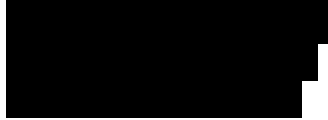




GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: April 19, 2019
MAHS Docket No.: 19-002745
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 April 17, 2019, from Lansing, Michigan. Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Don Schlagheck, Long Term Care Specialist, Hearings Facilitator.

Respondent's Exhibit A pages 1-343 were admitted as evidence.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) and/or 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. Petitioner was a Medical Assistance benefit recipient based upon disability.
2. Petitioner's Medical Assistance benefit case was scheduled for medical review in November 2017.
3. On July 13, 2018, the case was transferred to complete the medical review.
4. On July 13, 2018, the Department caseworker sent Petitioner documents and an interview was completed with the documents sent to the medical review team on July 23, 2018.

5. On March 15, 2018, the medical review team determined that Petitioner's case should be denied based upon his ability to perform his past work.
6. On March 15, 2019, the Department sent Petitioner a healthcare coverage determination notice indicating that the medical review team has denied ongoing medical based upon capable of performing past relevant work.
7. Petitioner's review application was denied, and his case was scheduled to close on April 1, 2019, indicating that Petitioner is not aged, blind, disabled, under 21, pregnant, or a parent/caretaker relative of a dependent child.
8. Petitioner indicated that his wife earns approximately \$26,000 per year which would put him over income eligibility for both the Healthy Michigan Plan and State Disability Assistance.
9. Petitioner alleges as disabling impairments: neuropathy, back pain, degenerative disc disease, scoliosis, arthritis, hypertension, placement of a spinal cord stimulator February 21, 2019, kidney disease stage III, and neck laminectomy surgery in 2018, a history of prostate cancer and the need for a knee replacement because of torn ligaments.
10. On March 21, 2019, the Department received a request for hearing to contest the Department's negative action.
11. On March 27, 2019, the Michigan Administrative Hearing System received a copy of the hearing summary and attached documents.

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 Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL

400.105. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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.

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).

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 August 27, 2018.

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

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).

Petitioner testified that he lives with his wife in the house which is paid off. He is married with no children under 18. His wife supports him and earns about \$26,000 per year. Petitioner does have a driver's license but is unable to drive alone. Petitioner's wife cooks, grocery shops and cleans the home. Petitioner watches television one hour per day and listens to music or reads as a hobby. Petitioner testified that he could stand for 15 minutes and can sit for 20-25 minutes at a time. He can walk 100 feet and can shower and dress himself. He is unable to squat, tie his shoes or touch his toes. His level of pain on a scale from 1 to 10 without medication is an eight and with medication is a four. He is right-handed and testified that his hands, arms, feet and legs have neuropathy and his hands and toes are always numb.

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

Specific sampling of 343 pages of the Medical documentation indicates:

A March 13, 2019, physical residual functional capacity assessment indicates that Petitioner can occasionally carry 20 pounds and frequently lift 10 pounds. He can stand, walk or sit about six hours in an eight-hour workday. He has unlimited ability to push or pull with hand or foot controls. (Page 231) Petitioner can occasionally climb stairs and ramps, stoop, kneel, crouch or crawl and can frequently balance. (Page 232) Petitioner has no manipulative, visual, communicative or environmental limitations. Petitioner has light residual functional capacity. The record shows that Petitioner has been diagnosed with or treated for gastroesophageal reflux disease, hypertension, neuropathy. However, the evidence shows that these conditions are stable, sensation is intact and there is no indication that these conditions impose more than mild limitations on Petitioner's ability to perform basic work activities. Therefore, they are not severe impairments. The medical evidence in the file does not establish a condition that meets or equals a listing. (Pages 233-237) Petitioner has a mild degree of limitation in areas of mental functioning: understand, remember or apply information; interact with others; concentrate, persist or maintain pace; and adapt or manage oneself. (Page 250) Petitioner has outpatient treatment for mild depression and his condition is improving and stable on medication. He is calm, has no anxiety and his mental status is normal. The progress report records also indicate no symptoms and normal mental status. The activities of daily living reflect primarily pain and physical limitations. The mental impairment is not severe. (Page 252)

A February 8, 2019, medical report indicates a grossly normal physical examination. Petitioner had an EKG done which showed normal sinus rhythm with a heart rate of 66. No acute ST – T changes. He had a colonoscopy with one polyp removed. The assessment indicated that Petitioner was stable in all labs except that he had mild chronic kidney disease stage II. (Page 60)

