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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]
[REDACTED], MI [REDACTED]

Date Mailed: February 14, 2020
MOAHR Docket No.: 19-012630
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 January 15, 2020, from Lansing, Michigan. Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by April Nemec, Hearing Facilitator.

ISSUE

Whether the Department properly determined 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 SDA.
2. On August 27, 2019, the Medical Review Team (MRT) denied Petitioner's application for SDA per BEM 261 because the nature and severity of Petitioner's impairments would not preclude work activity at the above stated level for 90 days and Petitioner is capable of performing other work under Medical Vocation Grid Rule 202.20 per 20 CFR 416.920(f).
3. On August 29, 2019, the Department Caseworker sent Petitioner a notice that his application was denied.
4. On December 4, 2019, the Department received a hearing request from Petitioner, contesting the Department's negative action.

5. Petitioner is a [REDACTED] year-old man whose date of birth is [REDACTED] 1970. Petitioner is [REDACTED]" tall and weighs [REDACTED] pounds. Petitioner completed High School and has a Bachelor's degree of Arts in Criminology and Sociology. Petitioner can read and write and do basic math. Petitioner was last employed as a police officer in 2012. He was previously employed as a warehouse packer at the heavy level.
6. Petitioner's alleged impairments are osteoarthritis, PTSD, major depressive disorder, social anxiety, and rheumatoid arthritis in hands, knees, and feet.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of 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. 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.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. 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 are 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

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, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are

evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is “substantial gainful activity” (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” 20 CFR 404.1520(c). An impairment or combination of impairments is “severe” within the meaning of regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Petitioner does not have a severe medically determinable impairment or combination of impairments, the Petitioner is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Petitioner’s residual functional capacity. 20 CFR 404.1520(e). An individual’s residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the trier must consider all of the Petitioner’s impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of his past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner has the residual functional capacity to do past relevant work, then the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual’s residual functional capacity is considered in determining whether disability exists. An individual’s age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Petitioner has satisfied requirements as set forth in steps one and two of the sequential evaluation. However, Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for step 3. Therefore, vocational factors will be considered to determine Petitioner's residual functional capacity to do relevant work and past relevant work.

In the present case, Petitioner was seen by an independent medical examiner for an internal medical examination at [REDACTED] on [REDACTED], 2019. His chief complaint was alleging disability due to cervical spine, lumbar spine, and bilateral knee pain. He is using a walking stick that was prescribed five years ago. He has a Velcro brace on the right knee. He appears stable in the standing, sitting, and supine positions. He had limitations in his shoulder motion bilaterally and his shoulder movement increases his upper back pain. In the right lower extremity, he has some mild limitation in his right knee flexion. He has mildly limited lumbar spine flexion. He does have moderate tenderness with palpitation over the lumbar spine and the upper thoracic spine. Petitioner is unable to walk on his toes and perform tandem gait, but he can squat and bend halfway. The independent medical examiner's clinical impression was a history of psoriatic arthritis with minimal cirrhosis and generalized pain in the hand, knees, ankles, and shoulders treated with medication, chronic mid back pain of undetermined etiology, chronic low back pain with radiation to the knees of undetermined etiology, and chronic neck pain with radiation to the shoulders of undetermined etiology. Petitioner has mild limitations in shoulder motion and a great deal of pain and stiffness on the shoulders and upper back with his shoulder motion. In the lower extremities, he has some mild limitation in the right knee motion. He has some limitation in lumbar spine motion and difficulty performing orthopedic maneuvers. On his exam today, there is no evidence of any rheumatoid type deformity or the joint swelling. Petitioner's ability to perform work related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying and traveling as well as pushing and pulling heavy objects is at least mildly impaired due to the objective findings described above. Department Exhibit 1, pgs. 78-86.

On [REDACTED], 2019, Petitioner was seen by an independent licensed psychologist from [REDACTED] for a psychological report. Petitioner's gait was observed to be overtly normal by the independent psychiatric examiner. His alleging mental impairments are depression and anxiety. He stated during the examination that he had PTSD from working as a police officer where he has a lot of nightmares and he doesn't sleep regularly. He also stated that he had a lot of anxiety. He stated he doesn't go out of the house much except for medical. He also admitted to having a lack of concentration. The independent psychiatric examiner's clinical impression was traits of a cluster B and C personality disorder that are presented during this exam, but it is not clear to what degree this behavior represents his typical functioning. Based on this exam, it was the psychologist's impression that Petitioner's mental abilities to understand, attend to, remember, and carry out instructions of work-related behaviors are not overtly impaired. Based on this exam, the psychologist's impression that Petitioner's abilities to perform activities within a schedule, at a consistent pace, maintain regular attendance, be punctual within customary tolerance, and complete in

normal workday, and work week without interruption from psychological symptoms are mildly impaired. His abilities to relate to social interaction such as responding appropriately to coworkers, supervision, and others in the workplace are mildly impaired. His mental abilities relating to adaptation and self-management such as traveling to unfamiliar places and adapting to change and stress in the workplace are mildly impaired. He was diagnosed with persistent depressive disorder with anxiety. His prognosis was fair. He is able to manage his own benefit funds. Department Exhibit 1, pgs. 73-76.

