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GOVERNOR

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

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DIRECTOR

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Date Mailed: November 25, 2019
MOAHR Docket No.: 19-010734
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 October 28, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Kendra Hall, Medical Contact Worker.

ISSUE

Did the Department properly determine 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 or around [REDACTED], 2019, Petitioner submitted an application seeking cash assistance benefits on the basis of a disability.
2. On or around [REDACTED], 2019, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. (Exhibit A, pp. 27-33)
3. On or around [REDACTED], 2019, the Department sent Petitioner a Notice of Case Action denying his SDA application based on DDS' finding that he was not disabled. (Exhibit A, pp. 6-10)
4. On [REDACTED], 2019, Petitioner submitted a timely written Request for Hearing disputing the Department's denial of his SDA application. (Exhibit A, pp. 2-5)

5. Petitioner alleged mental disabling impairments due to post-traumatic stress disorder (PTSD), bipolar disorder type II, anxiety, and depression. He indicated that he is unable to focus and concentrate and that he has paranoia and racing thoughts.
6. Although Petitioner testified during the hearing that he suffered a stroke while incarcerated in October 2016, Petitioner did not identify this impairment on the Medical Social Questionnaire completed in connection with the application. Thus, there were no medical records requested documenting treatment for such condition and this impairment was not assessed by DDS.
7. As of the hearing date, Petitioner was ■ years old with an ■ 1975 date of birth; he was ■" and weighed ■ pounds.
8. Petitioner has a high school education and employment history of work as an assembly line worker, a scissor lift operator at a produce warehouse, a chemical paint blender, and a barber. Petitioner has not been employed since November 2017.
9. Petitioner has a pending disability claim with the Social Security Administration (SSA).

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 State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration

that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he is not ineligible under Step 1, and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking,

standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the de minimis standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

At the hearing, Petitioner disclosed additional doctors, including his primary care physician (PCP) Dr. Saad from whom he receives medical treatment. Upon review, Petitioner did not identify Dr. [REDACTED] on the Medical – Social Questionnaire completed at the time of his SDA application, thus, there was no medical evidence requested or received from Petitioner's PCP. Petitioner further testified that he has been receiving mental health treatment since the end of 2017 and that in or around [REDACTED] 2018, a psychiatric/psychological evaluation was completed; however, the only mental health treatment records received were from IPsychiatry for treatment for the period between [REDACTED] 2019 and [REDACTED] 2019. Petitioner was given the option to extend the record in order to obtain the additional medical information not included in Exhibit A; however, Petitioner elected to proceed with only the evidence offered in the Department's Exhibit A. Petitioner did not present any medical evidence to supplement or in addition to that admitted as Exhibit A.

The limited medical evidence presented at the hearing was thoroughly reviewed and is briefly summarized below.

Petitioner's treating psychiatric mental health nurse practitioner authored a letter dated [REDACTED], 2018, which indicated that Petitioner is receiving treatment for bipolar disorder type II, social anxiety and PTSD. The letter further indicates that Petitioner struggles

with racing thoughts, sadness, irritability, insomnia, and decreased concentration. It was further indicated that Petitioner isolates himself and has difficulty leaving the house related to feeling judged by others, which makes obtaining employment difficult. (Exhibit A, pp. 41-42).

Petitioner's records from IPsychiatry for the [REDACTED] 2019 to [REDACTED] 2019 treatment period were presented and reviewed. (Exhibit A, pp. 43-69). Petitioner was receiving mental health treatment including therapy and medication for diagnosis of general anxiety disorder, PTSD, and bipolar affective disorder, current episode mixed, current episode severity unspecified. Notes from an [REDACTED] [REDACTED], 2019 visit indicate that Petitioner's affect was observed to be constricted, his mood was anxious, distrustful, fearful, paranoid, sad, worried and discouraged. He had obsessions and his judgment and insight were noted to be fair. His intelligence was average and above, his behavior cooperative and he was attentive throughout the session. He has limited interaction with others and spends most of his time at home in an isolated environment. There were no suicidal or homicidal ideations reported. Notes indicate that Petitioner expressed ongoing paranoid thoughts that people are looking at him and wanting to hurt him because they believe he killed his son. Petitioner reported that he recently got beat up at a gas station because he believed that people were looking at him strangely, which tapped into his paranoia that people want to hurt him because they think he killed his son. He reported that his mood has been unstable. Petitioner was to continue with his medication treatment. On [REDACTED] 2019, Petitioner presented for his medication review appointment and reported that things were going well, and his focus is good. He reported no issues and indicated that the Wellbutrin is working better than the Zoloft. His mental status exam was normal. During the therapy session that same day, Petitioner discussed his paranoia about people he perceives as staring at him. He fears that they know about his case and may attempt to hurt him to the point of killing him. This fear prevents Petitioner from going out freely from his home, as he is still struggling with the grief over the death of his son. It was noted that although he remains symptomatic, Petitioner's progress was steady, and he was engaged in the session. Notes from a [REDACTED], 2019 individual therapy session indicate that Petitioner's mood was noted to be angry, anxious, depressed, distrustful, fearful, hopeless, irritable, paranoid, pessimistic, sad, tense, unhappy and worried. His affect was constricted, his thought process normal and intact, his judgment was normal, and his insight and concentration were good. He had no suicidal or homicidal ideations. Petitioner reported that he has started wearing shades because he feels people cannot recognize him and feels more comfortable out in public. He indicated that he still spends much of his time isolated from the public and shared that he struggles with a lot of anger that builds up inside of him because of his son's death and the surrounding scenarios that have occurred as a result. He reported that he prays when he gets angry and usually his anger subsides. On [REDACTED], 2019, Petitioner had a medication review appointment, during which mental status exam notes indicate that his attitude was cooperative, his affect was normal, his mood was calm and relaxed, his thought process was normal and intact, his memory was intact, his judgment was normal, and his insight and concentration were good. Sleep disturbances were noted,

