



GRETCHEN WHITMER
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 19, 2020
MOAHR Docket No.: 20-005655
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 7, 2020, from Lansing, Michigan. The Petitioner was represented by Petitioner, [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Kimberly Reed (Lead Worker).

Petitioner's Exhibit 1, pages 1-4 and Respondent's Exhibit A, pages 1-260 were admitted as evidence.

ISSUE

Did the Department properly determine 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:

- (1) On [REDACTED], 2020, Petitioner applied for State Disability Assistance based on disability.
- (2) In March and April 2020, Petitioner received State disability Assistance due to the pandemic waiver.
- (3) Petitioner also receives Medical Assistance (MA) benefits and Food Assistance Program (FAP) benefits.
- (4) On August 13, 2020, the Medical Review Team denied Petitioner's application stating that Petitioner could perform other work.

- (5) On August 14, 2020, the Department caseworker sent Petitioner notice that his SDA review application was denied.
- (6) On August 25, 2020, Petitioner filed a request for a hearing to contest the Department's negative action.
- (7) On September 14, 2020, the Michigan Office of Administrative Hearings and Rules received the Hearing summary and attached documentation.
- (8) On October 7, 2020, the hearing was held.
- (9) Petitioner is a 41-year-old man, whose date of birth is [REDACTED], 1979. He is 6'4" tall and weighs 275 lbs. Petitioner has a bachelor's degree in Biomedical Sciences and has attended graduate school.
- (10) Petitioner has worked as a Teacher Assistant, a Corrections Officer, and a farmer on his parent's farm.
- (11) Petitioner does have a driver's license but gets rides from his mother. He drives two times per month to the store (20-30 minutes).
- (12) Petitioner alleges as disabling impairments: Post Traumatic Stress disorder; insomnia, anxiety, diffuse pain and weakness of lower extremities, bulging discs. L5-S1 – Severe loss of disc height with degenerative endplate changes. Mild posterior disc bulge, with a superimposed small, focal central postular annular fissure. Moderate bilateral degenerative facet hypertrophy. Moderate bilateral neural foraminal stenosis. No significant canal stenosis. August 23, 2017, MRI (Respondent's Exhibit A page 101)

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. 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 is 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.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education, and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education, and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);

- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

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 clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913.

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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 your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends, and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Petitioner is not engaged in substantial gainful activity. Petitioner is not disqualified from receiving disability at Step 1.

Petitioner testified on the record that he lives with his parents who currently support him. He occasionally drives. He cooks in the microwave. He grocery shops twice per month. He leans on the cart to shop. Petitioner has no hobbies and does no chores. His hands and arms are fine. He has pain in his legs and feet. He lays in bed 95% of his time. His mom makes him get up to exercise. He has Post Traumatic Stress Disorder from working in the prison and has insomnia. He takes Hydrocodone, Aleve, and Tylenol Arthritis for pain. His pain is a 9 of 10 without medication and a 6 of 10 with medication. He can walk 50 feet with a cane (which is not prescribed by a doctor.) Petitioner alleged that he could stand for 3-5 minutes at a time. He can shower and dress himself but does need help with his shoes and socks. (Hearing Testimony)

This Administrative Law Judge did consider the entire record in making this decision. Objective medical evidence indicates:

A July 6, 2020, Physical Therapy Discharge Summary indicates that Petitioner is diagnosed with low back pain, radiculopathy, lumbar region and Intervertebral disc disorders with radiculopathy, lumbar region. The patient is able to perform exercises with difficulty due to pain. The patient's progress towards goals is good and his tolerance to treatment is good. The patient's discharge prognosis is good. Bilateral lower extremity pain abolished with shift correction today but increase to 2/10 with weight bearing walking. Thoracic extension decreased rib and thoracic pain. Patient to use LUE for walking to normalize gait right ankle. Right plantarflexion weak but not worsening since onset. Patient will be continuing PT at a clinic close to home where he can attend aquatic PT. (Department's Exhibit A page 101; Petitioner's Exhibit 1 pages 1-14)

A June 29, 2020, Daily Notice Report indicates that Petitioner had improved right lower extremity symptoms with side lying rot, but the last three days returned to having severe pain right lower extremity and thoracic spine. Patient had a lateral shift to the right and weight on LLE but after shift correction had improved weight bearing and gait, especially with use of cane in left hand. (Department's Exhibit A Page 98)

