STATE OF MICHIGAN
GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[redacted]

Date Mailed: July 9, 2020
MOAHR Docket No.: 20-003061
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 9, 2020, from Lansing, Michigan. Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Karl Hiipakka, 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 March 5, 2020, 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 is capable of performing other work under Medical Vocation Grid Rule 204.00 per 20 CFR 416.920(f).

3. On March 10, 2020, the Department Caseworker sent Petitioner a notice that his application was denied.

4. On March 16, 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], 1985. Petitioner is 5' 10" tall and weighs 155/160 pounds. Petitioner completed High School. He was special education in all subjects. Petitioner can read and write and do basic math. Petitioner was last employed as a commercial cleaner in May 2019. He was also employed as building maintenance worker, sample worker, food prep worker, dishwasher, and buffet worker.

6. Petitioner's alleged impairments are on October 2019 that he jumped/fell out of a window where he sustained a broken jaw, left ankle fracture, and bilateral broken arms. He also suffers from depression, anxiety, bipolar disorder, panic attacks, and COPD where he is on oxygen.

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 purusant 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 impariment 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 [redacted] on February 18, 2020, and discharged on February 19, 2020. His discharge diagnosis was acute anemia, hyponatremia, history of opioid drug use, history of IV drug abuse, chronic pain, asthma, ADHD, bipolar 2, depressive episode, history of smoking abuse, and noncompliance where the patient left against medical advice. His discharge condition was unknown. Petitioner was initially admitted for leg swelling. The bilateral lower extremity swelling has been present for one and ½ weeks. He has a known history of IV drug abuse and hepatitis C. He reports that he no longer uses IV drugs. His workup showed anemia. He left before any of the studies were completed. Department Exhibit 1, pgs. 178-181.

On February 13, 2020, Petitioner was seen at [redacted]. He was seen weekly for medication refills. Petitioner states he is still dealing with coughing and swelling in both lower extremities. He has used cocaine twice this week. His right leg edema only slightly improved with no compression stockings. He is taking Lasix daily with no improvement. Petitioner did have shortness of breath, cough, wheezing and shortness of breath during exertion. He had nausea and vomiting, but no abnormal pain, constipation, diarrhea, and no blood in stools. He had joint swelling, limb pain, joint stiffness, limb swelling in both ankles, but no arthralgia and no myalgia. He had headaches, numbness, tingling in the left arm, but no confusion, dizziness, no limb with weakness, no convulsion, fainting and no difficulty walking. His medication for his opioid dependence was renewed. In addition, his medication for the swelling in his lower extremity was renewed with a prescription for compression stockings. Department Exhibit 1, pgs. 128-132.

On January 20, 2020, Petitioner was seen by his treating physician through his nurse practitioner. He presented with a cough which is a new problem with the current episode started one to four weeks ago. The problem has been gradually worsening. The problem occurs constantly. Associated symptoms include shortness of breath and wheezing. He has tried over-the-counter cough suppressant for the symptoms. The treatment provided mild relief. His past medical history is significant for asthma and bronchitis. There is no history of COPD or emphysema. He had an essentially normal physical examination. The clinical assessment was wheezing associated with respiratory infection of acute bronchitis with symptoms greater than 10 days. He was provided with medication to treat the symptoms of steroids and an inhaler if needed. Department Exhibit 1, pgs. 148-150.

On October 29, 2019, Petitioner was seen by his treating surgeon through his scribe. He was seen as a result of bilateral wrist fractures that took place on October 19, 2019. He was complaining of a 10 out of 10 pain level that he describes achy in nature and increases with use. He is currently taking Tylenol to manage the pain. He complains of swelling, but denies any numbness, tingling, popping or clicking. He presented to the office ambulatory with the assistance of a splint. He had a past diagnosis of ADHD, allergic rhinitis, asthma, bipolar two disorder, major depressive episode, chronic insomnia, chronic pain, generalized anxiety disorder, and insect bite on right arm. On physical examination, he had a short arm fiberglass cast on the forms and wrists of both upper extremities. There were good capillary responses within the fingers which he is flexing freely. He had good elbow range of motion of the left elbow without deformity or swelling. There was some mild tenderness around the olecranon. His x-ray of both wrists showed a communion dated impacted an intra-articular lead display. There was a distal radius fracture of the right wrist with considerable comminution and displacement. The left wrist demonstrates a comminuted intra-articular dorsally displaced distal radius fracture. The right wrist fracture was substantially more comminuted and displaced as compared to the left. The overlying splint material noted bilaterally. The clinical assessment was a bilateral close wrist fracture and close fracture of the distal ends radius and ulnar abode for arms. Treatment options discussed today included corner undergoing an ORIF of the bilateral distal radius. The Petitioner voiced understanding and with and wishes to proceed. Department Exhibit 1, pgs. 312-315.

This Administrative Law Judge finds Petitioner is physically limited with his upper extremity as a result of a fall where he bi-laterally fractured both his wrists. He has received treatment where he has been in a cast and seems to have recovered. Petitioner is in therapy and taking medication for his mental impairments. There was no evidence of a severe thought disorder or risk factors. He will be limited to light work because of the issues with his wrists.

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 not worsened. Petitioner stated that he does have mental impairments where he is taking medication and in therapy. 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 as a commercial cleaner in May 2019. He was also employed as building maintenance worker, sample worker, food prep worker, dishwasher, and buffet worker. Petitioner is in therapy and taking medication for his mental impairments. He has issues with his bilateral wrist as a result of fractures incurred in October 2019. As a result, he will be limited 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 bipolar disorder, ADD, panic attacks, anxiety, and depression. 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.

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 equivalent education, and an unskilled work history, who is limited to light work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.20. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as bipolar disorder, ADD, panic attacks, anxiety, and depression. 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.**

Carmen G. Fahie

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

Saginaw County via electronic mail

BSC2 via electronic mail

L. Karadsheh via electronic mail

Petitioner

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