



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: May 24, 2021
MOAHR Docket No.: 21-000959
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; and 45 CFR 205.10. After due notice, telephone hearing was held on March 31, 2021. Petitioner was represented by his advocate [REDACTED] and Petitioner testified on his own behalf. Rolin Carter represented the Department of Health and Human Services (Department). While on the record, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The hearing record was held open until April 30, 2021, so that Petitioner could submit additional relevant medical records. As of April 30, 2021, no additional documents were received, and the hearing record was closed.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that the Petitioner did not meet the disability standard for State Disability Assistance (SDA)?

FINDINGS OF FACT

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

1. On [REDACTED] the Petitioner submitted an application for State Disability Assistance (SDA) benefits alleging disability.
2. On September 17, 2020, Petitioner's case was referred to the Disability Determination Service (DDS). Exhibit A, pp 6-12.
3. On January 29, 2021, the Disability Determination Service (DDS) determined that the Petitioner did not meet the disability standard for State Disability Assistance (SDA) because it determined he is capable of performing other work. Exhibit A, pp 11-12.

4. On February 3, 2021, the Department sent the Petitioner notice that it had denied the application for cash assistance under the State Disability Assistance (SDA) program. Exhibit A, pp 43-47.
5. On February 22, 2021, the Department received the Petitioner's hearing request, protesting the denial of disability benefits. Exhibit A, pp 3-4.
6. The Petitioner applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
7. Department records indicate that Petitioner's application with the Social Security Administration (SSA) was denied on September 10, 2020. Exhibit A, p 8.
8. Petitioner testified that his application for Supplemental Security Income (SSI) benefits was denied and that intended to reapply.
9. The Petitioner's disability claim is based on degenerative disc disease, osteoarthritis of the right shoulder, attention deficit hyperactivity disorder, anxiety, mood disorder, bipolar disorder, and alcohol dependence.
10. The Petitioner is a [REDACTED] year-old man whose birth date is [REDACTED] [REDACTED] [REDACTED].
11. Petitioner is [REDACTED]" tall, weighs [REDACTED] pounds, and medical records indicate that he fits the definition of obese.
12. Petitioner was awarded a General Educational Development (GED) certificate.
13. Petitioner is able to read and write and does have basic math skills.
14. The Petitioner testified that he was not engaged in substantial gainful activity at any time relevant to this matter, and that he was last employed in 2014.
15. Petitioner has past relevant work experience as a factory mold technician where he was required to stand for 8 hours a day removing molded parts from a machine weighing less than 10 pounds.
16. Petitioner has past relevant work experience as an aircraft parts inspector where he was required to stand for over 8 hours a day lifting parts weighing 10 pounds.
17. Petitioner testified that his physical impairments interfere with his ability to bend and walk.

18. Petitioner testified that he suffers from severe chronic pain and takes pain medication that does little to alleviate the pain.
19. Petitioner testified that he is capable of showering while seated.
20. Petitioner testified that he is capable of preparing meals and shopping for groceries.
21. On January 29, 2021, a consultative physician determined that Petitioner is capable of lifting 20 pounds occasionally, lifting 20 pounds frequently, standing 6 hours in an 8-hour workday, sitting 6 hours in an 8-hour workday, and that his ability to push and pull with his hands is not significantly impaired. Petitioner's physical impairments limit his ability to climb ladders frequently. Petitioner has no visual impairments. Petitioner's ability to hear and speak is not impaired. Petitioner's ability to operate machinery is moderately impaired. Exhibit A, pp 16-23.
22. Petitioner testified that he lives alone, and spends time with crossword puzzles, watching television, talking with friends, and attending AA meetings.
23. Petitioner is receiving treatment for his mental impairments and is taking his prescribed medications on a regular basis.
24. A consultative physician determined that Petitioner suffers from moderate impairments of his memory, concentration, and ability for social interaction. Petitioner was found to be capable of performing simple routine tasks on a sustained basis. Exhibit A, pp 24-42.
25. On April 6, 2020, Petitioner underwent a treadmill graded exercise stress test. Petitioner was found to have very poor exercise capacity, and could not achieve target heart rate, but suffered no chest pain or exercise-induced arrhythmias. Exhibit A, p 99.
26. On April 23, 2020, Petitioner underwent a nuclear stress test, and the results were negative for ischemia by electrocardiography (E.K.G.) criteria with vasodilator infusion. No definite reversible perfusion defects were observed, and ventricular ejection was normal. Exhibit A, pp 100-102.
27. Magnetic resonance imaging (MRI) scans taken on June 9, 2020, revealed no acute fracture or acute malalignment, mild degenerative disc disease, hypertrophic degenerative changes at the mid to lower lumbar levels, low-grade neural foraminal narrowing, and mild contact of the intraspinal descending right S1 nerve. Exhibit A, p 105.
28. On November 26, 2019, a treating physician found Petitioner to have an unremarkable cervical spine with mild multilevel degenerative changes of the lumbar spine. Exhibit A, p 119.

