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

Date Mailed: October 23, 2020
MOAHR Docket No.: 20-005488
Agency No.: [REDACTED]
Petitioner: [REDACTED] [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 September 23, 2020, from Lansing, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Christin Gougeon, Eligibility Specialist.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the 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:

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] [REDACTED] 2020, the Petitioner applied for SDA.
2. On May 27, 2020, the Medical Review Team (MRT) denied the Petitioner's application for SDA is denied per BEM 261 because the nature and severity of the Petitioner's impairments would not preclude work activity at the above stated level for 90 days and is capable of performing other work under Medical Vocation Grid Rule 201.21 per 20 CFR 416.920(f).
3. On June 2, 2020, the Department Caseworker sent the Petitioner a notice that his application was denied.

4. On August 18, 2020, the Department received a hearing request from the Petitioner, contesting the Department's negative action.
5. The Petitioner is a [REDACTED]-year-old man whose date of birth is [REDACTED] [REDACTED] 1972. The Petitioner is [REDACTED] to [REDACTED]" tall and weighs [REDACTED] pounds. The Petitioner completed High School. The Petitioner can read and write but cannot perform basic math besides addition. The Petitioner was last employed as a welder at the heavy level on April 7, 2017, assembly worker, welder fabricator, general assembly worker, and laborer.
6. The Petitioner's alleged impairments are tumor in sinus, left knee arthritis, degenerative disc disease (DDD) in back and neck, broken left shoulder from a bicycle accident 10 years ago resulting in two surgeries, depression, PTSD, and social anxiety.
7. The Petitioner was seen by his therapist at Community Mental Health for Central Michigan on March 26, 2020. He started therapy on February 14, 2020. He participated in the Covid-19 audio session. He was negative for Covid. The session focused on how he was managing the stay-at-home order as he is staying in a Sober House. He reported that he has his own room and will spend a lot of time in his room when everyone is there. He continues to follow through with contacting community resources to obtain housing. Department Exhibit 1.
8. On March 16, 2020, the Petitioner was seen by his treating orthopedic surgeon. The assessment was incomplete rotator cuff tear or rupture of left shoulder not specified as traumatic where a MRI was recommended and follow-up for test results. He has an impingement syndrome of the right shoulder where activities are allowed as pain permits. An MRI will be considered for the right shoulder in the future. He was seen for a follow-up and bilateral shoulder pain. Last time he was here, the treating surgeon confirmed that his clavicle nonunion appeared clinically and radiographically united. The Petitioner still however has pain with activity in the left shoulder. He reported his port stiffness. He also reported clicking and catching. The Petitioner also has pain and limitations with the right shoulder. No neurovascular signs going down the arms or numbness and tingling in the hands. Good grip strength bilateral. Bilateral radial pulse. Left clavicle walking well healed. Rotator cuff strength is grossly intact with some give way. Left shoulder range of motion abduction 90° for elevation 90° internal rotator greater trochanter. Right shoulder active range of motion for elevation 120° abduction 90° internal rotation to sacrum. Department Exhibit 1.
9. On August 14, 2019, the Petitioner was seen by his treating urologist at AuSable Urology. His urologist reviewed the images from his recent CAT scan and no ureter stone was detected. His creatinine is normal. The treating urologist suspected chronic, anatomical UPI obstruction. A renal scan was ordered as previously planned. His chronic pain was likely due to muscle spasm. His treating urologist recommended rest, ice, and over-the-counter pain medication when

necessary, one pack, gentle stretching. He was seen for a follow-up for a kidney stone from the emergency room on July 19, 2019. He had an essentially normal physical examination. A stone in the inferior pole of the right kidney measures 8 mm. There is prominence of the renal pelvis bilaterally. No obstructing stone was identified. Department Exhibit 1.

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, the Petitioner was seen by his therapist at Community Mental Health for Central Michigan on March 26, 2020. He started therapy on February 14, 2020. He participated in the Covid-19 audio session. He was negative for Covid. The session focused on how he was managing the stay-at-home order as he is staying in a Sober House. He reported that he has his own room and will spend a lot of time in his room when everyone is there. He continues to follow through with contacting community resources to obtain housing. Department Exhibit 1.

On March 16, 2020, the Petitioner was seen by his treating orthopedic surgeon. The assessment was incomplete rotator cuff tear or rupture of left shoulder not specified as traumatic where an MRI was recommended and follow-up for test results. He has an impingement syndrome of the right shoulder where activities are allowed as pain permits. An MRI will be considered for the right shoulder in the future. He was seen for a follow-up and bilateral shoulder pain. Last time he was here, the treating surgeon confirmed that his clavicle nonunion appeared clinically and radiographically united. The Petitioner still however has pain with activity in the left shoulder. He reported his port stiffness. He also reported clicking and catching. The Petitioner also has pain and limitations with the right shoulder. No neurovascular signs going down the arms or numbness and tingling in the hands. Good grip strength bilateral. Bilateral radial pulse. Left clavicle walking well healed. Rotator cuff strength is grossly intact with some give way. Left shoulder range of motion abduction 90° for elevation 90° internal rotator greater trochanter. Right shoulder active range of motion for elevation 120° abduction 90° internal rotation to sacrum. Department Exhibit 1.

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The Administrative Law Judge finds that the Petitioner should be able to perform at least light work. He does have some physical limitations with his shoulders, back, and neck. He is in therapy at CMH, but not taking medication for his mental impairments. There was no avid evidence of a severe thought disorder or risk factors so he will be limited to simple, unskilled, light work.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the Petitioner testified that he does

perform some of his daily living activities. The Petitioner does feel that his condition has worsened because of his back and kidney stones. The Petitioner stated that he does have mental impairments where he is not taking medication but is in therapy at the Recovery Network (CMH). The Petitioner smokes a pack of cigarettes a day. He drinks beer. He stopped using illegal and illicit drugs of crack cocaine where he is quitting again. The Petitioner did not feel there was any work he could do.

At Step 4, this Administrative Law Judge finds that the Petitioner has established that he cannot perform any of his prior work. He was previously employed as a welder at the heavy level on April 7, 2017, assembly worker, welder fabricator, general assembly worker, and laborer. The Petitioner is in therapy but not taking medication for his mental impairments. He has issues with his back and neck from DDD, arthritis in his left knee, and a repaired left shoulder. He does seem to have physical limitation but should be able to perform at least light work. Therefore, the Petitioner is not disqualified from receiving disability at Step 4. The 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 the 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. The 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, the Petitioner testified that he has depression, PTSD, and social anxiety. The Petitioner is not taking medication, but 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, 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, the Petitioner can meet the physical requirements of medium 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, skilled, and semi-

skilled work history, who is limited to light work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.21. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression, PTSD, and social anxiety like. 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 the Petitioner's mental and physical impairments, the Administrative Law Judge finds that the Petitioner could perform simple, unskilled, light work and that the 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. The Petitioner could perform simple, unskilled, light work and that the Petitioner does not meet the definition of disabled under the SDA program.

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



CF/nr

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

Jessica Tokar
1509 Washington, Ste. A
PO BOX 1609
Midland, MI
48641

Midland County DHHS- via electronic mail

BSC2- via electronic mail

L. Brewer-Walraven- via electronic mail

Petitioner

██████████ - via first class mail

██

██████████, MI

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