function are stable. (Page 316)

A March 28, 2018, Progress Note indicates that Petitioner uses a cane with ambulation. His physical examination was normal. (Page 322) His cardiac diagnostics: NYHA II-III. ECG today: sinus rhythm with LVH, left atrial enlargement; 1:1 AV conduction with ventricular rate 88 bpm. (Page 323) Right ventricle: mildly enlarged right ventricle and severely and severely reduced global RV systolic function. Left atrium: severely dilated. Right atrium: moderately dilated. Moderate to severe mitral valve regurgitation. Mild pulmonic regurgitation. (Page 326) The impression was Severe LV dysfunction with LVIDD 7.35 cm on guideline directed medications with NYHA class III symptoms. (Page 327)

An April 30, 2018, Petitioner had an implantable cardioverter-defibrillator placed. He was discharged in good condition. (Page 336)

A July 10, 2018, Progress Note indicates that Petitioner was assessed with ejection fraction of 16%, non-ischemic, dilated cardiomyopathy with systolic and diastolic heart failure. (Page 349) He is currently not a candidate for advanced heart failure therapies

due to lack of social support, history of substance abuse (tobacco and marijuana). His housing is stable now. He does report smoking still. (Page 350)

A physical residual functional assessment dated November 21, 2018, indicates that Petitioner can frequently carry 10 pounds. He can stand or walk at least two hours in an 8-hour work day. He can sit about six hours in an 8-hour workday. He can push and pull in unlimited manner. He can occasionally climb stairs but never scaffolding or ladders. He can occasionally stoop, kneel, crouch and crawl. He has no manipulative, visual, postural, communicative or environmental limitations. LVEF 16% (Range 15-20%) with NYHA II CHF in the presence of NL clinical findings with stable cardiac functions and preserved Neuro/MSK integrity confirm the ability to perform a broad range of daily activities and allow a NL lifestyle that is established in the RFC. (Pages 12-19)

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating Petitioner suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was oriented to time, person and place during the hearing. Petitioner was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that Petitioner suffers a severely restrictive mental impairment. The evidentiary record is sufficient to establish that Petitioner has met his burden of establishing a severe physical impairment. Petitioner has met his burden of proof at Step 2.

If Petitioner had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Petitioner's condition does not give rise to a finding that she would meet a statutory listing in the code of federal regulations.

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).

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 2016.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii).

The objective medical evidence in the record indicates that Petitioner’s condition has not improved from 2016 when his ejection fraction was 16%. In fact, he has had a pacemaker placed as of April 30, 2018.

At Step 2, Petitioner’s impairments do equal or meet the severity of an impairment listed in Appendix 1.

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, this Administrative Law Judge finds that Petitioner does not have medical improvement that is related to Petitioner’s ability to perform substantial gainful activity. Petitioner has established that he currently lacks residual functional capacity at Step 5.

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.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the Petitioner's current impairment(s) is 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 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/she has done in the past. In this case, this Administrative Law Judge finds that Petitioner could probably not perform past work as a landscaper.

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 Petitioner's vocational profile of **a person of closely approaching advanced age (age 49), with a 9th grade education and no GED and an unskilled work history who is limited to sedentary work is considered disabled pursuant to Medical Vocational Rule 201.17**. This Administrative Law Judge finds that Petitioner does not currently have medical improvement in this case and the Department has not 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 cancel the State Disability Assistance benefits based upon medical improvement.

The Department determined that Petitioner could perform other work.

Moving forward, the burden of proof rests with the State to prove by substantial evidence that Petitioner has the residual function capacity for substantial gainful activity. After careful review of Petitioner's extensive medical record, and the Administrative Law Judge's personal interaction with Petitioner at the hearing, this Administrative Law Judge finds that Petitioner's exertional and non-exertional impairments render Petitioner unable to engage in a full range of, even sedentary, work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 11, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The Department has failed to provide sufficient vocational evidence which establishes that Petitioner has the residual functional capacity for substantial gainful activity and, that given Petitioner's age, education, and work experience, there are significant numbers of jobs in the national economy which Petitioner could perform despite Petitioner's limitations.

Accordingly, this Administrative Law Judge concludes that Petitioner is disabled for purposes of the SDA program as of December 31, 2018.

The Department has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Petitioner was no longer eligible to receive State Disability Assistance based upon disability.

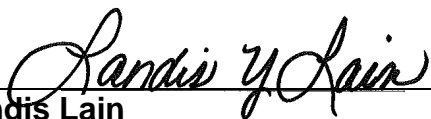
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner is medically disabled as of the December 31, 2018 date of closure for State Disability Assistance.

Accordingly, the Department's decision is hereby **REVERSED**, and the Department is ORDERED to:

1. Initiate a review of the [REDACTED], 2018, review application for SDA, if not done previously, to determine Petitioner's non-medical eligibility.
2. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for December 31, 2019.

LL/hb



Landis Lain
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

Keisha Koger-Roper
12140 Joseph Campau
Hamtramck, MI 48212

Wayne County (District 55), DHHS

BSC4 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[REDACTED]
[REDACTED], MI [REDACTED]