including Petitioner's reported inability to sleep at night without Klonopin. A similar assessment was made during his [REDACTED], 2019 visit. (Exhibit A, pp. 43-69).

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders), and 12.15 (trauma – and – stressor – related disorders), were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration, Petitioner is not disabled under Step 3, and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3), to which a five-point scale is applied (none, mild, moderate, marked, and extreme). 20 CFR 416.920a(c)(4). The last

point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner alleges exertional and nonexertional limitations due to his impairments. Petitioner testified that he suffered a stroke in 2016 while he was incarcerated and that he now has limited use of the left side of his body. He testified that he has no limitations with respect to walking, sitting, standing, or climbing stairs. He reported that he is unable to grip or grasp items with his left hand and that he is able to lift up to 10 pounds. He reported some difficulty bending and squatting. Petitioner reported that he lives in his car and uses his mother's mailing address. He reported that he is able to bathe himself and take care of his own personal hygiene without any assistance or modification. He is able to dress himself and do chores including cooking, cleaning and laundry. While he reported that he does his own shopping, he indicated that he is scared of the grocery store because there are too many people there. He testified that he isolates himself and has limited social interaction. It is noted that there were no medical records presented that reference any exertional limitations resulting from Petitioner's impairments.

With respect to his mental impairments, Petitioner testified that he has been diagnosed with and receiving treatment for PTSD, social anxiety, bipolar disorder, depression and paranoia. He stated that he attends therapy for one hour once a month and participates in a once monthly 30-minute psychiatry session for his medication management. Petitioner testified that his son was killed, and he was charged and tried for the death. Petitioner indicated that he was found innocent and he now suffers mental illness as a result of that situation. He testified that he suffers from anxiety attacks that can last minutes or hours and that he is unable to concentrate long enough to even put a puzzle together. He reported problems with his memory and stated that he suffers from severe sadness, irritability, and insomnia. He did not report any suicidal or homicidal ideations and testified that he talks to and dreams about his son. Petitioner reported that he isolates himself and punches walls, knocks things over and sometimes hits himself in the head. He reported suffering from panic attacks and testified that he has fears that someone will hurt or kill him and that he lives in a state of constant paranoia.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

The evidence presented is considered to determine the consistency of Petitioner's statements regarding the intensity, persistence and limiting effects of his symptoms. Although Petitioner indicated he is only able to lift 10 pounds, there was no objective medical evidence or records documenting such restriction. Petitioner further indicated that he does not have any limitations with respect to his ability to stand, walk to sit.

Therefore, based on a thorough review of Petitioner's medical records and in consideration of the above referenced evidence, it is found that Petitioner has no limitations to his exertional RFC.

Based on the medical records presented, as well as Petitioner's testimony, Petitioner has: mild limitations with respect to his ability to understand, remember, or apply information; and moderate limitations with respect to his ability to interact with others, in his ability to concentrate, persist, or maintain pace and in his ability to adapt or manage oneself. Petitioner's nonexertional RFC is considered at both Steps 4 and 5.

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as an assembly line worker, a scissor lift operator at a produce warehouse, a chemical paint blender, and a barber. Based on the RFC analysis above, Petitioner has no limitations to his exertional RFC. Because Petitioner has no exertional limitations, he is not precluded from performing past relevant work due to the exertional requirement of his prior employment. Additionally, as discussed above, Petitioner has a nonexertional RFC imposing only mild to moderate limitations on his ability to perform basic work activities. After thorough review of the evidence presented, it is found that Petitioner's nonexertional limitations would not preclude him from performing past relevant work. Because Petitioner is capable of performing past relevant work, it is found that Petitioner is not disabled at Step 4 and the assessment ends.

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 **not disabled** for purposes of the SDA benefit program.

DECISION AND ORDER

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



ZB/TM

Zainab A. Baydoun
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

LaClair Winbush
17455 Grand River
Detroit, MI 48227

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

cc: SDA: L. Karadsheh
AP Specialist-Wayne County