A June 12, 2020, MRI of the Spine indicates: Spinal stenosis, lumbar region with neurogenic claudication; radiculopathy, lumbosacral region; Other spondylosis with myelopathy, cervical region; other intervertebral dis degeneration, lumbar region (Comparison November 23, 2017) Findings: Conus medullaris is normal in signal and morphology terminating at L2. Vertebral heights and alignment are maintained. Mild-to-moderate L5-S1 spondylosis. Posterior elements are intact, facets patent. Vertebral heights and alignment are maintained. L1-L5 unremarkable. L5-S1: small chronic central disc protrusion. No incidental paraspinal abnormality demonstrated. Impression: Mild to moderate Spondylosis. No significant interval change. (Department's Exhibit A page 85)

A February 26, 2020, medical report indicates that Petitioner presented with back pain. It is located diffusely. The complaint moderately limits activities. The frequency of episodes is constant. It is radiating down both legs. Important triggers include bending, lifting, twisting, activity, exertion and position change. The symptom is alleviated by rest laying down with both legs elevated and medication hydrocodone and Motrin. Mechanism of injury is unknown. Pertinent findings include extremity weakness, sleep disturbance. Weight 321 lbs. Height 6'4". BMI 39.1. Temperature 97 F. Blood pressure 130/82. (Page 122)

A September 5, 2017, medical examination report indicates that Petitioner weighed 270 lbs. and was 6'4" tall. His BMI was 32.87 and his temperature was 96.7° F. His heart rate was 67 beats per minute sitting and regular. His blood pressure was 118/85 on the left arm sitting. His pulse oximetry was 98% on room air. His general appearance was no acute distress, well developed and well nourished. His pupils were equal, round, reactive to light accommodation. Overall mouth, tongue and pharynx normal. The neck overall size had no masses and all corrected bruits. Respiration was normal to percussion. Breath signs were clear bilaterally and no rales, rhonchi or wheezes. The heart had normal rate and a regular rhythm. S1 and S2 were normal. Petitioner had pain and weakness of lower extremities. (Page 108). Symmetric muscle bulk and normal muscle tone bilaterally in the upper and lower extremities. No pronator drift. No adventitious movements or tremors (Page 109) Cranial nerves 2 through 12 are intact. Overall a deep tendon reflexes were intact. Petitioner normal motor functions. He had normal sensory functions. Not a candidate for surgical intervention. (Page 110)

A June 23, 2017, L5-S1 – Severe loss of disc height with degenerative endplate changes. Mild posterior disc bulge, with a superimposed small, focal central postural annular fissure. Moderate bilateral degenerative facet hypertrophy. Moderate bilateral neural foraminal stenosis. No significant canal stenosis. (Page 115)

A June 23, 2017, MRI of the thoracic and lumbar spine indicates: the thoracic spine is anatomically aligned. There is desiccation of the T7-T8 and T8-T9 discs. There are mild fatty degenerative marrow changes at the inferior T7-T8, and T9 endplate. (Page 112)

At Step 2, Petitioner has the burden of proof of establishing that he currently has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that Petitioner suffers a severely restrictive physical or mental impairment.

This Administrative Law Judge finds that Petitioner has reports of pain in multiple areas of his body; however, there are insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the Petitioner. There are insufficient laboratory or X-ray findings listed in the file. The clinical impression is that Petitioner is stable. There is no medical finding that Petitioner has any muscle atrophy or trauma, abnormality or injury that is consistent with a **deteriorating** condition. In short, Petitioner has restricted himself from tasks associated with occupational functioning based upon

his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Petitioner has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that Petitioner has a continued severely restrictive physical impairment.

Petitioner alleges the following disabling mental impairments: post-traumatic stress disorder.

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).

There is insufficient objective medical/psychiatric evidence in the record indicating Petitioner suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was oriented to time, person, and place, during the hearing. Petitioner was able to answer all the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that Petitioner suffers a severely restrictive mental impairment.

