



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: October 5, 2020
MOAHR Docket No.: 20-004798
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 August 18, 2020. The Petitioner, [REDACTED] appeared on his own behalf. Jessica Slack, Therapist, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by April Nemec, Hearing Facilitator.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-3,475.

ISSUE

Did the Department properly determine 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] 2020, Petitioner applied for SDA. (Exhibit A, pp. 6-10)
2. On May 8, 2020, the Department notified Petitioner that SDA was approved for a household size of two, Petitioner and his wife. It was noted that this was temporary due to the 45-day disability determination waiver as a result of COVID-19. (Exhibit A, pp. 17-18)
3. The SDA approval for Petitioner's wife was based on the April 15, 2020, DHS-54A Medical Needs form stating spouse was needed in the home to provide care. (Exhibit A, pp. 3 and 15-16)

4. On June 25, 2020, the Medical Review Team/Disability Determination Services (MRT/DDS) found Petitioner not disabled. (Exhibit A, pp. 29-35)
5. On July 1, 2020, the Department notified Petitioner that as of August 1, 2020, SDA was only approved for a household of one, his wife. (Exhibit A, pp. 19-21)
6. On July 6, 2020, the Department received Petitioner's timely written request for hearing. (Exhibit A, pp. 3 and 5)
7. Petitioner alleged disabling impairments including: bipolar disorder, chronic anxiety, depression, borderline personality disorder, panic disorder, mixed social phobias, lumbar disc disorder, bulging disks, back pain, gout, hypertension, diabetes, breathing problems, and bad feet. (Exhibit A, pp. 15, 37, 56, and 80; Petitioner Testimony)
8. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED] 1969, birth date; was [REDACTED] in height; and weighed [REDACTED] pounds. (Petitioner Testimony)
9. Petitioner has a bachelor's degree and has a work history of several part time jobs including clerk/answering phones, job coach, and teaching. (Exhibit A, p. 83; 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 including: bipolar disorder, chronic anxiety, depression, borderline personality disorder, mixed social phobias, lumbar disc disorder, bulging disks, back pain, gout, hypertension, diabetes, breathing problems, and bad feet. (Exhibit A, pp. 15, 37, 56, and 80; Petitioner Testimony) While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

A [REDACTED] 2019, record from Genesee Health System documents active diagnoses of bipolar II disorder, social anxiety disorder, generalized anxiety disorder, and borderline personality disorder. Petitioner was noted to have high anxiety with even opening the mail. Petitioner was also worried about groups in Dialectical Behavioral Therapy (DBT) but was trying and support was being provided. (Exhibit A, pp. 382-394)

[REDACTED] and [REDACTED] 2020 records from Dr. Sherman-Gach indicate diagnosis and treatment of multiple conditions, including type 2 diabetes with long term insulin use, dyspnea, chronic gout, disc disorder of lumbar region, generalized anxiety disorder, hyperlipidemia, and hypertension. (Exhibit A, pp. 2984-2998)

A [REDACTED] 2020, record from Genesee Health System, in part, documents that Petitioner was in bed some days for 12 hours at that time. (Exhibit A, pp. 2905-2915)

An [REDACTED] 2020, record from Genesee Health System, in part, documents that Petitioner was waiting to start DBT and had concerns about the group setting. (Exhibit A, pp. 2892-2904)

An [REDACTED] 2020, Medical Needs form completed by Dr. Sherman-Gach lists diagnoses of lumbar disc disease, bipolar disorder, and chronic anxiety. The doctor marked that Petitioner would be unable to work for his lifetime and his spouse was needed in the home to provide care. (Exhibit A, pp. 15-16)

A [REDACTED] 2020, record from Genesee Lung Assoc documented dyspnea but the cause was not identified yet. Petitioner was noted to have a history of severe sleep apnea and hypopnea. Review of memory chips indicated he was complaint with CPAP. It was noted that anxiety could be contributory. (Exhibit A. pp. 2960-2962)

A [REDACTED], 2020, record from Genesee Health System documents that Petitioner recently re-started DBT and was concerned about his ability to participate in the group portion. It was also noted that petitioner cannot get through a store due to anxiety and will abandon what he is doing. Petitioner's memory was noted to be poor. This record also indicates that when Petitioner tired going back to work he ended up suicidal on more than one occasion. (Exhibit A, pp. 2885-2891)

