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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
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Date Mailed: February 8, 2022
MOAHR Docket No.: 21-005541
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 January 18, 2022. The Petitioner was represented by Garrett TenHave-Chapman, Attorney. [REDACTED] Petitioner, appeared and testified. The Department of Health and Human Services (Department) was represented by Marci Walker, Lead Worker.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-570. Petitioner's additional documentation was admitted as Exhibit 1, pp. 1-17.

ISSUE

Whether the Department properly determined 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 March 11, 2020, DDS found Petitioner not disabled for SDA based on a determination that he was capable of performing other work. (Exhibit A, pp. 553-559)
2. A July 23, 2020 hearing decision reversed the disability determination finding Petitioner's impairments rendered him unable to engage in a full range of even sedentary work activities on a regular and continuing basis. Medical review was requested for July 2021. (Exhibit A, p. 558; MOAHR Docket No. 20-002812)

3. On June 8, 2021, Petitioner submitted a Renew Benefits. (Exhibit A, pp. 51-54)
4. On July 12, 2021, a Redetermination Interview was completed with Petitioner. (Exhibit A, pp. 59-61)
5. On July 20, 2021, Petitioner submitted a Medical Social Questionnaire Update. (Exhibit A, pp. 55-58 and 74-77)
6. On or about July 28, 2021, Petitioner's case was sent to Disability Determination Services (DDS) for review for the SDA program. (Exhibit A p. 4)
7. On or about November 4, 2021, DDS found Petitioner not disabled for SDA. (Exhibit A, p. 524-530)
8. On November 19, 2021, the Department notified Petitioner of the DDS determination regarding SDA. (Exhibit A, pp. 34-38)
9. On November 29, 2021, the Department received Petitioner's timely written request for hearing with additional medial documentation. (Exhibit A, pp. 5-33)
10. Petitioner alleged disabling impairments including traumatic lumbar spondylopathy with vertebral end plate compression fracture and lumbar ligamentous injury resulting in straightening of the lumbar and limited range of motion, chiari malformation type I, and lumbar radiculopathy and weakness in the left lower limb along with antalgic gait and migraines. (Exhibit A, p. 74; Petitioner Testimony)
11. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED] 1992 birth date; was [REDACTED] in height; and weighed [REDACTED] pounds. (Petitioner Testimony)
12. Petitioner attended some college studying automotive engineering and has a work history of managing an auto parts store, removing car parts at a scrap yard, and seasonal labor at a granary. (Petitioner Testimony)
13. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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.

For the SSI standard, 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).

Once an individual has been found disabled for purposes of benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. In evaluating a claim for ongoing benefits, federal regulation requires a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease, and benefits continued if sufficient evidence

supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Petitioner's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii).

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v). If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology related to the ability to work;
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Petitioner's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

In the present case, Petitioner alleged disabling impairments including traumatic lumbar spondylopathy with vertebral end plate compression fracture and lumbar ligamentous injury resulting in straightening of the lumbar and limited range of motion, chiari malformation type I, and lumbar radiculopathy and weakness in the left lower limb along with antalgic gait, and migraines. (Exhibit A, p. 74; Petitioner Testimony) While numerous older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

On [REDACTED] 2021, Petitioner attended a consultative medical evaluation. It was noted that Petitioner appeared to be in pain. The assessment documented: traumatic lumbar spondylopathy with vertebral endplate compression fracture and lumbar ligamentous injury resulting in a straightening of the lumbar lordosis and limited lumbar passive range of motion; lumbar radiculopathy with positive straight leg raising sign and weakness in the left lower limb along with an antalgic gait on the left; chronic right shoulder pain with bicipital tenosynovitis and rotator cuff syndrome; impaired balance; and chronic pain due to trauma. It was noted that Petitioner utilized a straight cane to ambulate and had an antalgic gait on the left. The doctor's opinion was that Petitioner

was incapable of gainful employment at that time due to the limitations caused by the work injury, which occurred on or about December 9, 2017. Restrictions included: alternate sitting, standing, walking, and lying down as needed; no lifting, pushing, or pulling greater than 10 pounds; avoid kneeling, stooping, crouching, crawling, or ladder climbing; limit bending and twisting to occasional only; no over the shoulder level work with the right upper limb; no repetitive activity involving the right shoulder; limit reaching with the right upper limb to occasional only. (Exhibit A, pp. 13-20)

A [REDACTED], 2021 record from Lansing Urgent Care documented a complaint of leg pain. Petitioner was noted to have: an antalgic gait; lumbar paraspinous tenderness; lumbar paraspinous spasm; tenderness SI region; spasm SI region; tenderness LS interspinous region; limited rotation LS spine; tenderness to palpation over the lower leg; thighs, legs, and post knees with mild diffuse tenderness that is mildly worse but similar to baseline pain from back. Petitioner was treated for a flare of chronic lower back pain. (Exhibit A, pp. 383-387)

A [REDACTED], 2021 record from MSU HealthCare documented current assessment for multiple conditions including dysuria, pain in right lower limb, chronic back pain, and paresthesia. (Exhibit A, pp. 288-298)

