



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: August 26, 2020
MOAHR Docket No.: 20-003035
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 June 23, 2020, from Lansing, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Barbara Schram, Family Independence Manager.

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 April 14, 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 due to a non-exertional impairment per 20 CFR 416.920(f).
3. On April 21, 2020, the Department Caseworker sent Petitioner a notice that his application was denied.
4. On May 6, 2020, 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], 1979. He is 6' tall and weighs 230 pounds. Petitioner completed High School. He can read and write and do basic math. Petitioner was last as a salesman at the light level in March 2018. He has also been employed as a tire technician at the medium level and overnight stockperson.
6. Petitioner's alleged impairments are bipolar disorder, anxiety, traumatic brain injury, blackouts, and depression.

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, the Petitioner has satisfied requirements as set forth in steps one and two of the sequential evaluation. However, the 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 the Petitioner's residual functional capacity to do relevant work and past relevant work.

In the present case, Petitioner was seen by his treating nurse practitioner at [REDACTED] on March 5, 2020. He was diagnosed with schizoaffective disorder, bipolar type with a secondary diagnosis of major depressive disorder, recurrent episode, moderate and a tertiary diagnosis of generalized anxiety disorder. Petitioner has a personal history of a traumatic brain injury. He presented today for a medication review and follow-up. He states that he is taking his medication and denies any adverse reaction/side effects. Petitioner stated that he is been doing pretty good actually. He states that his medication has helped with his anxiety. He has been working on getting out more. Petitioner has been walking and he states he went to Walmart a couple of times and felt more confident regarding these trips. He feels his depression and anxiety have decreased and his moods have improved. His only concern today is that he is having night terrors 3 to 4 times a week again and it has been affecting his sleep. An adjustment was made to his medication routine. He denies psychosis and mania. He does find benefit with therapy and the resources provided for him. Patient was cooperative. He had normal psychomotor tone. His mood was okay, and it appeared normal and appropriate. Affect was slightly blunted. He denied paranoid/delusional thoughts, and none were observed today. There were no suicidal or homicidal ideations. His insight and judgment were fair. Thought process was circumstantial it appears. He made good eye contact and speech was clear and coherent. Department Exhibit F, pgs. 266-269.

On February 3, 2020, Petitioner underwent an annual assessment at [REDACTED]. Petitioner presented as an individual needing assistance in managing his mental health as well as keeping him connected to his community and medical needs. He experiences significant anxiety/paranoia associated with blacking out and fears harming other people if he goes into the community because of his past experiences doing so. Through mental health treatment, Petitioner has not had a black out for a couple of years, but still feels that has just not happened yet and is going to, and once it does that is going back to jail. He has been involved with CMH services since February 2019. Petitioner stated he had normal development until the age of 15 when he was in a severe car accident. At that time, he was never checked for any head injury. He had an MRI in March 2019 that confirmed that he had a traumatic brain injury. He reports feeling anxious and when the anxiety level gets too high, he blocks out and is unable to recall what happened. This has caused him to experience a lot of sadness, distress, and to isolate himself from others. Petitioner reports that he has had blackouts since before he had his TBI. He has worked at several local car dealerships but was either let go or left due to the blackouts he experienced where he's assaulted several different coworkers during these blackouts. He tries to get some exercise at his home. He does attend medical appointments as needed. He believes himself to be fairly healthy and monitors his food intake to stay at about the weight he

currently is at. Petitioner experiences paranoid delusions from time to time but is able to manage them most of the time. He experiences some visual and auditory hallucinations but reports that he has intact orientation. Petitioner would benefit from CLS services to assist him in developing some comfort in social situations as well as increasing his ability to manage stressors that occur when he does need to get out of his home. He would also benefit from TCM or B3 assisting him in connecting/linking to services to look into some of the presenting symptoms (blackouts) and potential causes that may not be mental health related as well as outpatient therapy in locating appropriate interventions to help him manage the symptoms. Lastly, the Petitioner would benefit from assistance in getting SSI/DI so he can have some income to help him manage his home. Department Exhibit F, pgs. 245, 261.

