[redacted]

Date Mailed: March 3, 2020
MOAHR Docket No.: 19-012422
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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; 42 CFR 438.400 to 438.424; and 45 CFR 205.10. After due notice, a Detroit hearing was held on December 18, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Tina Seals, Family Independence Manager.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. The documents referenced by the Disability Determination Service (DDS) in Exhibit A were received and marked into evidence as Exhibit B, pages 1 through 636. The requested documents from [redacted] ([redacted]) were not received even after a second interim order was issued ordering the Department to request the documents. The record closed on February 28, 2020, and the matter is now before the undersigned for a final determination based on the evidence presented.

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 [redacted] 2019, Petitioner applied for cash assistance based on a disability.

2. On September 25, 2019, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 6-12).

3. On October 14, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 34-41).

4. On [redacted] 2019, the Department received Petitioner's written Request for Hearing (Exhibit A, pp. 3-4).

5. Petitioner alleged disabling impairment due to myasthenia gravis (MG) and type 2 diabetes mellitus (DM).

6. On the date of the hearing, Petitioner was 49 years old with a [redacted], 1970 birth date; he is 6'4" in height and weighs about 249 pounds.

7. Petitioner has a college doctorate degree.

8. At the time of application, Petitioner was not employed.

9. Petitioner has an employment history of work as a professor at [redacted] a psychologist; and a bill collector.

10. Petitioner has a pending disability claim with the Social Security Administration.

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).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. There must be a medically determinable impairment that could reasonably be expected to produce an individual's symptoms. Social Security Ruling (SSR) 16-3p. 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 Servs*, 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. SSR 85-28.

The medical evidence presented at the hearing, and in response to the Interim Order, was reviewed and is summarized below.

Notes from a [redacted] 2018 visit by Petitioner to his internal medicine doctor, [redacted], indicated that Petitioner had been hospitalized after reporting ongoing fatigue and weakness, aggravated by walking, for a month and had been diagnosed with MG. He was treated with Mestinon, which provided significant relief. (Exhibit B, pp.

Progress notes by [redacted] for office visits on [redacted], 2018; [redacted], 2018; [redacted], 2018; and [redacted], 2018 showed follow-up for treatment of MG. The notes from the [redacted] visit indicated that Petitioner had been hospitalized several times due to MG crisis, not always due to noncompliance. (Exhibit B, pp. 512-525.)

From [redacted] to [redacted], 2018, Petitioner was hospitalized due to shortness of breath, dysphagia, and dysarthria. A chest x-ray showed no acute disease. He admitted that he had been off his daily maintenance Mestinon for three days after running out and had not received his last month's IVIG (intravenous immunoglobulin) treatment due to insurance issues. The doctor concluded that Petitioner's worsening symptoms were likely related to running out of Mestinon, which was used to treat his MG. (Exhibit B, pp. 534-573.)

A [redacted], 2018 barium swallow x-ray showed no evidence of tracheal aspiration; premature spill with all consistencies; and piriform and vallecular retention that cleared with subsequent swallows (Exhibit B, pp. 426-427).

Petitioner was hospitalized at [redacted] from J[redacted] to [redacted] 2019. At admission, he complained of dysphasia/difficulty speaking and blurriness and indicated that he had run out and not taken for 3 weeks one of the medications he took to manage his MG. He told the doctor that anytime he ran out of his medication, he develops exacerbation and in the last three days he had had difficulty with speech and progressive dysphasia and some generalized mild weakness. He was last evaluated by neurology for an MG exacerbation ion [redacted], 2018. He was on monthly IVIG per his neurologist but during his hospital stay, he completed four doses of IVIG and was started on steroids to continue until his neurology follow up. Petitioner denied loss of consciousness, persistent severe headache, weakness in any limbs, sensory loss, radicular pain or change in sphincter function over the past year but admitted to intermittent facial weakness and dyspnea. The doctor's impression was MG Foundation of America class IIa (mild weakness affecting limb or axial muscles or both, with ocular muscle weakness of any severity and lesser involvement of oropharyngeal muscles per https://www.medscape.com/answers/1171206-92629/what-are-the-classifications-of-myasthenia-gravis-mg). It was noted that his DM was stable on half of his home dose of Lantus despite being on prednisone. He had a chest x-ray in response to his shortness of breath and, though the evaluation was limited, it was noted that there were minimal lung base opacities suggesting atelectasis. His discharge diagnosis was MG exacerbation and DM-2 insulin dependent. (Exhibit B, pp. 183-196, 439-506, 574-636.)