A January 24, 2019, medical report indicates that Petitioner presented with back and leg complaints. He is scheduled on February 21, 2019, for a spinal cord stimulator implantation. Petitioner indicated that he fell but his neck was x-rayed and nothing was disturbed. He has kidney stones. (Page 18)

A December 27, 2018, medical report indicates that Petitioner was assessed with low back pain, radiculopathy in the lumbar region, spondylosis with radiculopathy in the lumbosacral region, cervicgia, opioid dependence, and radiculopathy. He was 74 inches tall and weighed 195 pounds. His blood pressure was 170/106. His BMI was 25.03. Heart weight was 96; respiratory rate was 16. He was well built, and nourished. His skin was normal. (Page 20)

A November 27, 2018, neurosurgical office note indicates that Petitioner was able to ambulate without the use of any assistive devices. He does have a slow antalgic gait. There is no gross gait ataxia on physical examination. No long track signs were elicited, there is no dysmetria or dysdiadochokinesia on physical examination. There is no atrophy or for circulation of the musculature. Global strength is 5-/5 in the upper and lower extremity secondary to some pain inhibition and reflexes 1/4 in the upper and lower extremities. There is no sciatic notch tenderness. There is no sacroiliac tenderness or pain to manipulation or palpation. Cranial nerves 2-12 were grossly intact. Romberg's was negative. The encounter diagnosis was back pain, unspecified and lumbar spondylosis. There was no gross abnormality on physical examination. Petitioner was wearing a rigid cervical collar. No effusion of the joints, or gross deformity of the joints noted. No ligamentous laxity appreciated on physical examination. (Page 74)

On September 17, 2018, Petitioner was preoperatively diagnosed with cervical disc displacement, and cervical radiculopathy. Petitioner tolerated the procedure (cervical ESI at the level of C7 – T-1) well without complications. (Page 36)

An August 16, 2018, medical examination report indicates that Petitioner had a Medtronic spinal cord stimulator placed at T7, T8 and T9 under anesthesia. (Page 41)

A May 3, 2018, medical report indicates that Petitioner had abdominal pain. His blood pressure was 121/68; pulse 80. Height was 74 inches tall he was 199.2 pounds. His BMI was 25.6. He was well-developed, well-nourished and alert and oriented. His abdomen was nondistended with no evidence of ascites. No hepatomegaly or splenomegaly. No mass is palpable. No guarding, rigidity or rebound. No tenderness on palpation. Hearing seemed normal. Thyroid gland not enlarged. Trachea central and in position. Lungs were clear to auscultation bilaterally. Equal breath sounds. No evidence of rales. No rhonchi. No wheezing. In the cardiovascular area there were no clicks. S1 and S2 appear normal. No murmurs.

A March 15, 2018, medical report indicates that Petitioner was diagnosed with cervical facet syndrome on the left side and required surgery. The surgery was conducted on the C2, C3, C4 and C5 vertebral bodies. Petitioner was discharged home in a stable condition and instructions were given to observe for any signs of infection, bleeding, bruising or increase in pain. Petitioner was told not to engage in strenuous activities and no heavy lifting. (Pages 25-26)

At Step 2, Petitioner's impairments do not 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 have medical improvement and the medical improvement is related to the Petitioner's ability to perform substantial gainful activity. Petitioner has not established that he 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 this case, this Administrative Law Judge finds Petitioner can perform at least sedentary or light work even with his impairments. His impairments are no longer as severe as they once were.

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 perform past work at Walmart.

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 person aged (age 57), with an associate's degree education and an unskilled work history who is limited to light work is not considered disabled**. MA and SDA are denied using Vocational Rule 204.00 as a guide. Petitioner can perform other work in the forms of light work per 20 CFR 416.967(b). 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 cancel the State Disability Assistance benefits based upon medical improvement.

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the Petitioner does not meet the definition of disabled under the Medical Assistance program and because the evidence of record does not establish that Petitioner is unable to work for a period exceeding 90 days, the Petitioner does not meet the disability criteria for State Disability Assistance benefits either.

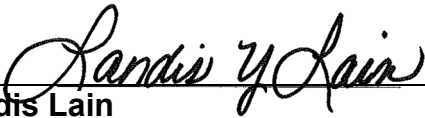
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was no longer eligible to receive Medical Assistance based upon disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner has medical improvement and the Department has appropriately established on the record that it was acting in compliance with department policy when it denied Petitioner's review application for Medical Assistance benefits. Petitioner should be able to perform a wide range of light or sedentary work even with his impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is **AFFIRMED** based upon the substantive information contained in the file.

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

Pam Farnsworth
903 Telegraph
Monroe, MI 48161

Monroe County, DHHS

BSC4 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

Petitioner