On December 19, 2019, Petitioner was seen by his treating physician from [REDACTED], [REDACTED]. His chief complaint was that he needs a referral to neurology. He states that he had an MRI and it confirmed the brain injury. He is blacking out a lot. He had a normal physical exam. He has a headache daily with a history of a bad car accident two years ago. There is also a history of assault. He had an abnormal MRI. He will be called back for additional GRE images to rule out hemorrhage. His treating physician's clinical assessment was GERD, abnormal brain MRI, and blackouts. His schizoaffective disorder was acknowledged due to the abnormal brain MRI and a social history of alcohol abuse, blackouts and depression. He was referred to neurology for the abnormal MRI. Department Exhibit F, pgs. 272-277.

On October 5, 2019, Petitioner underwent a mental status examination with [REDACTED], [REDACTED], Ed. D., PH. D. His alleged disability was major depressive disorder and schizoaffective disorder. He arrived at his appointment on time and was neat, clean, and dressed appropriately. Petitioner communicates effectively with speed, volume, flow, rate, and articulation were all normal. He is capable of getting his point across effectively and appears to be average in intelligence. [REDACTED] did not observe any significant mental health issues, but Petitioner does exhibit depressive symptoms. Based on observation, Petitioner was not physically limited. During the time of the interview, he was alert, cooperative, and attended to the task associated with the assessment procedure. He was average in memory, communication, and executive functioning. In [REDACTED]' clinical opinion, Petitioner functions within the average range of reasoning, insight, and judgment is good. He is currently attending counseling/psychotherapy through CMH and is being treated with medication. He reported no history of alcohol/drug abuse or dependence and is not currently exhibiting suicidal/homicidal ideation, delusions, or hallucinations. In [REDACTED]' clinical opinion, Petitioner will continue to benefit from supportive therapy to address depression/anxiety, to improve his self-esteem, and enable him to cope with social, emotional, and environmental challenges reducing the rollbacks blocks to meaningful employment. He was diagnosed with major depression that was mild with a good prognosis. He is capable of performing work with no moderate or severe limitations to employment. Department Exhibit F, pgs. 331-335.

This Administrative Law Judge finds that Petitioner does have mental impairments but should be able to perform simple and unskilled work. He is taking medication and in therapy for his mental impairments. He is not physically impaired. There was no evidence of a severe thought disorder or risk factors. He did have blackouts where he stated he did not remember what happened and assaulted his coworkers, which resulted in him going to jail. Petitioner has had improvement with his therapy and his medication for his mental impairments and has not had a blackout in a couple of years.

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. Petitioner does feel that his condition has worsened because of his increase in anxiety and depression where he is seeing shadows and hearing voices. Petitioner stated that he does have mental impairments where he is taking medication and in therapy at CMH. Petitioner did not feel there was any work he could do.

At Step 4, this Administrative Law Judge finds that Petitioner has not established that he cannot perform any of his prior work. He was previously employed as a salesman at the light level in March 2018. He has also been employed as a tire technician at the medium level and overnight stockperson. Petitioner is in therapy and taking medication for his mental impairments. He has no physical limitations. Therefore, Petitioner is disqualified from receiving disability at Step 4. Petitioner is capable of performing his past work as an overnight stockperson, which is performed at the simple, unskilled level. 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 his 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.

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 bipolar disorder, anxiety, depression, traumatic brain injury, and blackouts. 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. He will be limited to simple and unskilled work.

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).

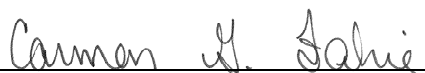
At Step 5, Petitioner can meet the physical requirements of work, based upon the Petitioner's physical abilities. Under the Medical-Vocational guidelines, a younger age individual with a high school education, and an unskilled work history, who is limited to work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 204.00. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as bipolar disorder, anxiety, depression, traumatic brain injury, and blackouts. 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 simple and unskilled 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 simple and unskilled 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

Iosco County via electronic mail

BSC1 via electronic mail

L. Karadsheh via electronic mail

Petitioner