Petitioner's Therapist testified that she worked with Petitioner from [REDACTED] 2019 through [REDACTED] 2020. As part of the program, Petitioner was to attend individual therapy and a group skills training course. Petitioner was terminated from the program because he only completed 9 of 28 classes due to his symptoms and struggles with anxiety. Petitioner has been back again since [REDACTED] 2020. Petitioner is overwhelmed by debilitating anxiety and panic attacks. Petitioner also struggles with depression, trauma, sleep disturbances, memory deficits, focus, concentration, suicidal ideations, self-harm, and social anxiety. Petitioner has difficulty leaving his home, even for attending medical appointments. There was a time that Petitioner could not open mail due to anxiety. Petitioner has also had difficulty with daily hygiene/self-care/activities of daily living. Petitioner's therapist has witnessed Petitioner having panic attacks and the difficulties recovering from them. Petitioner's therapist stated that Petitioner would not be successful in any environment where he is around others in a confined setting for more than a few minutes, let alone a couple of hours. Even the larger room the group classes were held in was problematic. They tried adaptations with the group courses, and even one on one skills training instead of the group setting, but this was still really difficult for Petitioner. Further, Petitioner would not be successful with typical work functions, would often miss time/leave early. Petitioner would have difficulty staying on task, even for simple repetitive tasks. (Therapist Testimony)

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: diabetes, lumbar disc disease, hypertension, dyspnea, chronic gout, bipolar II disorder, social anxiety disorder, generalized anxiety disorder, and borderline personality disorder.

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System and 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. For example, the medical records did not establish that Petitioner met or equaled the requirements of listing 1.04 disorders of the spine. Further, the medical records did not establish that Petitioner met or equaled the requirements for listings 12.04, 12.06, or 12.08. 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, a comparison of the individual's residual functional capacity 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: diabetes, lumbar disc disease, hypertension, dyspnea, chronic gout, bipolar II disorder, social anxiety disorder, generalized anxiety disorder, and borderline personality disorder. Petitioner's testimony indicated he can walk 5 minutes, stand 5-10 minutes, sit 15 minutes, and would have difficulty lifting and carrying a gallon of milk. The testimony of Petitioner and his Therapist regarding the limitations from the mental health impairments, was supported by the medical records and is found credible.

After review of the entire record it is found, at this point, that Petitioner has a combination of exertional and non-exertional limitations and does not maintain the residual functional capacity to perform sedentary work as defined by 20 CFR 416.967(a) on a sustained basis.

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 several part time jobs including clerk/answering phones, job coach, and teaching. (Exhibit A, p. 83; Petitioner Testimony) In light of the entire record and Petitioner's RFC (see above), it is found that Petitioner is not able to perform his past relevant work. Accordingly, the Petitioner cannot be found disabled, or not disabled, at Step 4; therefore, the Petitioner's eligibility is considered under Step 5. 20 CFR 416.905(a).

In Step 5, an assessment of Petitioner's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Petitioner was ■ years old and, thus, considered to be closely approaching advanced age for disability purposes. Petitioner completed a bachelor's degree and has a work history of several part time jobs including clerk/answering phones, job coach, and teaching. (Exhibit A, p. 83; Petitioner Testimony) Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Petitioner to the Department to present proof that the Petitioner has the residual capacity to substantial

gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

The evidence confirms recent diagnosis and treatment of multiple impairments including: lumbar disc disease, bipolar II disorder, social anxiety disorder, generalized anxiety disorder, and borderline personality disorder. As noted above, Petitioner does not maintain the residual functional capacity to perform sedentary work as defined by 20 CFR 416.967(a) on a sustained basis.

After review of the entire record, and in consideration of the Petitioner's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, Petitioner is found disabled at Step 5.

In this case, the Petitioner is found disabled for purposes SDA benefits as the objective medical evidence establishes 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 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 disabled for purposes of the SDA benefit program.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Initiate a review of the application dated [REDACTED] 2020, for SDA, if not done previously, to determine Petitioner's non-medical eligibility. The Department shall

inform Petitioner of the determination in writing. A review of this case shall be set for February 2021.

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

Tamara Morris
Genesee (Union Street) County DHHS –
via electronic mail

BSC2 – via electronic mail

L. Karadsheh – via electronic mail

Petitioner

██████████ – via first class mail
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██████ MI ████████