Petitioner was receiving SDA because of the COVID-19 emergency, rather than meeting medical criteria. However, this Administrative Law Judge will consider Petitioner's condition under the medical improvement standard, also.

In general, Petitioner has the responsibility to prove that he is disabled. Petitioner's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only Petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the Petitioner has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which **current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to**

the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the Petitioner is not engaged in substantial gainful activity and has not worked since 2005.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii).

Petitioner does not have such a medical impairment. Petitioner does not have nerve root compression or impingement pursuant to social security listing 1.04 Disorders of the Spine. He is not diagnosed with having the inability to ambulate effectively, nor has current medical documentation established that he has insufficient lower extremity functioning. Petitioner has some limitations. He can use handheld devices for assistance with ambulation. Petitioner has no limitation in his upper extremities. There is no established atrophy or associated muscle weakness. Petitioner's injury or impairment does not meet a social security listing.

At Step 2, Petitioner's impairments do not equal or meet the severity of an impairment listed in Appendix 1.

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the Petitioner was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Petitioner's impairment(s).

If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the Petitioner's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

In the instant case, this Administrative Law Judge finds that Petitioner does have medical improvement, and the medical improvement is related to the Petitioner's ability to perform substantial gainful activity. Petitioner has not established that he lacks residual functional capacity at Step 5.

If there is a finding of medical improvement related to Petitioner's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the Petitioner's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a Petitioner's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds Petitioner can perform at least sedentary or light work even with his impairments. His impairments are no longer as severe as they once were.

In the seventh step of the sequential evaluation, the trier of fact is to assess a Petitioner's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the Petitioner's current residual functional capacity based on all current impairments and consider whether the Petitioner can still do work he has done in the past. In this case, this Administrative Law Judge finds that Petitioner could probably not perform past work as a corrections officer based upon his back injury, but Petitioner attained his bachelor's degree after his alleged injury to his spine. He can perform other work. A February 14, 2018, medical source opinion indicates that Petitioner would need a job that permits shifting positions at will from sitting, standing or walking and requires periods of walking around. Petitioner does retain bilateral manual hand dexterity.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the Petitioner can do any other work, given the Petitioner's residual function capacity and Petitioner's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii).

In this case, based upon the Petitioner's vocational profile of **a person aged (age 41), with a bachelor's degree and an unskilled work history who is limited to sedentary work is not considered disabled**. SDA is denied using Vocational Rule 203.28 as a guide. Petitioner can perform other work in the forms of sedentary work per 20 CFR 416.967(a): Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting articles like files, ledgers, and small tools. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

This Administrative Law Judge finds that Petitioner does have medical improvement in this case and the Department has established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel the State Disability Assistance benefits based upon medical improvement. It should be noted that the Social Security Administration has denied Petitioner's application for disability at the hearing level and the case is currently pending at Appeals Council. (Respondent's Exhibit A Pages 15-24)

There is insufficient medical information on the record to establish that there has been a worsening of Petitioner's condition. Petitioner goes to the Doctor once per year. The most recent medical documentation indicates that Petitioner is normal in all areas except for his back injury. He maintains his pain with prescription medication. He has no muscle atrophy or documented weakness in his lower extremities. Petitioner does

maintain his own personal needs. He shops with his mother. He can drive. There is insufficient current medical documentation provided at the hearing which would support a determination of continued disability.

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the Petitioner does not meet the definition of disabled under the Medical Assistance program and because the evidence of record does not establish that Petitioner is unable to work for a period exceeding 90 days, the Petitioner does not meet the disability criteria for State Disability Assistance benefits either.

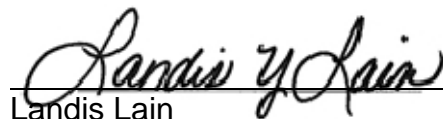
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Petitioner was not or no longer eligible to receive State Disability Assistance based upon disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Petitioner has medical improvement and that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied Petitioner's application for State Disability Assistance benefits. The Petitioner should be able to perform a wide range of sedentary work even with his impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is AFFIRMED based upon the substantive information contained in the file.

LL/ml



Landis Lain
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

Kimberly Reed
Montcalm County DHHS – via electronic
mail

BSC3 – via electronic mail

L. Karadsheh – via electronic mail

Petitioner

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