



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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██████████, MI ██████████

Date Mailed: May 27, 2022
MOAHR Docket No.: 22-000791
Agency No.: ██████████
Petitioner: ██████ ██████

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 30, 2022, from Lansing, Michigan. Participants represented himself. Marci Walker represented the Department of Health and Human Services (Department). Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence.

ISSUE

Did the Department of Health and Human Services (Department) properly determine that 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 ██████████ ██████████ Petitioner submitted an application for State Disability Assistance (SDA) benefits alleging disability. Exhibit A, p 6.
2. On January 21, 2022, the Disability Determination Service (DDS) determined that Petitioner did not meet the disability standard for State Disability Assistance (SDA) because it determined that he is capable of performing other work. Exhibit A, p 97.
3. On February 4, 2022, the Department sent Petitioner notice that it had denied the application for assistance. Exhibit A, p 1,954.
4. On ██████████ ██████████ the Department received Petitioner's hearing request, protesting the denial of disability benefits. Exhibit A, p 5.

5. On [REDACTED] [REDACTED] [REDACTED] Petitioner applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA), and he testified that his application is pending. Exhibit A, p 142.
6. Petitioner is a [REDACTED]-year-old man whose birth date is [REDACTED] [REDACTED] [REDACTED]
7. Petitioner is [REDACTED] [REDACTED] tall and weighs [REDACTED] pounds.
8. Petitioner is a high school graduate.
9. Petitioner is able to read and write and does have basic math skills.
10. Petitioner testified that he is employed as a cook and expects to work 4 hours per week at a rate of \$[REDACTED] per hour.
11. Petitioner testified that his employer accommodates his physical impairments to allow him to maintain his employment.
12. Petitioner was not engaged in substantial gainful activity at any time relevant to this matter.
13. Petitioner has past relevant work experience as a commercial and residential painter where he was required to lift 10 pounds frequently and 60 pounds occasionally. Exhibit A, pp 134-135.
14. Petitioner's disability claim is based on respiratory failure, hypoxia, Covid-19 infection, and deep vein thrombosis.
15. Petitioner is capable of lifting 20 pounds occasionally and 10 pounds frequently. Exhibit A, p 100.
16. Petitioner is capable of standing for about 6 hours in an 8-hour workday and sitting about 6 hours in an 8-hour workday. Exhibit A, p 100.
17. Petitioner is capable of cooking and cleaning at home.
18. Petitioner is capable of dressing and bathing without assistance.
19. Petitioner has been hospitalized for pulmonary embolism, pneumonia, hypoxic respiratory failure, deep vein thrombosis of upper extremity, and pulmonary embolus associated with a Covid-19 infection in September and October of 2021. Exhibit A, pp 29-37.
20. On [REDACTED], 2021, Petitioner was diagnosed by a treating physician with worsening dyspnea and pneumothorax, which developed from an expanding lung bleb. Exhibit A, p 27.
21. On [REDACTED] 2021, a treating physician found Petitioner to have redemonstrated chronic sequelae from Covid-19 viral infection that had

improved compared to 2 months prior, and significant interval decrease in the size of a cystic/cavitary lesion within the right lower lobe no longer containing layering fluid. Exhibit A, p 198.

22. On [REDACTED], 2021, a cardiac stress test revealed a normal perfusion scan and left ventricular ejection fraction was measured at 49%. Exhibit A, p 212.
23. Petitioner continues to suffer from severe lung impairments during an evaluation by his treating physician on [REDACTED] 2022, which are related to his Covid-19 infection. Petitioner's Exhibit 1.

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.

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 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.

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 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.

At this hearing, Petitioner testified that he is currently doing some work type activity. The income Petitioner receives from that employment may have an impact on his eligibility for SDA benefits, but whether he meets the financial criteria for receiving cash assistance is not under consideration here. Further, it is the policy of the Social Security Administration that a person earning over \$██████ per month as of the date Petitioner filed his application for assistance is presumed to be capable of performing significant gainful activity.

