



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: March 17, 2021  
MOAHR Docket No.: 20-006438  
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 December 16, 2020. The Petitioner was represented by [REDACTED] Authorized Hearing Representative (AHR). [REDACTED] the Petitioner, appeared and testified. The Department of Health and Human Services (Department) was represented by Kristina Warner, Eligibility Specialist (ES).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as marked, Exhibits A pp. 1-799. The hearing record was left open for additional medical evidence. However, the Department instead provided documentation on a more recent Social Security Administration (SSA) determination finding Petitioner disabled as of December 4, 2020, which has been received and admitted as Exhibit 1, pp. 1-30; and documentation of the Department's corresponding approval of Petitioner's application for benefits as of December 1, 2020, which has been received and admitted as Exhibit 2, pp. 1-4.

**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 and reported that he was disabled. (Exhibit A, p. 27-32, 762-767)
2. On September 11, 2020, the Medical Review Team/Disability Determination Services (MRT/DDS) found Petitioner not disabled. (Exhibit A, pp. 6-12 and 292-298)
3. On September 17, 2020, a Notice of Case Action was issued informing Petitioner that SDA was denied. (Exhibit A, pp. 57-61 and 791-796)
4. On October 2, 2020, the Department received Petitioner's timely written request for hearing. (Exhibit A, pp. 3-4)
5. Petitioner alleged disabling impairments including: herniated disks, back injuries with two surgeries, arthritis, high blood pressure, diverticulitis, shoulder injury, frequent headaches, depression, severe acid reflux, severe heart burn, and anxiety. (Exhibit A, p. 77; Petitioner Testimony)
6. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED] 1970, birth date; was [REDACTED]" in height; and weighed [REDACTED] pounds. (Exhibit A, pp. 76-77; Petitioner Testimony)
7. Petitioner completed the 12<sup>th</sup> grade and worked as a construction worker, factory employee, and press operator. (Exhibit A, p. 80; Exhibit 1, p. 24; Petitioner Testimony)
8. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.
9. On January 14, 2021, an SSA Reconsideration determination found Petitioner disabled as of December 4, 2020. (Exhibit 1, pp. 9-29)
10. On January 19, 2021, the Department issued a Benefit Notice approving SDA benefits for Petitioner as of December 1, 2020. (Exhibit 2, pp. 1-4)

### **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 to 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: herniated disks, back injuries with two surgeries, arthritis, high blood pressure, diverticulitis, shoulder injury, frequent headaches, depression, severe acid reflux, severe heart burn, and anxiety. (Exhibit A, p. 77; 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.

Petitioner was hospitalized [REDACTED] 2020 for a primary diagnosis of left sided numbness. Secondary diagnoses included essential hypertension, chronic midline low back pain without sciatica, GERD without esophagitis, tobacco dependence, marijuana dependence, alcohol dependence, non-compliance with treatment, hypophosphatemia, prediabetes, and chronic left shoulder pain. A [REDACTED] 2020, MRI of the brain showed no intracranial abnormality and small cerebellar developmental venous anomaly. A [REDACTED] 2020, MRI of the lumbar spine showed degenerative spondylosis at multiple levels. A [REDACTED] 2020, MRI of the cervical spine showed multilevel degenerative changes. (Exhibit A, pp. 118-121, 130-134, 146-155, 157-221, 254-262, 280-285, 314-343, 377-417, 427-428, 434-463, 497-537, 547-548, 616-620, 620-624, and 644-648)

[REDACTED] 2020, records from [REDACTED] documented diagnosis and treatment of multiple conditions including: GERD; severe back pain/issue with multiple surgeries; depression/anxiety; pain across abdomen on and off; and arthritis. (Exhibit A, pp. 101-108 and 124-127)

On July 3, 2020, [REDACTED] completed a DHS-54A Medical Needs form documenting diagnoses of chronic low back ache, GERDS, and prediabetes. The doctor marked that Petitioner was unable to work and noted he was referred to a back specialist for management and work status determination. (Exhibit A, pp. 65-66, 70-71, and 122-123)

