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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]  
[REDACTED], MI [REDACTED]

Date Mailed: December 10, 2019  
MOAHR Docket No.: 19-010462  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Janice Spodarek

### **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, an administrative hearing was held on November 12, 2019, with the Administrative Law Judge (ALJ) initiating a conference call from Lansing, Michigan. All other parties appeared in-person at the Iosco County Department of Health and Human Services (Department or Respondent).

Petitioner was represented by Attorney Ann Hopcroft, of Oscoda, Michigan.

Witnesses on behalf of Petitioner:

- Petitioner [REDACTED] personally testified
- [REDACTED]

The Department was represented by Assistant Attorney General, Jennifer L. A. Walker with the Michigan Department of Attorney General.

Witnesses on behalf of Respondent:

- Barbara Schram, FIM
- Mark Foss, ES

Department Exhibit A.314 was offered and admitted into the record.

### **ISSUE**

Did the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) 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] 2019, Petitioner applied for SDA, a cash benefit program based on disability, with the Michigan Department of Health and Human Services.
2. Petitioner is a beneficiary of the Medicaid program and receives medical benefits under the Healthy Michigan Plan (HMP).
3. On August 26, 2019, the Medical Review Team (MRT) denied Petitioner's application.
4. On August 27, 2019, the Department issued notice of denial, and on October 3, 2019, Petitioner filed a timely hearing request.
5. Petitioner has an SSI application pending with the Social Security Administration.
6. As of the date of application, Petitioner was a [REDACTED]-year-old, standing [REDACTED] tall and weighing [REDACTED] pounds. Petitioner's Body Mass Index (BMI) is [REDACTED] classifying Petitioner as obese under the BMI index.
7. Petitioner smokes. Petitioner has a nicotine addiction.
8. Petitioner has a driver's license and can drive an automobile.
9. Petitioner has a 12<sup>th</sup> grade education.
10. Petitioner has no income, and lives with his mother in her home.
11. Petitioner is not currently working.
12. On February 28, 2019, Petitioner had a two-week trial on charges including torture, criminal sexual conduct, rape, assault, and domestic violence from an incident that Petitioner's former wife said allegedly occurred on October 2, 2016 in their home. After a jury trial, Petitioner was acquitted of all charges except for the OWI charge and was released after 25 months in the county jail where he was denied bond. Petitioner experienced an untreated broken jaw while in jail.
13. Petitioner alleges that the onset of his alleged impairments began on October 2, 2019.
14. Petitioner alleges disability based on multiple physical and mental impairments, including post-traumatic stress disorder, severe depression, anxiety, panic attacks, sciatic nerve injury, complex tear of the left knee and lateral meniscus, four bulging discs in the lumbar region of the spine.
15. Petitioner's work history includes sporting goods associate, night auditor, funeral director for five years, and dental assistant/radiologist for 14 years.

16. Petitioner's treating psychiatrist, Dr. K. Raval, indicates that Petitioner has debilitating anxiety attacks two to five times per day and that Petitioner is unable to work during these episodes. Exhibit A.56.
17. Petitioner's treating primary doctor indicates that Petitioner cannot work at his past relevant work and cannot work during panic attacks, when he often vomits.
18. Petitioner can at times, do light housework, light laundry, and shopping.

### **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 Health and Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

For the SDA program, 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. BEM, Item 261, p. 1.

As to the disability assessment, the State of Michigan follows the general guidelines with regards to the MA program to show SDA statutory disability with one major exception: duration for the SDA program is due to a disability which has lasted or can be expected to last for a continuous period of not less than 90 days. Unless otherwise noted below, the MA regulations, policy and law are followed.

Relevant federal guidelines provide in pertinent part:

Disability is:

...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.

Federal regulations require that several considerations be analyzed in sequential order:

We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required.

These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). Monthly income limit for 2017 presumptive SGA for non-blind individuals is \$1,170.00. If the applicant is not engaged SGA or presumptive SGA, the analysis continues to Step 2.
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 416.909(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 that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(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. Sections 200.00-204.00(f).

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? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends, and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application, Petitioner has the burden of proof:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required to establish statutory disability. Statements alone made by the applicant and/or the applicant's physician are not sufficient. Rather, regulations require laboratory or clinical medical reports that corroborate an any applicant's or physicians' statements regarding disability. These regulations state in part:

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

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your

statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques.

- (c) **Psychiatric signs** are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated;
- (d) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927.

It is noted that Congress removed obesity from the Listing of Impairments shortly after the removal of drug and alcohol addiction. This removal reflects the view of a strong behavioral component. In addition, these behavioral driven impairments are not considered to fall within the category of diseases under consideration of statutory disability under the social security disability program.

Applying the sequential analysis herein, Petitioner is not ineligible at the first step as Petitioner is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). This second step is a de minimis standard. Ruling any ambiguities in Petitioner's favor, this Administrative Law Judge (ALJ) finds that Petitioner meets both. The analysis continues.

The third step of the analysis looks at whether an individual meet or equals one of the Listings of Impairments. 20 CFR 416.920(d). Petitioner's representative argued at the administrative hearing that Petitioner meets 12.04, 12.06, and 12.15. The undersigned does not find, for the reasons set forth in the MRT analysis that Petitioner meets or equals these listings with regard to any one impairment by itself. Thus, the analysis continues.