On [REDACTED], 2019, Petitioner underwent cervical and lumbar spine with bilateral knees x-rays at [REDACTED]. The radiologist's clinical impression was limited flexion of the cervical spine with a negative study of the lumbar spine. He had minimal degenerative changes of the left knee joint with a normal study of the right knee joint. Department Exhibit 1, pgs. 87-89.

On [REDACTED], 2019, Petitioner was seen by his treating therapist at [REDACTED]. He was seen for psychotherapy for 45 minutes. He was diagnosed with a moderate episode of recurrent major depressive disorder. His mood was reported as dysphoric severe with an affect that was blunted and depressed. There was no evidence of a severe thought disorder or risk factors. His complaints were depressed mood and anxiety where he was depressed most of the day with a reduced interest or pleasure in activities, isolators, significant weight increase, hypersomnia, psychomotor retardation, worthlessness or excessive/inappropriate guilt, feelings of hopelessness, poor concentration/difficulty making decisions, low self-esteem, and fatigue/loss of energy. Petitioner's helplessness and hopelessness or preventing any progress in his depression. The treatment plan will be continued. Department Exhibit 1, pgs. 468-478.

On [REDACTED], 2019, Petitioner was seen by his treating physician at [REDACTED]. He was seen as a follow-up for neck pain, osteoarthritis, arthritis, chronic kidney disease, asthma, gastro esophageal reflux, and allergic rhinitis. Petitioner is overweight where healthy eating, being active, and encouragement to exercise was discussed. His physical exam was positive for arthralgias, neck pain, and stiffness. He had an essentially normal physical examination. His treating physician did note that he had positive pedal pulses where he had multiple joint pain with manipulation. He had crepitus noted in his joints, but no erythema or heat noted. He was to continue his current treatment plan. He was encouraged to exercise range of motion for all joints involved. He was required to aggressively control blood pressure and follow a low-salt diet. For his asthma, he was to continue his previous inhalers as prescribed. For his GERD he was to avoid caffeine, mint, chocolate, and large meals. Avoid eating before bedtime, elevate the head of the bed 10 to 15 degrees. He was counseled regarding the need to lose weight where complications of obesity including diabetes and hypertension were discussed with the patient in details. He was advised to follow a strict 1800 calorie diet and increased physical activity/walking for 30 to 60 minutes a day. Department Exhibit 1, pgs. O-U.

This Administrative Law Judge finds that Petitioner had an essentially normal physical examination. He did have physical limitations with his back, shoulder, and bilateral knees that would limit him to at least light work. He is in therapy and taking medication for his mental impairments. There was no evidence of a significant severe thought disorder or risk factors.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the Petitioner testified that he does not perform most of his daily living activities. This level of impairment is not supported by the objective medical evidence on the record. Petitioner does feel that his condition has worsened because of his night terrors, sleep schedule, panic attacks, and lack of concentration. Petitioner stated that he does have mental impairments where he is taking medication and in therapy at Hurley Mental Health. Petitioner does not or has ever smoked cigarettes or use illegal or illicit drugs. He stopped drinking in 2010, which before he drunk occasionally. Petitioner did not feel there was any work he could do.

At Step 4, this Administrative Law Judge finds that Petitioner has established that he cannot perform any of his prior work. He was previously employed as a as a police officer in 2012. He was previously employed as a warehouse packer at the heavy level. Petitioner is in therapy and taking medication for his mental impairments. He has physical issues with his back, shoulders, and bilateral knees arthritis that may limit him to light work. Therefore, Petitioner is not disqualified from receiving disability at Step 4. Petitioner is not capable of performing his past work. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the Petitioner has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

The objective medical evidence on the record is insufficient that Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in him previous employment or that he is physically unable to do any tasks demanded of him. Petitioner's testimony as to his limitation indicates his limitations are non-exertional and exertional.

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).

In the instant case, Petitioner testified that he has PTSD, major depression disorder, and social anxiety. Petitioner is taking medication and in therapy for his mental impairments. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. Petitioner has a high school diploma and a Bachelor's degree in Criminology and Sociology.

In the final step of the analysis, the trier of fact must determine if the Petitioner's impairment(s) prevent the Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. 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. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. 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 this 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. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects

weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

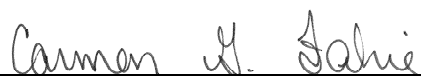
At Step 5, Petitioner can meet the physical requirements of light work, based upon Petitioner's physical abilities. Under the Medical-Vocational guidelines, a younger age individual with a high school education and more, and a skilled and unskilled work history, who is limited to light work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.02. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as PTSD, major depressive disorder, and social anxiety. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to Petitioner's mental and physical impairments, the Administrative Law Judge finds that Petitioner could perform light work and that Petitioner does not meet the definition of disabled under the SDA program.

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. Petitioner could perform light work and Petitioner does not meet the definition of disabled under the SDA program.

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

CF/hb



Carmen G. Fahie
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

Genesee County (Union) via electronic mail

BSC2 via electronic mail

L. Karadsheh via electronic mail

Petitioner

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