On [redacted] 2019, Petitioner had a neurology consult with [redacted]. Petitioner reported to him that he had several symptoms of MG, including diplopia, dysarthria, dysphagia and rare dyspnea, and intermittent facial weakness. [redacted]' impression was MG Foundation of America class IIa. Petitioner reported monthly IVIG infusions. Petitioner was advised that prednisone monotherapy could worsen his diabetes, but he indicated he was willing to accept the risks. (Exhibit B, pp. 299-304.)

Following his release from the hospital, Petitioner visited [redacted], internal medicine, for a follow-up diabetic visit. The doctor found no abnormalities in the diabetic foot exam. The doctor recommended muscle strengthening exercises and weight management. (Exhibit B, pp. 315-320.) On May 7, 2019, Petitioner had a three-month follow-up visit with his internal medicine doctor for his DM. His hemoglobin A1C level was 6.7. The doctor noted that his disease course was fluctuating and associated symptoms included weakness. Petitioner tested positive for malaise/fatigue, joint pain, and weakness. (Exhibit B, pp. 272-281, 311-314.)

Petitioner was again hospitalized at [redacted] from [redacted] to [redacted] 2019 after complaints of upper respiratory infection symptoms, cough, shortness of breath, and chest pains, ongoing for two weeks. A [redacted] 2019 chest x-ray showed no acute cardiopulmonary process. His neurology evaluations determined that an MG exacerbation was unlikely the cause of his symptoms but a mild asthma exacerbation, likely secondary to a viral URI (upper respiratory infection) with sinusitis and mild asthma exacerbation suspected. A neurological exam showed diminished vibration at the ankle bilaterally, manual muscle testing 5/5 at all four extremities with adequate tone and bulk and decreased reflexes. He was treated with Flonase and discharged in

improved condition and encouraged to follow up with physical therapy for neck muscle spasm. Petitioner was started on Neurontin, 100 mg daily, to treat his neuropathy. (Exhibit B, pp. 213-261.)

On [redacted] 2019, Petitioner participated in a medical examination by an independent medical examiner. The reviewing nurse practitioner prepared a report. Petitioner reported that he was diagnosed with MG in [redacted] 2018 and the disease caused chronic fatigue, generalized muscle weakness, difficulty swallowing, and episodes of choking. He stated he was diagnosed with asthma when he was 18 years old and, even though he had experienced episodes of shortness of breath, he did not attribute these episodes to his asthma and denied having any complications from his asthma. Petitioner also stated that his blood sugar continued to be elevated despite taking his medication, and that his high-dose prednisone for his MG disease contributed to his elevated blood sugar as well as to significant weight gain. Petitioner also complained of back pain and tingling in both feet due to his type 2 DM diagnoses just four months after his MG diagnosis. Petitioner told the nurse he was unable to cook, clean, or grocery shop, and could not stand more than five minutes. He needed assistance taking showers. He stated he stayed in bed most days of the week because he was too tired and weak to do anything, and he no longer drove. In examining Petitioner, the nurse found that Petitioner had some slight limitations in his left shoulder rotation but concluded that he had no limitations in his ability to sit, stand, bend, stoop, button clothes, tie shoes, dress and undress, open a door, make a fist, pick up a coin or pencil, write, squat, climb stairs, or get on and off the examination table. She also found that he could walk on his heels and toes and his gait was stable and within normal limits. She found no evidence that he was unable to stand from a seated position or maintain balance in a standing position. His bilateral hand grip was 3/5.

