[redacted]

Date Mailed: April 9, 2021
MOAHR Docket No.: 20-008626
Agency No.: [redacted]
Petitioner: [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 March 9, 2021, from Lansing, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Joshua Caldwell, Eligibility Specialist and Tamia McGlothin, Assistance Payments Supervisor.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) program?

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 MA and retroactive MA to November 2019.

2. Petitioner was found eligible for MA Healthy Michigan Program (HMP) with no break in service since applying.

3. On April 23, 2020, the Disability Determination Services (DDS) denied Petitioner's application for MA because Petitioner is capable of performing his past relevant work Medical/Vocational Grid Rule 202.20 per 20 CFR 416.920(f).

4. On April 28, 2020, the Department Caseworker sent Petitioner a notice that his application was denied.

5. On May 11, 2020, the Department received a hearing request from the Petitioner, contesting the Department's negative action.

6. Petitioner is a 39-year-old man whose date of birth is June 24, 1981. He is 5' 11" tall and weighs 220 pounds. Petitioner completed high school and a Bachelor of Science degree. He can read and write and do basic math. Petitioner was last employed as a teacher until June 2014. He was also employed as a substitute teacher and general administrator for an insurance company in June 2002.

7. Petitioner's alleged impairments are insomnia, headaches, muscular pain, degenerative disc disease (DDD), anxiety, depression, fibromyalgia, and small fiber neuropathy.

On May 24, 2018, Petitioner was seen by his specialist at the Neurology at [redacted]. His chief complaints were allergic rhinitis, acne, GERD without esophagitis, and primary fibromyalgia syndrome. He was to follow with pain medicine for his chronic pain and sleep issues. There was no neurological basis for his current conditions. Department Exhibit 3, pg. 115-117.

On May 9, 2018, Petitioner was seen by his specialist at the [redacted]. He had an essentially normal physical examination. His MRIs showed mild cervical degenerative change and mild lumbar DDD. He seemed to be doing better than his last visit. His medications were reviewed and adjusted as medically necessary. Petitioner was given a new prescription for a tens unit and for physical therapy. He was a moderate opioid risk. Department Exhibit 2, pg. 1-4.

On January 2, 2018, Petitioner was seen by his specialist at the Neurology at [redacted]. His chief complaints were allergic rhinitis, acne, and primary fibromyalgia syndrome. An assessment was made for neuralgia. His medications were reviewed and adjusted as medically necessary. A skin biopsy was taken, and the Petitioner tolerated the procedure well. Department Exhibit 3, pg. 122-125.

On November 9, 2017, the Petitioner was seen by his specialist at the Neurology at [redacted]. He had an essentially normal physical examination. He was diagnosed with small fiber neuropathy. It was recommended that he follow up with the Pain Clinic. Department Exhibit 3, pg. 125-130.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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 medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

(a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

(c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown using medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

(1) The nature and limiting effects of your impairment(s) for any period in question;

(2) The probable duration of your impairment; and

(3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis, and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is

internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping, or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

Step 1

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, Petitioner is not engaged in substantial gainful activity and has not worked since June 2014. Therefore, Petitioner is not disqualified from receiving disability at Step 1.

Step 2

Secondly, to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities mean, 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).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity

requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the Administrative Law Judge findings:

On May 24, 2018, Petitioner was seen by his specialist at the Neurology at [redacted]. His chief complaints were allergic rhinitis, acne, GERD without esophagitis, and primary fibromyalgia syndrome. He was to follow with pain medicine for his chronic pain and sleep issues. There was no neurological basis for his current conditions. Department Exhibit 3, pg. 115-117.

On May 9, 2018, Petitioner was seen by his specialist at the [redacted]. He had an essentially normal physical examination. His MRIs showed mild cervical degenerative change and mild lumbar DDD. He seemed to be doing better than his last visit. His medications were reviewed and adjusted as medically necessary. Petitioner was given a new prescription for a tens unit and for physical therapy. He was a moderate opioid risk. Department Exhibit 2, pg. 1-4.

On January 2, 2018, Petitioner was seen by his specialist at the Neurology at Saint Mary's Medical Group. His chief complaints were allergic rhinitis, acne, and primary fibromyalgia syndrome. An assessment was made for neuralgia. His medications were reviewed and adjusted as medically necessary. A skin biopsy was taken, and the Petitioner tolerated the procedure well. Department Exhibit 3, pg. 122-125.

On November 9, 2017, Petitioner was seen by his specialist at the Neurology at [redacted]. He had an essentially normal physical examination. He was diagnosed with small fiber neuropathy. It was recommended that he follow up with the Pain Clinic. Department Exhibit 3, pg. 125-130.

At Step 2, the objective medical evidence in the record indicates that Petitioner has established that he has a severe impairment. Petitioner is being treated successful by a neurologist and the pain clinic in addition to physical therapy and a chiropractor. There was no evidence of a severe thought disorder or risk factors. He is not taking medications, but not in therapy. The Administrative Law Judge finds that Petitioner is not capable of performing his past relevant work but should be able to perform other light work. Therefore, Petitioner is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

Step 3

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Petitioner's medical record will not support a finding that Petitioner's impairment(s) is a

"listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Petitioner cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that Petitioner's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, Petitioner is disqualified from receiving disability at Step 3.

Step 4

Can the Client do the former work that he performed within the last 15 years? If yes, the Client is not disabled.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment(s) prevents Petitioner from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that Petitioner testified that he does perform some of his daily living activities, but has issues with physical pain. Petitioner does feel that his condition has worsened due to increase in pain that is burning. Petitioner stated that he does have mental impairments of depression and anxiety where he is not taking medications and in therapy, but no records at Spectrum Health Rehabilitation. Petitioner does not or has ever smoked cigarettes, drinking alcohol, or used illegal and illicit drugs. Petitioner did not feel there was any work he could do.

At Step 4, this Administrative Law Judge finds that Petitioner has established that he cannot perform any of his prior work. His past employment was as a teacher until June 2014. He was also employed as a substitute teacher and general administrator for an insurance company in June 2002. Petitioner is not taking medication for his mental impairments and in therapy. There was no evidence of a severe thought disorder or risk factor. Therefore, Petitioner is not disqualified from receiving disability at Step 4. Petitioner is not capable of performing his past, relevant work. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether Petitioner has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

Step 5

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the Petitioner's impairment(s) prevents Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner's:

(7) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;

(8) age, education, and work experience, 20 CFR 416.963-.965; and

(9) the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 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).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The objective medical evidence on the record is sufficient that 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. Petitioner's testimony as to his limitation indicates his limitations are exertional and non-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 and anxiety. Petitioner is not taking medication for his mental impairments and in therapy. See MA analysis Step 2. There was no evidence of a severe thought disorder or risk factors. Petitioner has a high school diploma and a bachelor's degree. He was employed as a teacher and substitute teacher.

At Step 5, Petitioner can meet the physical requirements of light work, based upon Petitioner's physical abilities. Under the Medical-Vocational guidelines, a younger aged individual with a high school education and more, and a skilled and unskilled work history, who is limited to light work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.20. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression and anxiety. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after considering Petitioner's physical and mental impairments, the Administrative Law Judge finds that Petitioner could perform light work and that Petitioner does meet the definition of disabled under the MA 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 MA benefit program.

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

Carmen G. Fahie

CF/hb

Carmen G. Fahie
Administrative Law Judge
for Elizabeth Hertel, 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

Kent County via electronic mail

BSC3 via electronic mail

C. George via electronic mail

EQADHShearings via electronic mail

Petitioner

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