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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]
MI [REDACTED]

Date Mailed: December 2, 2020
MOAHR Docket No.: 20-004701
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 October 6, 2020. The Petitioner, [REDACTED] appeared on his own behalf. The Department of Health and Human Services (Department), was represented by Malak Fawaz, Eligibility Specialist (ES).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-201. The record was left open for additional documentation, which was received and has been admitted as Exhibit 1, pp. 1-6; and Exhibit 2, pp. 1-42.

ISSUE

Did the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

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 and reported that he was disabled. (Exhibit A, pp. 8-12)
2. On March 20, 2020, the ES received instructions that due to COVID-19, all pending SDA cases should be approved while waiting for the disability determination from Disability Determination Services (DDS). (Exhibit A, p. 1)
3. On March 26, 2020, Petitioner's SDA case was approved while waiting for the DDS decision. (Exhibit A, p. 1 and 13-15)

4. On April 2, 2020, the Medical Review Team/Disability Determination Services (MRT/DDS) found Petitioner not disabled. (Exhibit A, pp. 17-23)
5. On April 30, 2020, the Department notified Petitioner that SDA was denied effective June 1, 2020. (Exhibit A, pp. 5-6)
6. On July 13, 2020, the Department received Petitioner's timely written request for hearing. (Exhibit A, p. 3)
7. Petitioner alleged disabling impairments including: asthma, diabetes, high blood pressure, fear of having an asthma attack, and injuries from a car accident. (Exhibit A, p. 37; Petitioner Testimony)
8. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED] 1961, birth date; was [REDACTED] in height; and weighed [REDACTED] pounds. (Petitioner Testimony)
9. Petitioner completed a Bachelor of Science degree in civil engineering and has a work history of civil engineering. (Exhibit A, pp. 39-40 and 69-76; Petitioner Testimony)
10. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

CONCLUSIONS OF LAW

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

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

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). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's statements about pain or other symptoms are not, in and of themselves, sufficient to establish disability. 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) daily activities; (2) the location/duration/frequency/intensity of an applicant's pain or other symptoms; (3) precipitating and aggravating factors; (4) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain or other symptoms; (5) any treatment other than medication that the applicant has received to relieve pain or other symptoms; (6) any measures the applicant uses to relieve pain or other symptoms; and (7) other factors concerning the applicant's functional limitations and restrictions due to pain or other symptoms. 20 CFR 416.929(c)(3). The applicant's pain or other symptoms must be considered in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR

416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.922(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(a)(1)(iv)(vi)(vii).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity. Therefore, Petitioner is not ineligible for disability benefits under Step 1.

The severity of Petitioner's alleged impairment(s) is considered under Step 2. Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education, and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.922(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleged disabling impairments asthma, diabetes, high blood pressure, fear of having an asthma attack, and injuries from a car accident. (Exhibit A, p. 37; Petitioner Testimony)

An [REDACTED] 2019, medical report from an overseas doctor stated Petitioner suffers from chronic hypertension, diabetes mellitus, and chronic bronchitis with asthmatic attacks. (Exhibit A, p. 198)

A [REDACTED], 2019, record from Petitioner's primary care doctor indicated this was a new patient visit. In part, the record indicated Petitioner's blood pressure was 140/82, and multiple labs were ordered. However, most of the handwritten portions of the office visit record were not legible. The lab reports from [REDACTED] 2020 were included. In part, Petitioner's A1C was normal. A [REDACTED] 2019, progress report indicated petitioner's blood pressure was 148/82. Again, most of the handwritten portions of the office visit record were not legible. (Exhibit A, pp. 188-196)

On [REDACTED] 2020, Petitioner attended a consultative medical examination. Petitioner's blood pressure was 140/88. The respiratory findings were normal. For example, no rales, rhonchi, or wheezes noted. The bone and joint finding included: Petitioner did not use a cane or aid for support; tandem walk, heel walk, and toe walk were done slowly; able to squat to 70% of the distance and recover and bend to 80% of the distance and recover. The final impressions were asthma, hypertension, diabetes non-insulin dependent, and morbid obesity. Based on the exam, the doctor's opinion was that Petitioner has occasional limitations with standing and walking due the findings, which includes a history of hypertension, history of diabetes, history of obesity with erythema in bilateral lower extremities with slow execution of tandem walk, heel walk, and toe walk, and decreased range of motion in both knees. Pulmonary function testing that same date indicated severe obstruction and low vital capacity possibly due to restriction. However, it was also noted that the results should be interpreted with care because the maneuvers were not reproducible. (Exhibit A, pp. 159-186)

On [REDACTED], 2020, Petitioner attended a consultative mental status examination. Petitioner was not found to have any psychiatric diagnosis. (Exhibit A, pp. 146-155)

Records from Beaumont Heath indicate Petitioner was in a car accident on [REDACTED] 2020. Petitioner was seen in the emergency department and discharged. CT of the cervical spine was normal with no fracture or traumatic subluxation. CT of the head was normal. Chest x-ray was normal without evidence of a suspicious pleural or parenchymal abnormality. Pelvis x-ray did not identify any posttraumatic osseous or articular abnormality. Petitioner's diagnosis was headache. (Exhibit 2, pp. 4-21, 27, and 30)