29. On November 26, 2019, no acute findings of the right knee were detected by a treating physician. Exhibit A, p 123.
30. On January 7, 2021, Petitioner was diagnosed with joint rigidity, polyarthralgia, and balance problems. Exhibit A, p 153.
31. Petitioner occasionally received physical therapy for chronic knee pain. Exhibit A, p 192.
32. On November 26, 2019, a treating physician found no signs of inflammatory arthropathy in Petitioner's unremarkable right shoulder. Exhibit A, p 124.
33. On February 14, 2020, Petitioner was found to have a normal ankle-brachial index (ABI) bilaterally and a reduced right toe brachial index of 0.88 consistent with an element of end vessel disease. Exhibit A, p 128.
34. On April 23, 2020, Petitioner was found to have no definite evidence of reversible defect and a normal left ventricular ejection fraction of 67%. Exhibit A, p 131.
35. On November 23, 2020, Petitioner was diagnosed with alcohol abuse and long-term medication use. Exhibit A, p 145.
36. On January 7, 2021, Petitioner was found to suffer from minimal depression. Exhibit A, p 148.
37. On January 7, 2021, Petitioner was diagnosed with bipolar affective disorder, long term medication use, anxiety, and alcohol dependence. Exhibit A, p 163.

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, Rule 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance has been denied. Mich Admin Code, R 400.903. 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. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (January 1, 2020), pp 1-44.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. Department of Health and Human Services Bridges Eligibility Manual (BEM) 261 (April 1, 2017), p 1.

A finding by the Social Security Administration (SSA) that a client is not disabled is binding on the Department's determination of disability. Department of Health and Human Services Bridges Administrative Manual (BAM) 815 (April 1, 2018), p 2.

Petitioner does not dispute that his application with the SSA for disability benefits was denied. Petitioner testified that he did not intend to appeal his denied application with SSA, but that he would reapply. A finding by the SSA of non-disability is normally binding on the Department determination of eligibility for cash assistance under the SDA program. In this case, Petitioner was within the timeframe that he could have appealed the denial of his application by SSA when his case was reviewed by the DDS, which also found Petitioner to not be disabled. Therefore, a review of the findings by DDS will continue.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance (MA) and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. 20 CFR 416.920.

STEP 1

Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is not disabled.

At step 1, a determination is made on whether the Petitioner is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he is not disabled regardless of how severe his physical or mental impairments are and regardless of his age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The Petitioner testified that he has not been employed since 2014, and is not currently engaged in substantial gainful activity, which was not disputed by the Department during the hearing. Therefore, this Administrative Law Judge finds that the Petitioner is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

STEP 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 not disabled.

At step two, a determination is made whether the Petitioner has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921). If the Petitioner does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The Petitioner has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 3 months or result in death.

The Petitioner was [REDACTED] years old when he filed his application for cash assistance. He is [REDACTED]" tall, weighs [REDACTED] pounds, and fits the definition of obese. The Petitioner alleges disability due to degenerative disc disease, osteoarthritis of the right shoulder, attention deficit hyperactivity disorder, anxiety, mood disorder, bipolar disorder, and alcohol dependence.