The consultative examiner concluded that Petitioner had moderate limitations for prolonged walking, standing, and climbing stairs and should avoid unprotected heights and operating any type of motorized vehicle due to his chronic fatigue, sporadic blood sugar spikes, muscle weakness, and complaints of dizziness. She found he had moderate limitations for heavy lifting or moving heavy objects, pushing, pulling, or grasping due to his decreased grip strength, but there were no limitations for fine motor activity. She noted that he might experience schedule interruptions due to the flare-ups of his symptoms of his MG disease and causing a potential myasthenic crisis. (Exhibit B, pp. 142-153, 172-177.)

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 11.12 (myasthenia gravis) and 9.0 (endocrine 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. Therefore, 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).

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner testified that he lived with his son and parents who did the chores in the home. He did not drive and could not do any errands. He could bathe and take care of his personal hygiene, but he took a long time to dress himself. He had back issues because he was often on bed rest due to his MG. He could not stand more than 10 minutes or lift more than 10 pounds. He had problems walking when his MG flared. He had days when his MG flared and he would have difficulty swallowing and slurred speech. Petitioner testified that his MG symptoms worsened over the course of the day. Also, he could not control when he would have flares and testified that he had them 10 times since his 2018 diagnosis, including in [redacted] 2019 and [redacted] 2019.

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.

Petitioner has a diagnosis for MG and DM supporting his symptoms of generalized weakness, shortness of breath, difficulty speaking, and difficulty swallowing. Although he was hospitalized for MG exacerbation in [redacted] 2018 and [redacted] 2019, in both instances he had run out of medication and admitted that his MG exacerbated when he did not take his medication. His [redacted] 2019 hospitalization was attributed to a mild asthma exacerbation likely secondary to a viral upper respiratory infection. However, there was also evidence that Petitioner had diminished vibration at the ankle bilaterally and decreased reflexes. At his [redacted], 2019 independent consultation, the examiner found that Petitioner's bilateral hand grip was 3/5. Although she did not observe that Petitioner had any limitations in his ability to sit, stand, bend, dress, get on

or off the examination table, stand from a seated position, maintain balance in a standing position, or walk on his heels and toes, she concluded that he did have moderate limitation for prolonged walking, standing, and climbing stairs and for heavy lifting or moving heavy objects, pushing, pulling, or grasping due to his decreased grip strength. There were no limitations for fine motor activity. Upon review of the record, including Petitioner's testimony, with respect to Petitioner's exertional limitations, it is found that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a).

Petitioner also has limitations that affect his nonexertional RFC. The consultative examiner concluded that Petitioner should avoid unprotected heights and operating any type of motorized vehicle due to his chronic fatigue, sporadic blood sugar spikes, muscle weakness, and complaints of dizziness and noted that he might experience schedule interruptions due to the flare-ups of his symptoms of his MG disease that could cause a potential myasthenic crisis. Petitioner also pointed out that the symptoms of his MG, including slurring and fatigue, tended to worsen over the course of the day. These limitations affect Petitioner's nonexertional RFC.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

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 a psychologist, bill collector and college professor. His past relevant work as a psychologist and bill collector, as described by Petitioner, is best categorized as sedentary.

Based on the RFC analysis above, Petitioner's exertional RFC limits him to sedentary work activities. Based solely on his exertional RFC, Petitioner can perform past employment. However, Petitioner also limitations to his nonexertional RFC. While limitations that he avoid unprotected heights and operating any type of motorized vehicle would not preclude his employment in past relevant work, Petitioner also has, as a condition of his impairment, ongoing weakness, fatigue, and sluggishness that tends to worsen over the course of the day. Although Petitioner has flare ups of his conditions, the medical evidence showed that the flare-ups, that affect his speech and ability to

swallow, coincided with episodes during which Petitioner was not taking his medication. Petitioner was on IVIG treatment and medication and appeared to respond to his medication. Thus, Petitioner's nonexertional RFC would not preclude his ability to perform his past relevant work. Because, at this time, Petitioner can perform past relevant work, Petitioner is not disabled at Step 4 and the assessment ends.

DECISION AND ORDER

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.

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

ACE/tlf

Alice C. Elkin
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

Via Email:

MDHHS-Wayne-19-Hearings
BSC4 Hearing Decisions
L. Karadsheh
MOAHR

Petitioner – Via First-Class Mail:

[redacted]