Two copies of a DHS-49 Medical Examination Report from the orthopedic surgeon's office were submitted. While the medical provider(s) did not date the form when it was signed, the Department received a copy on [REDACTED] 2020. One copy of this form lists a date of last examination of [REDACTED] 2020. The listed diagnoses indicate Petitioner had

recent back and neck injuries, and he injured both wrists while holding the steering wheel in a motor vehicle accident. The medical provider indicated limitations expected to last 90 days including: lifting/carrying less than 10 pounds frequently; standing/walking less than 2 hours in an 8 hour work day; sitting less than 6 hours in an 8 hour work day; and unable to use hands/arms for repetitive reaching and pushing/pulling. It was stated that neck and back injuries were under investigation and treatment with medication and physical therapy. It appears that a second copy of this report was submitted from before a second medical provider's signature was added, as well as the dates Petitioner was first and last examined. (Exhibit 1, pp. 1-3; Exhibit 2, pp. 22-24) Office visit records were submitted, but appear to be incomplete/partial copies and/or records from multiple visits were intermixed. It appears that Petitioner was seen initially a few days after the accident for neck pain, low back pain, dorsalgia, right shoulder pain, left shoulder pain, and stiffness of left shoulder. Physical therapy was ordered. It appears that conservative therapy was to continue after the follow up visit about a month later. (Exhibit 2, pp. 31-42)

Undated medication instructions/warnings/counseling printouts were submitted. (Exhibit 1, pp. 4-6; Exhibit 2, pp. 25-26 and 28-29)

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that he does have some limitations on the ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted, or can be expected to last, continuously for 90 days; therefore, Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms recent diagnosis and treatment of multiple impairments including: asthma; diabetes; high blood pressure; obesity; and neck, back and shoulder injuries from a recent car accident.

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System and 3.00 Respiratory Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. For example, the imaging reports did not show findings that would establish that Petitioner met or equaled the requirements of listings 1.02 major dysfunction of a joint; 1.04 disorders of the spine; or 1.07 fracture of an upper extremity. Similarly, the medical records did not establish that Petitioner met or equalled the requirements of listing 3.03 Asthma. There are no medical records of hospitalizations for asthma. The pulmonary function testing report indicated the results should be interpreted with care because the maneuvers were not reproducible. Accordingly, Petitioner cannot be found disabled, or not disabled at Step 3; therefore, Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered non-exertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, individual's residual functional capacity is compared with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment, along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or

crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The evidence confirms recent diagnosis and treatment of multiple impairments including: asthma; diabetes; high blood pressure; obesity; and neck, back and shoulder injuries from a recent car accident. Petitioner's testimony indicated he can walk 10-20 feet, stand 5 minutes, sit 1-2 hours, and cannot lift and carry a gallon of milk. Petitioner acknowledged that his fear of having an asthma attack is more limiting than the couple of attacks he has per month. Petitioner stated that his continued smoking is to control his weight. Petitioner described headaches, blurry vision, and pain in his neck, shoulder, and back since the car accident. The testimony of Petitioner regarding the severity of his limitations was partially supported by the medical records and is found only partially credible. For example, the imaging reports from the date of the car accident did not show abnormal findings to fully support the severity of Petitioner's reported symptoms and limitations. Similarly, medical records that are not legible, undated, or partial/incomplete copies are given limited weight and cannot fully support the reported severity of Petitioner's limitations.

After review of the entire record it is found, at this point, that Petitioner has a combination of exertional and non-exertional limitations and maintains the residual functional capacity to perform limited light work as defined by 20 CFR 416.967(b) on a sustained basis. Limitations would include: climbing ramps/stairs occasionally; balancing occasionally; stooping occasionally; kneeling occasionally; crouching occasionally; crawling occasionally; avoiding concentrated exposure to extreme cold or heat; avoiding concentrated exposure to humidity; avoiding concentrated exposure to fumes, odors, dusts, gasses, poor ventilation, etc.; and avoiding moderate exposure to hazards and unprotected heights.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is considered. 20 CFR 416.960(b)(3).

Petitioner has a work history of civil engineering. (Exhibit A, pp. 39-40 and 69-76; Petitioner Testimony) As described by Petitioner, a day at his most recent job involved: walking 2 hours; standing 1 hour; sitting 3 hours; climbing ½ hour; kneeling ¼ hour; crouching ¼ hour; no crawling; handling, grabbing, or grasping big objects ½ hour; and writing, typing, or handling small objects 4 hours. The heaviest weight lifted was 20

pounds and the weight frequently lifted was 10 pounds. (Exhibit A, pp. 69-70) In light of the entire record and Petitioner's RFC (see above), it is found that Petitioner is able to perform his past relevant work. Accordingly, the Petitioner is found not disabled, at Step 4.

In this case, the Petitioner is found not disabled for purposes of SDA benefits, as the objective medical evidence does not establish a physical and/or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Petitioner's impairments did not preclude work at the above stated level for at least 90 days.

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.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.

CL/ml



Colleen Lack
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

Tara Roland 82-17
Wayne (Dist 17) County DHHS – via
electronic mail

BSC4 – via electronic mail

L. Karadsheh – via electronic mail

Petitioner

[REDACTED] – via first class mail
[REDACTED] MI [REDACTED]