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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]

Date Mailed: May 8, 2019  
MOAHR Docket No.: 19-003249  
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 May 1, 2019, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Gregory Folsom, Hearings Facilitator.

Respondent's Exhibit A pages 1-450 were admitted as evidence.

### **ISSUE**

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

### **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 receiving State Disability Assistance, approval date February 2, 2018.
- (2) On February 4, 2019, Petitioner filed a review application for State Disability Assistance (SDA) benefits alleging disability.
- (3) Petitioner receives Medical Assistance (MA) and Food Assistance Program (FAP) benefits.
- (4) On March 19, 2019, the Medical Review Team denied Petitioner's application stating that Petitioner could perform prior work.

- (5) On March 20, 2019, the Department caseworker sent Petitioner notice that his review application was denied.
- (6) On April 4, 2019, Petitioner filed a request for a hearing to contest the Department's negative action.
- (7) On May 1, 2019, the hearing was held.
- (8) Petitioner is a [REDACTED]-year-old male (date of birth [REDACTED], 1979). He is 6'3" inches tall and weighs 205 lbs. He has a GED.
- (9) He last worked May 2016 at a car parts factory.
- (10) Petitioner alleges as disabling impairments: left knee pain, right arm nerves destroyed, lack of dexterity in right arm, gunshot wounds to both arms.
- (11) Petitioner was approved for Social Security Disability for a closed period.

### **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 on the record that he lives with a friend. He is single with no children under 18. He receives Food Assistance Program and Medical Assistance benefits. He does not drive, cook, grocery shop or do chores. He watches television five hours per day. He has no limits to the ability to stand, sit or walk. He is able to squat, bend at the waist, shower and dress himself (needs help with buttons and zippers). He can carry a gallon of milk in his left hand. He does not smoke, do drugs, or drink and alcohol.

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

Specific sampling of 450 pages of the Medical documentation indicates a non-severe condition:

A medical evaluation indicates that Petitioner has a history of gunshot wound to right arm in 2016. Petitioner had several surgeries to correct the issue. At his last doctor visit in January 2019, his arm pain was described as moderate. (Page 24)

A physical examination report dated February 19, 2019, indicates that Petitioner was 75 inches tall. He weighed 193 pounds. His BMI was 24.12<sup>th</sup>. As oxygen saturation on room air was 98%. His temperature was 97.6° F. His pulse rate was 64 beats per minute and respiration was 16 per minute. His blood pressure was 120/70 the left arm. He was diagnosed with peripheral neuropathy in a vitamin D deficiency. (Pages 132-134)

A November 8, 2018 office visit note indicates that Petitioner's examination was basically normal. He had chronic right forearm pain following the gunshot. He had complaints of numbness and tingling of his fingers. His pain level was a seven. His blood pressure was 110/68. The EMG indicated that Petitioner has damaged to ulnar, median and radial nerves on the right arm. No cervical radiculopathy. He was to continue with his current medications. (Pages 147-148)

A December 11, 2018, office visit note indicates that Petitioner left the office prematurely because the doctor told him that he would not prescribe controlled substances due to positive urine drug screen until he tests negative for marijuana. (Page 152)

Petitioner only has difficulty using his right hand. (Page 26)

The Social Security Administration (SSA) determined that Petitioner was disabled from May 2016 until June 2017 but has not been disabled since then. Petitioner is currently at the SSA appeals council level challenging the decision. Petitioner was given a temporary SDA approval because of limitations from his right arm injury. Petitioner has a history of gunshot wound to the right arm in 2016. Petitioner had several surgeries to correct his issues. Petitioner has made significant improvement and is currently not on the medications, he no longer participates in physical therapy. The only doctor Petitioner sees currently is a pain management doctor. The pain management doctor notes that Petitioner can flex and extend wrist but does have a weak grip in the right hand only. At the last doctor visit in January 2019 his arm pain was described as moderate. Also note in the chart is that Petitioner runs for exercise. Petitioner was denied a refill of pain medication Hydrocodone because on December 11, 2018, he tested positive for alcohol, opiates and codeine. Petitioner is no longer eligible for temporary SDA benefits since he has shown significant improvement. (Page 24)

All the other medical documentation contained in the file is from 2016, which was already considered by the SSA.

At Step 2, Petitioner has the burden of proof of establishing that he currently has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Petitioner suffers a severely restrictive physical or mental impairment.

This Administrative Law Judge finds that Petitioner has reports of pain in multiple areas of his body; however, there are insufficient corresponding clinical findings that support the reports of symptoms and limitations made by Petitioner. There are insufficient laboratory or x-ray findings listed in the file. The clinical impression is that Petitioner is stable. There is no medical finding that Petitioner has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, Petitioner has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Petitioner has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that Petitioner has a severely restrictive physical impairment.

Petitioner alleges no mental disability.

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. For these reasons, this Administrative Law Judge finds that Petitioner has failed to meet his burden of proof at Step 2. Petitioner must be denied benefits at this step based upon his failure to meet the evidentiary burden.

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 he 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 2001.

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).

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 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 the car parts factory.

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 younger individual (age 39), with a high school education and an unskilled work history who is limited to light work is not considered disabled**. SDA is denied using Vocational Rule 202.13 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, Petitioner does not meet the disability criteria for State Disability Assistance benefits either.

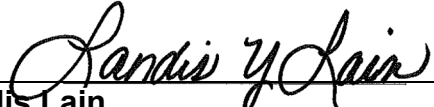
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was no longer eligible to receive State Disability Assistance based upon disability.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner has medical improvement and that the Department has appropriately established on the record that it was acting in compliance with department policy when it denied Petitioner's application for State Disability 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

  
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**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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

Mark Epps  
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**Petitioner**