A [REDACTED] 2021 record from Lansing Urgent Care documented a complaint of rash. Petitioner was treated for contact dermatitis due to plants. (Exhibit A, pp. 388-391)

An [REDACTED] 2021 abdominal ultrasound showed findings consistent with fatty infiltration of the liver versus hepatic steatosis not significantly changed as well as interval cholecystectomy. (Exhibit A, p. 342)

An [REDACTED] 2021 record from Lansing Urgent Care documented a complaint of head congestion. Petitioner was treated for acute sinusitis. (Exhibit A, pp. 392-396)

An [REDACTED], 2021 record from Lansing Urgent Care documented a complaint of left shoulder injury. Petitioner was noted to have: abnormalities to the shoulder area on musculoskeletal examination. X-ray of the shoulder was normal. Petitioner was treated for a sprain of the right shoulder joint. (Exhibit A, pp. 397-400)

A [REDACTED] 2021 record from Lansing Urgent Care documented a complaint rash. Petitioner was treated for superficial mycosis. (Exhibit A, pp. 401-402)

An [REDACTED] 2021, MRI of the cervical spine showed: no cord abnormality, no neuroforaminal or canal stenosis, and up to 10-11 mm inferior cerebellar tonsillar herniation on the right and 6 mm on the left that was stable in the interval since the last imaging. (Exhibit 1, p. 15)

A [REDACTED] 2021 bone density test showed that Petitioner's bone density was below the expected range for age based on Z-scores for the left femoral neck, left hip, and lumbar spine. (Exhibit A, p. 12)

A December 1, 2021 MRI of the thoracic spine showed: mild compression deformity of the superior aspect of the T1 vertebra that appeared acute with no significant retropulsion of this vertebra into the spinal canal; mild thoracic spondylosis and small disc bulges at some of the thoracic levels, which were also seen previously with no significant spinal canal or neural foraminal narrowing on this study. (Exhibit 1, p. 3)

Based on the objective medical evidence, considered listings included 1.15 Disorders of the skeletal spine resulting in compromise of a nerve root, 12.04 depressive, bipolar, and related disorders; and 12.06 anxiety and obsessive-compulsive disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Petitioner cannot be found disabled, or not disabled at this step.

Step 2 requires a determination of whether there has been medical improvement. The medical records and testimony indicate that since Petitioner was found disabled on July 23, 2020, there has not been improvement with Petitioner's limitations. The July 23, 2020 hearing decision indicates the ALJ found that Petitioner's impairments rendered him unable to engage in a full range of even sedentary work activities on a regular and continuing basis. (MOAHR Docket No. 20-002812) The [REDACTED] 2021, consultative medical evaluation noted that Petitioner appeared to be in pain. The doctor's opinion was that Petitioner was incapable of gainful employment at that time due to the limitations caused by the work injury, which occurred on or about December 9, 2017. Restrictions included: alternate sitting, standing, walking, and lying down as needed; no lifting, pushing, or pulling greater than 10 pounds; avoid kneeling, stooping, crouching, crawling, or ladder climbing; limit bending and twisting to occasional only; no over the shoulder level work with the right upper limb; no repetitive activity involving the right shoulder; limit reaching with the right upper limb to occasional only. (Exhibit A, pp. 13-20) Accordingly, Petitioner's exertional and non-exertional limitations appear to have continued. These restrictions, particularly lying down as needed, would continue to preclude Petitioner from engaging in a full range of sedentary work activities on a regular and continuing basis. The opinion of the consultative examination doctor was consistent with the majority of the other recent medical records. For example, the [REDACTED] 2021 record from Lansing Urgent Care noted that Petitioner had: an antalgic gait; lumbar paraspinous tenderness; lumbar paraspinous spasm; tenderness SI region; spasm SI region; tenderness LS interspinous region; limited rotation LS spine; tenderness to palpation over the lower leg; thighs, legs, and post knees with mild diffuse tenderness that is mildly worse but similar to baseline pain from back. Petitioner was treated for a flare of chronic lower back pain. (Exhibit A, pp. 383-387) The only inconsistencies were found in records from visits where another condition was the focus of that visit. For example, the [REDACTED], 2021 record from Lansing Urgent Care when Petitioner was treated for acute sinusitis. (Exhibit A, pp. 392-396) Overall, the recent medical records indicate no significant improvements in Petitioner's condition.

In consideration of all medical evidence, it is found that, overall, there has not been medical improvement. The exceptions contained in 20 CFR 416.994(b)(3) and 20 CFR

416.994(b)(4) are not applicable. Accordingly, Petitioner is found disabled for purposes of the SDA program.

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 disabled for purposes of the SDA benefit program.

DECISION AND ORDER

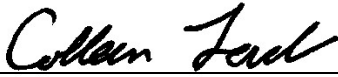
Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Initiate a review of the SDA case, if not done previously, to determine Petitioner's non-medical eligibility.

The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for February 2023.

CL/ml



Colleen Lack
Administrative Law Judge

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

Electronic Mail Recipients:

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