Petitioner was hospitalized [REDACTED] 2020 for diverticulitis of intestine with perforation without abscess or bleeding. A CT of the abdomen and pelvis showed: findings concerning for sigmoid colonic diverticulitis with focal perforation versus diverticular perforation mild pneumoperitoneum; thickening of urinary bladder wall with surrounding inflammatory changes; no hydronephrosis; and mild thickening and surrounding inflammatory changes involving the distal ileum within the lower abdomen/upper pelvic region may be related to reactive inflammatory changes from adjacent sigmoid colonic diverticulitis. (Exhibit A, pp. 88-93, 109-117, 134-143, 155-157, 221-252, 254-258, 263-280, 354-377, 426-427, 430, 474-497, 546-547, 550-551, 616-620, and 652-750)

On [REDACTED], 2020, Petitioner was seen by [REDACTED] for lower back pain as well as bilateral lower extremity radicular pain. It was noted that Petitioner was seen by another doctor in [REDACTED] 2020 who did not recommend any neurosurgical intervention at that time. At the time of this visit, this doctor noted that Petitioner's symptoms were explained by the MRI of the lumbar spine, which showed degenerative lumbar spine disease worse at L5-S1 with right sided facet disease and significant right sided stenosis. Petitioner's impairment was amenable to surgical intervention, specifically right redo L5-S1 transforaminal lumbar interbody fusion screw fixation. Petitioner declined surgical option. Petitioner was referred to a pain clinic. (Exhibit A, pp. 649-652)

On [REDACTED] 2020, Petitioner was seen by [REDACTED] for back pain. It was noted that Petitioner's chronic pain was secondary to failed back surgery syndrome and lumbar radiculopathy. Petitioner continued to decline surgery revision and the plan was to try caudal epidural steroid injection. (Exhibit A, pp. 625-637)

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: hypertension, chronic low back pain, bilateral lower extremity pain, GERD, left shoulder pain, arthritis, prediabetes, diverticulitis, depression, and anxiety.

Based on the objective medical evidence, considered listings included: 1.04 Spine Disorder, 4.02 Chronic Heart Failure, 5.00 Digestive 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. 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: hypertension, chronic low back pain, bilateral lower extremity pain, GERD, left shoulder pain, arthritis, prediabetes, diverticulitis, depression, and anxiety. Petitioner's testimony indicated he can walk 2-3 minutes, stand 5 minutes, sit 3 minutes, and lift/carry a gallon of milk. Petitioner testified he mostly lays down during the day. Petitioner described pain and tingling in his back and lower extremities, numbness and tingling in his arms, severe acid reflux and heart burn, frequent and urgent need to use the bathroom, loss of interest, isolating, trouble sleeping, and memory problems. (Petitioner Testimony) Petitioner's testimony regarding his impairments and the severity of his limitations was partially supported by the medical records and is found partially credible. For example, the medical records support a that Petitioner has chronic pain secondary to failed back surgery syndrome and lumbar radiculopathy, but do not support the full extent of the physical limitations reported by Petitioner.

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 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 past relevant work history including construction worker, factory employee, and press operator. These were considered medium and heavy level work. (Exhibit A, p. 80; Exhibit 1, p. 24; 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 the hearing, Petitioner was 50 years old and, thus, considered to be closely approaching advanced age for disability purposes. Petitioner completed the 12<sup>th</sup> grade and has a past relevant work history including construction worker, factory employee, and press operator. These were considered medium and heavy level work. The skills from Petitioner's past work are not transferable. (Exhibit A, p. 80; Exhibit 1, p. 24; 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).

As noted above, Petitioner has a combination of exertional and non-exertional limitations and maintains 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 Petitioner's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rules 201.14 and 201.21, Petitioner is found not disabled at Step 5 until [REDACTED] 2020, at which time he attained the next higher age category and is found disabled. While there are some indications of substance use in the medical records, substance abuse is not material to the determination.

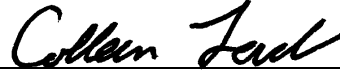
In this case, the Petitioner is found not disabled for purposes of SDA benefits prior to [REDACTED] 2020, as the objective medical evidence does not establish a physical and/or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Petitioner's impairments did not preclude work at the above stated level for at least 90 days prior to [REDACTED] 2020.

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 prior to [REDACTED] 2020.

**DECISION AND ORDER**

Accordingly, the Department's determination is AFFIRMED.

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Colleen Lack  
Administrative Law Judge  
for Elizabeth Hertel, Director  
Department of Health and Human Services

