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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

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: June 11, 2020  
MOAHR Docket No.: 20-001735  
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 May 12, 2020, from Lansing, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Amy Leonard, Eligibility Specialist.

### **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 February 18, 2020, the Medical Review Team (MRT) denied Petitioner's application for SDA per BEM 261 because the nature and severity of the Petitioner's impairments would not preclude work activity at the above stated level for 90 days and is capable of performing other work under Medical Vocation Grid Rule 201.18 per 20 CFR 416.920(f).
3. On February 20, 2020, the Department Caseworker sent Petitioner a notice that his application was denied.
4. On February 24, 2020, the Department received a hearing request from the Petitioner, contesting the Department's negative action.

5. Petitioner is a [REDACTED] year-old man whose date of birth is [REDACTED], 1972. Petitioner is [REDACTED]" tall and weighs [REDACTED] pounds. Petitioner completed the 11<sup>th</sup> High School with no GED. Petitioner can read and write and do basic math. Petitioner was last employed as a plow truck driver in 2009 for three to four months. He was also employed as a car detailer at the light level.
6. Petitioner's alleged impairments are COPD, DDD, and five back surgeries with the last surgery in 2017.

### **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 his treating physician on April 30, 2020, for back issues and chronic pain management. On physical examination, Petitioner had tenderness to palpation along the lumbar paraspinal columns with some spasms noted. He had limited range of motion on the axial rotation and lateral deviation, flexion/extension due to pain. He uses a walking stick to assist with ambulation. His clinical assessment was lumbar radiculopathy, chronic pain syndrome, chronic obstructive pulmonary disease, unspecified COPD type-J 44.9, and gastroesophageal reflux disease without esophagitis. He will look into treatment for his lumbar radiculopathy of neurosurgery locations in Traverse City. He was stable and compliant with his chronic pain syndrome. Petitioner's medication was reviewed including his usage and side effects for his COPD. He was counseled to maintain activity levels if possible. Petitioner was also counseled to quit smoking if he had not already. For his GERD without esophagitis, he was counseled to refill his medication and was noted to be stable. He was scheduled for a follow-up in four weeks. Petitioner Exhibit 1, pgs. A-C.

On [REDACTED], 2019, Petitioner was seen at the [REDACTED]. His chief complaint was weakness in the legs, low back pain, and a fall. He reported that he had a fall in his home about a month ago where he fell and struck his head. He also injured his right wrist at that time. Petitioner did not seek medical attention after the event. He does use Norco and Lyrica for pain. His past surgical history was a L4-S1 lumbar decompression and fusion, and multiple laminectomies. Petitioner stated he is having increasing weakness in his legs and more episode where his legs gave out. The ER did proceed with a CT of the brain as well as cervical spine and an x-ray of the right wrist, MRI of the lumbar spine as well as some basic labs.

Petitioner's MRI of the lumbar spine showed a posterior disc protrusion at L4-L5 with about 7 mm protrusion into the canal. There was no spinal stenosis related to that neural foraminal stenosis. There was no compression of the nerves that make up the Conus medullaris. Otherwise, Petitioner's CT shows what appears to be stable degenerative disc disease. Petitioner's CT of the brain shows no evidence of skull fracture, intracranial hemorrhage, or any other acute findings. The cervical spine shows past surgical changes and degenerative changes, but no evidence of fracture or dislocation. His right wrist x-ray reveals no evidence of fracture or dislocation either. Overall, his ER workup is largely negative. He does have a significant disc protrusion at L4-L5, but this is not causing cauda equina type picture at least radiologically. There was no evidence of a serious nerve compression. Final impression was acute on chronic low back pain. He was discharged home in stable condition. Petitioner Exhibit 1, pgs. D-J.

On October 31, 2019, Petitioner underwent testing due to bilateral radiculopathy. He did have an abnormal study. There were electrodiagnostic findings suggestive of but not diagnostic for a left L5/S1 territory sub-acute radiculopathy. Clinically, today's findings do not explain his symptoms. While mild left L5/S1 territory axonal injury was identified this may be related to his previous lumbar radiculopathy and does not fit his primary symptoms. The decrease activation identified in multiple muscle groups could be due to pain inhibition, poor effort, or CNC etiology. Needle EMG of bilateral lower extremities demonstrates mild evidence for axonal loss to the left abductor hallucis. All weak muscle groups demonstrated decrease activation without clear neurogenic recruitment. Department Exhibit 1, pgs. 108-112.

On October 9, 2019, Petitioner was seen by his treating specialist for a follow-up after physical therapy. Petitioner states he has increased pain with physical therapy. He has a history of chronic low back pain and right lower extremity pain. He has had a L4-S1 lumbar fusion in 2017. He stated that after surgery that he only received a one month relief of his pain. His pain radiates from his low back down the right lower extremity worse than the left since his surgery. Pain affects the groin and anterior thigh and then travels into the lower leg. He also states there is numbness and tingling in the lower leg area as well. He has weakness in his foot and his quadriceps reportedly. He does use a walking stick to help ambulate. He complains of urinary frequency and urgency especially when the pain is severe but denies any incontinence or saddle anesthesia. Overall, he feels little improvement/change in the last two to three years.

He reports fatigue but reports no weight loss and no weight gain. He reports loss of vision, blurred vision, and double vision. He reports joint pain, muscle pain, muscle cramps, neck pain, and lower back pain. He reported headaches, lost balance, numbness/tingling, and muscle stiffness. He had a widening stance width, analgic, uses single point cane on right side. On the lumbar spine, he had right-sided tenderness to palpitation of the paraspinal musculature with normal muscle tone. Range of motion was decreased to active flexion, extension, rotation. There was pain noted with active lumbar extension and rotation. Overall bilateral lower extremity strength examination yields at least 4+/5 strength to all tested muscle groups through intermittent giveaway is noted throughout.

His primary pain side is the lumbar spine and right left leg. MRI of the lumbar spine from May 2019 identifies moderate central canal stenosis of L3-four with near-complete effacement of CSF from nerve roots. There was no clear neural foraminal stenosis noted at other levels. There was a note of mild hyper enhancement of the nerve roots in the lower lumbar levels which was suggestive of arachnoiditis. Physical therapy was not helpful in August 2019 and 2017. The procedures that he has undergone was a L4-S1 decompression and fusion in 2017, multiple lumbar epidurals prior to most recent fusion, and multiple lumbar laminectomies dating to 2003. An option for pain control discussed was a spinal cord stimulator. An EMG of bilateral lower extremities was suggested for evaluation. In addition, epidural injections may be helpful for interim pain management. However, he states that he does not wish to pursue this for the purpose of temporary pain control. Department Exhibit 1, pgs. 127-130.

This Administrative Law Judge finds that that Petitioner does have physical limitations. His most recent back surgery was in 2017 with limited success. He continues to have chronic pain, which is being managed. As a result, Petitioner will be limited to light work.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that Petitioner testified that he does perform some of his daily living activities. He did not have any mental impairments. 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 plow truck driver in 2009 for three to four months. He was also employed as a car detailer at the light level. He has physical limitations with his back 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 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 exertional.

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, the 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 limited education, and an unskilled work history, who is limited to light work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.17. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to Petitioner's 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



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**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**

Lake County via electronic mail

BSC3 via electronic mail

L. Karadsheh via electronic mail

**Petitioner**

[REDACTED], MI [REDACTED]