The objective medical evidence supports the following findings:

On January 29, 2021, a consultative physician determined that Petitioner is capable of lifting 20 pounds occasionally, lifting 20 pounds frequently, and standing or sitting 6 hours in an 8-hour workday. The consultative physician determined that Petitioner cannot climb a ladder or operate heavy machinery, but his vision and hearing are not impaired. On January 7, 2021, Petitioner was diagnosed with joint rigidity, polyarthralgia, and balance problems. Petitioner is undergoing physical therapy for chronic knee pain. Petitioner testified that she suffers from severe pain which is not relieved by the medication he takes.

Petitioner testified that his physical impairments interfere with his ability to bend and walk. He is capable of showering while seated. He is capable of preparing meals and shopping for groceries. He is capable of living alone, and enjoys completing crossword puzzles, talking with friends, and he is capable of attending AA meetings.

Magnetic resonance imaging (MRI) scans taken on June 9, 2020, revealed mild degenerative disc disease, low-grade neural foraminal narrowing, and mild contact of the intraspinal descending right S1 nerve. On November 26, 2019, a treating physician found Petitioner to have an unremarkable cervical spine with mild multilevel degenerative changes of the lumbar spine.

The results of a treadmill graded exercise stress test on April 6, 2020, demonstrated that Petitioner has very poor exercise capacity but suffered no chest pain or exercise induced arrhythmias. The results of a nuclear stress test on April 23, 2020, revealed no definite reversible perfusion defects and that ventricular ejection was normal. On February 14, 2020, Petitioner was found to have a normal ankle-brachial index bilaterally and a reduced right toe brachial index consistent with an element of end vessel disease. On April 23, 2020, Petitioner was found to have no definite evidence of reversible heart defects and he had a normal left ventricular ejection fraction.

Petitioner's mental impairments are being treated with medication. A consultative physician determined that Petitioner suffers from moderate mental impairments and he is capable of performing simple routine tasks on a sustained basis. On January 7, 2021, Petitioner was diagnosed with minimal depression, bipolar affective disorder, long term medication use, anxiety, and alcohol dependence.

The evidence on the record indicates that the Petitioner's was been diagnosed with mild impairments of the spine, chronic knee pain for which he is receiving physical therapy, mild heart impairments, poor physical conditioning, and mild mental impairments. The combination of these physical and mental impairments is a significant impairment to Petitioner's ability to perform work related activities.

This Administrative Law Judge finds a combination of physical and mental impairments that have more than a de minimus effect on the Petitioner's ability to perform work activities. The Petitioner's impairments have lasted continuously or are expected to last for twelve months. The Petitioner is not disqualified from receiving disability benefits at step 2 and the analysis will continue.

STEP 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.

At step three, a determination is made whether the Petitioner's impairment or combination of impairments is of a severity to meet or medically equal the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Petitioner's impairment or combination of impairments is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the Petitioner is disabled. If it does not, the analysis proceeds to the next step.

The Petitioner's impairment failed to meet the listing for a disorder of the skeletal spine under section 1.15 or section 1.16 because the objective medical evidence does not demonstrate a documented medical need for a walker, bilateral canes or crutches, or a wheeled and seated mobility device involving the use of both hands. The medical evidence does not demonstrate an inability to use one upper extremity to independently initiate, sustain, and complete work-related activities involving fine and gross movements. The medical evidence does not demonstrate an inability to use both upper extremities.

The Claimant's impairment failed to meet the listing for degenerative disc disease or arthritis under section 14.09 Inflammatory Arthritis because the objective medical evidence does not demonstrate an impairment involving a weight-bearing joint and resulting in an inability to ambulate effectively. The objective evidence does not support a finding that the Petitioner lacks the ability to perform fine and gross movements with each upper extremity. A consultative physician determined that Petitioner is capable of lifting 20 pounds and medical tests have revealed only minor back impairments.