The fourth step of the analysis looks at the ability of the applicant to return to past relevant work. This step examines the physical and mental demands of the work done by Petitioner in the past. 20 CFR 416.920(f).

In this case, this ALJ finds that Petitioner cannot return to past relevant work based on the medical evidence. The analysis continues.

The fifth and final step of the analysis applies the biographical data of the applicant to the Medical Vocational Grids to determine the residual functional capacity of the applicant to do other work. 20 CFR 416.920(g).

In weighing the entirety of the evidence of recorded, there are a number of considerations which the courts have weighed in on, with regard to the role and weight of certain facts. One of those is obesity. It is noted that Petitioner's obesity, and by analogy smoking as discussed below, are the "individual responsibility" types of behaviors reflected in the *SIAS v Secretary of Health and Human Services*, 861 F2d 475 (6<sup>th</sup> Cir 1988) decision. In *Sias*, the Petitioner was an obese, heavy smoker who argued that he could not afford support hose prescribed by his doctor for acute thrombophlebitis. The doctor also advised Petitioner to reduce his body weight. The court said in part:

...The Petitioner's style of life is not consistent with that of a person who suffers from intractable pain or who believes his condition could develop into a very quick life-threatening situation. The Petitioner admitted to the ALJ he was at least 40 pounds overweight; ignoring the instructions of his physician, he has not lost weight.

...The Social Security Act did not repeal the principle of individual responsibility. Each of us faces myriads of choices in life, and the choices we make, whether we like it or not, have consequences. If the Petitioner in this case chooses to drive himself to an early grave, that is his privilege—but if he is not truly disabled, he has no right to require those who pay Social Security taxes to help underwrite the cost of his ride. *Sias*, supra, p. 481.

In *Sias*, the Petitioner was found not truly disabled because the secretary disregarded the consequences resulting from the Petitioner's unhealthy habits and lifestyles—including the failure to stop smoking. *Awad v Secretary of Health and Human Services*, 734 F2d 288, 289-90 (6<sup>th</sup> Cir 1984).

Statutory disability does not recognize many behaviors as statutorily disabling where behavioral driven treatment will remove or reduce the severity or complaint. Among others, this includes complaints such as drug and alcohol addiction, obesity, and *smoking*. *Issues related to these problems often result from lifestyle choices*. In addition, many heart problems, type 2 diabetes, neuropathy, and high cholesterol have been significantly correlated with many lifestyle behaviors. In such instances, the symptoms and problem are treatable--obesity is treatable with weight loss, diet and exercise; alcoholism and drug addiction with abstinence; lung/breathing related medical issues are treatable with cessation from smoking. As with the congressional mandate denying statutory disability for alcohol and drug addiction, individual behaviors that drive medically related complaints and symptoms are not considered under the federal social security law as "truly disabling". See *Sias, supra*. In most instances, standard medical protocol is to instruct the individual to stop consuming alcohol, stop the drug addiction, stop smoking, and to lose weight. In fact, 20 CFR 416.930 requires a finding of not disabled where an individual fail to follow the recommended or prescribed treatment program.

Here, Petitioner is morbidly obese with a BMI of [REDACTED] well over 30. Petitioner also has a nicotine addiction. Based on the above case law, Petitioner's obesity and nicotine addiction do not meet federal statutory disability criteria.

At the fifth step of the analysis, MRT denied Petitioner at step five on the basis of MVR 202.21.

After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge concurs with the MRT only to the extent of the impact of Petitioner's individual impairments by themselves and considered individually. However, under federal regulation 20 CFR 416.923, the law allows for statutory disability when it can be shown that the combined effect of all of an applicant's impairments taken together, meet the definition of disability. Here, the undersigned finds that 20 CFR 416.923 is supported by the evidence of record. Specifically, under 20 CFR 216.923, a finding of disabled is met when the combined effect of both the multiple physical and mental impairments are taken into consideration. Here, the evidence supports finding that the intensity, persistence, and alleged functionally limiting effects of pain or other symptoms are shown when all the impairments are taken together, and in combination by the objective medical evidence, to show statutory disability. Thus, statutory disability is shown. 20 CFR 416.923.

It is noted that the law requires that Petitioner's treating physician be given substantial weight. Here both Petitioner's psychiatrist and primary doctors indicate that he is unable to work as a result of and during his deliberating anxiety attacks.

Having recognized the role that Petitioner's multiple impairments in combination play, nevertheless at Petitioner's age, many of his conditions can be treated with a high



probability of a positive outcome, due to his young age. Federal statutory disability allows for much weight to be given issues and considerations of age. On this basis, an earlier review date of eight months is indicated.

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.

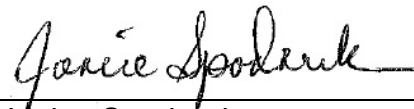
### **DECISION AND ORDER**

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 ten DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Reinstate Petitioner's [REDACTED] 2019 SDA application date,
2. Reprocess Petitioner's application to assess if Petitioner meets the non-medical criteria, and
3. If eligible, issue any supplemental benefits to Petitioner to which he may be entitled, and
4. Set this case for a review date in eight months from the date of this Decision and Order.

JS/ml



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Janice Spodarek  
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

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