However, Petitioner credibly testified that he is earning less than \$██████ in gross monthly income and that his employer provides accommodations that allow him to maintain employment despite his physical impairments. There is not sufficient evidence on the record to establish that Petitioner is engaged in substantial gainful activity as defined in 20 CFR 416.971 through 416.975.

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 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 Petitioner does not have a severe medically determinable impairment or combination of impairments, he is not disabled. If Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

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 12 months or result in death.

Petitioner is a [REDACTED] year-old man that is [REDACTED]" tall and weighs [REDACTED] pounds. Petitioner alleges disability due to a Covid-19 infection, fatigue, and lung blebs.

The objective medical evidence indicates the following:

Petitioner has been hospitalized for pulmonary embolism, pneumonia, hypoxic respiratory failure, deep vein thrombosis of upper extremity, and pulmonary embolus, which were all associated with a Covid-19 infection. On [REDACTED], 2021, a treating physician found Petitioner to have worsening dyspnea and pneumothorax developing from an expanding lung bleb. On [REDACTED] 2021, Petitioner was found to have redemonstrated chronic sequelae from Covid-19 but had improved compared to 2 months prior and significant interval decrease in the size of a cystic/cavitary lesion in his lungs.

A cardiac stress test revealed a normal perfusion scan and left ventricular ejection fraction was measured at 49%.

A consultative physician determined that Petitioner is capable of lifting 20 pounds occasionally and 10 pounds frequently. Petitioner is capable of standing or sitting for 6 hours in an 8-hour workday.

A treating physician determined that Petitioner continues to suffer from severe lung impairments related to a Covid-19 infection.

This Administrative Law Judge finds a physical impairment that has more than a de minimus effect on Petitioner's ability to perform work activities. Petitioner's impairments have lasted continuously or are expected to last for twelve months. 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 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 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), Petitioner is disabled. If it does not, the analysis proceeds to the next step.

The medical evidence of 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 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 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 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 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 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 Petitioner has the residual functional capacity to do his past relevant work, Petitioner is not disabled. If 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.

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).

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).

Petitioner has past relevant experience as a painter where he was required to climb ladders and lift objects weighing as much as 65 pounds. There is no evidence upon which this Administrative Law Judge could base a finding that 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 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 Petitioner is able to do any other work considering his residual functional capacity, age, education, and work experience. If Petitioner is able to do other work, he is not disabled. If Petitioner is not able to do other work and meets the duration requirement, he is disabled.

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.

If Petitioner had the residual functional capacity to perform a full range of sedentary work, considering Petitioner's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 202.13.

However, the additional limitations so narrow the range of work Petitioner might otherwise perform that a finding of "disabled" is appropriate under the framework of this rule. The objective medical evidence indicates that Petitioner was admitted for inpatient medical treatment for a Covid-19 infection and that this infection has caused severe impairments of his ability to sustain work related tasks without significant accommodations being made by his employer.

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 State Disability Assistance (SDA) benefits.

DECISION AND ORDER

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

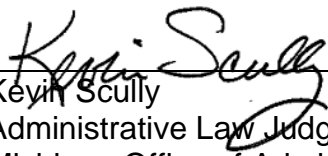
THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

Initiate a determination of Petitioner's eligibility for State Disability Assistance (SDA) benefits effective November 1, 2021, to determine Petitioner's non-medical eligibility.

Provide the Petitioner with written notice describing the Department's revised eligibility determination.

Issue the Petitioner any retroactive benefits he may be eligible to receive, if any.

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

Lacy Miller
105 W. Tolles Drive
St. Johns, MI 48879

Clinton County DHHS- via electronic mail

BSC2- via electronic mail

L. Karadsheh- via electronic mail

Petitioner

██████████ - via first class mail
██████████
██████████, MI ██████████