The Petitioner's mental impairments fail to meet the listing under section 12.04 or 12.06 because the objective medical evidence does not demonstrate a marked limitation of his ability to interact with others, adapt or manage himself, or to understand, remember, or apply information. Petitioner is capable of managing his affairs, living by himself, and interacting with other people. The hearing record does not contain evidence that Petitioner has minimal capacity to adapt to changes in his environment or demands that are not already part of his daily life.

The medical evidence of the Petitioner's condition does not give rise to a finding that he would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

STEP 4

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

Before considering step four of the sequential evaluation process, a determination is made of the Petitioner's residual functional capacity (20 CFR 404.1520(e) and 416.920(c)). 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 undersigned must consider all of the Petitioner's impairments, including impairments that are not severe (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, a determination is made on whether the Petitioner has the residual functional capacity to perform the requirements of his past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Petitioner actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Petitioner to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Petitioner has the residual functional capacity to do his past relevant work, 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 and last step.

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.

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 determine the skills required in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. These terms have the same meaning as defined in. 20 CFR 416.968.

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. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs. 20 CFR 416.968(a).

The objective medical evidence indicates that Petitioner is capable of performing "light work," which is supported by his ability to lift objects weighing as much as 20 pounds, and his ability to sit or stand for prolonged periods of time. Petitioner is capable of caring for his personal needs. Petitioner suffers from diminished physical conditioning and suffers from chronic pain, but the evidence does not establish that these impairments prevent him from performing "light work."

Petitioner has been diagnosed with mental impairments and he received ongoing treatment for those impairments. The objective medical evidence indicates that Petitioner's mental impairments are not marked impairments of his ability to perform simple work-related activities. Petitioner is capable of following simple routine tasks on a sustained basis. Petitioner's mental impairments do not prevent him from performing unskilled work.

After careful consideration of the entire record, this Administrative Law Judge finds that Petitioner has the residual functional capacity to perform "light work" and "unskilled work" as defined in 20 CFR 404.1567 and 416.967.

Petitioner's past relevant work required him to stand for 8 hours or more while manipulating and moving objects weighing less than 10 pounds. Although Petitioner's past work meets the definition of "light work", due to Petitioner's diminished physical conditioning, joint rigidity, and chronic pain, the evidence supports a finding that Petitioner is not able to perform work he was capable for performing in the past.

There is no evidence upon which this Administrative Law Judge could base a finding that the Petitioner is able to perform work substantially similar to work performed in the past.

STEP 5

At Step 5, the burden of proof shifts to the Department to establish that the Petitioner has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

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, client is not disabled.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), a determination is made whether the Petitioner is able to do any other work considering his residual functional capacity, age, education, and work experience. If the Petitioner is able to do other work, he is not disabled. If the Petitioner is not able to do other work and meets the duration requirement, he is disabled.

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).

The objective medical evidence indicates that the Petitioner has the residual functional capacity to perform some other less strenuous tasks than in his prior employment and that he is physically able to do less strenuous tasks if demanded of him. The Petitioner's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

The Petitioner was able to answer all the questions at the hearing and was responsive to the questions. The Petitioner was oriented to time, person and place during the hearing.

The Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Petitioner's ability to perform work.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Petitioner is ■ years old, a person closely approaching advanced age, 50-54, with a high school equivalent education, and a history of unskilled work. Based on the objective medical evidence of record Petitioner has the residual functional capacity to perform light work. State Disability Assistance (SDA) is denied using Vocational Rule 202.13 as a guideline.

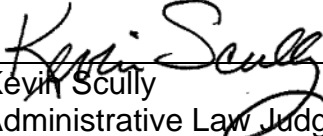
The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. Department of Human Services Bridges Eligibility Manual (BEM) 261 (July 1, 2013), pp 1-8. Because the Petitioner does not meet the definition of disabled and because the evidence of record does not establish that the 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 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 State Disability Assistance (SDA) benefits.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.

KS/nr



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings and Rules
(MOAHR)

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

Elisa Daly
411 East Genesee
PO Box 5070
Saginaw, MI
48607

Saginaw County DHHS- via electronic
mail

BSC2- via electronic mail

L. Brewer-Walraven- via electronic mail

Petitioner

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