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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: November 17, 2022  
MOAHR Docket No.: 22-004758  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 November 10, 2022, via conference line. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by Cathy Burr, Assistance Payments Supervisor and Jennifer Bellini, Assistance Payments Worker.

**ISSUE**

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit 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 ██████████ 2021, Petitioner submitted an application seeking cash assistance benefits on the basis of a disability.
2. On September 7, 2022, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program.
3. On September 13, 2022, the Department sent Petitioner a Notice of Case Action informing him that his SDA application was denied.
4. On ██████████, 2022, Petitioner submitted a timely written Request for Hearing disputing the Department's decision to deny his SDA application.

5. Petitioner alleged disabling impairments due to decreased kidney function, back/neck pain, carpal tunnel syndrome, attention deficit hyperactivity disorder (ADHD), and post-traumatic stress disorder (PTSD), and headaches.
6. As of the hearing date, Petitioner was ■ years old with a ■ 1968 date of birth.
7. Petitioner obtained a high school degree and has completed some college courses. Petitioner has a reported employment history of work as a pizza delivery driver, taxi driver, dispatcher, and poker dealer. Petitioner has reportedly not been employed since January 2019.
8. Petitioner has a pending disability claim with the Social Security Administration (SSA).

### **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 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.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment, for 90 or more days. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a

determination cannot be made that an individual is disabled, or not disabled at a particular step, the next step is required. 20 CFR 416.920(a)(4). The duration requirement for purposes of SDA eligibility is 90 or more days. BEM 261 (April 2017), p. 2.

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 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, are insufficient to establish disability. 20 CFR 416.927(d).

### **Step One**

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he is not ineligible under Step 1, and the analysis continues to Step 2.

### **Step Two**

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect



On [REDACTED] 2020, Petitioner had an assessment at [REDACTED] [REDACTED] (Exhibit A, pp. 415-436). Petitioner's evaluation was completed in connection with criminal charges. Petitioner was diagnosed as bipolar with manic symptoms/delusional thinking. It was recommended that Petitioner take Celexa; Lamictal, and Risperdal.

On [REDACTED] 2020, Petitioner presented at [REDACTED] with complaints of upper flank/rib cage pain after coughing (Exhibit A, pp. 186-189). A physical examination of Petitioner's systems revealed they were all normal, with the exception of pinpoint tenderness on his right mid-lateral chest wall with no crepitus. An X-ray revealed a right posterior lateral rib fracture at the site of his point tenderness. Petitioner had stable vital signs and controlled pain. Petitioner was discharged and advised to follow-up with his PCP.

Petitioner reported he has chronic headaches. Petitioner had various computerized tomography (CT) imaging performed (Exhibit A, pp. and 445-491). On [REDACTED] 2021, Petitioner had a CT scan of his head and was diagnosed with nonintractable headache. On [REDACTED] 2021, Petitioner had a CT scan of his head and was diagnosed with other-headache syndrome. On [REDACTED] 2021, Petitioner had a CT scan of his cervical spine and was diagnosed with chronic post-traumatic headache.

On [REDACTED], 2022, Petitioner completed an examination with [REDACTED] [REDACTED] (Exhibit A, pp. 309-313). Petitioner's general examination revealed that his hearing and speech were normal. Petitioner's gait was normal. Petitioner was not using an assistive device for ambulation. Examination of Petitioner's head, ears, nose, and throat were normal. Examination of Petitioner's skin revealed there were no lesions appreciated, with no signs of cyanosis or clubbing. Petitioner's visual acuity in the right eye was 20/13 and the left eye was 20/13 with glasses. Petitioner's neck was supple with no thyroid masses or goiter. Petitioner had no bruits over the carotid arteries. Petitioner had no lymphadenopathy. Examination of Petitioner's chest showed his AP diameter was grossly normal. Petitioner's lungs were clear to oscillation, without any adventitious sounds. Petitioner's heart had no murmurs or gallops appreciated. Petitioner's heart did not appear to be enlarged. Petitioner's abdomen was soft and nontender, without distension. Examination of Petitioner's extremities and muscular skeletal system revealed no obvious bony deformities. Petitioner's femoral, popliteal, dor pedis and post tibial pulses were decreased bilaterally. Petitioner's hair was present, temperature warm, his color normal, and no femoral bruits noted bilaterally. Petitioner had trace edema in the lower extremities. Petitioner had no paravertebral muscle spasms noted. Petitioner's range of motion was intact and full throughout. Petitioner's straight leg raise was negative in the seated and supine positions. Petitioner had no erythema or effusion of any joint. Petitioner's grip strength was 5/5 bilaterally as tested grossly. Petitioner's hands have had full dexterity bilaterally. Petitioner had no difficulty getting on and off the exam table, and only mild difficulty with heel and toe walking and squatting, due to pain. Petitioner's neurological exam was normal. Petitioner was able to complete all tasks asked of him during the examination, with only mild difficulty, due to pain. Petitioner's range of motion

and motor strength was intact throughout. Petitioner did not require the use of an assistive device and his gait was normal. Petitioner had 5/5 grip strength bilaterally with no digital dexterity loss. As part of the examination, Petitioner also had imaging of his lumbar spine completed. Petitioner had normal anatomic alignment of lumbar vertebrae. The vertebral bodies showed mild degenerative osteophytic spurring. Petitioner had no fractures or subluxation. It was concluded that Petitioner had mild osteoarthritis of the lumbar spine. Imaging of Petitioner's cervical spine showed normal anatomic alignment. Petitioner's vertebral bodies showed mild degenerative osteophytic spurring. Petitioner had no fractures, and his posterior elements were intact. Petitioner's occipitocervical junction was normal, as was the C1-C2 relationship. Petitioner had no prevertebral soft tissue swelling or radiopaque foreign bodies.

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

### **Step Three**

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual'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 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, the most relevant in this case is Listing 1.15 (disorder of the skeletal spine resulting in compromise of a nerve root) and 1.16 (lumbar spinal stenosis resulting in compromise of the cauda equina). To meet Listing 1.15 and Listing 1.16, there must be some compromise of either the root nerve or cauda equina. Based on the evidence provided, Petitioner's spinal impairments did not cause any diminishing of any nerves. Therefore, Petitioner does not meet either Listing 1.15 or Listing 1.16. Additionally, hypertension does not constitute a listing.

Listings 6.09 (complications of chronic kidney disease) and 12.04 (depressive, bipolar and related disorders) were considered. A thorough review of the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

### **Residual Functional Capacity**

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do,

based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 20 CFR 416.967(a). 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 the light 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). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to

tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3), to which a five-point scale is applied (none, mild, moderate, marked, and extreme). 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner alleges exertional limitations due to his impairments. Petitioner testified that due to his headaches and spinal impairments, he is in chronic pain. Petitioner stated he experiences radiant pain in his neck and back. Petitioner indicated his symptoms are tolerable when he is medicated but the symptoms are never alleviated. Petitioner is able to walk without the assistance of any walking devices but only for a couple of blocks. Petitioner can grip and grasp. Petitioner can stand for up to 20 to 30 minutes and can sit for a couple of hours. Petitioner can bend and squat but with difficulty. Petitioner can ascend and descend stairs with difficulty. Petitioner has difficulty moving due to pain in his feet, knees and joints. Petitioner lives alone and can perform his own personal hygiene. Petitioner can dress himself, perform his own household chores, grocery shop and drive.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

The evidence presented is considered to determine the consistency of Petitioner's statements regarding the intensity, persistence and limiting effects of his symptoms. A thorough review of Petitioner's medical records, including records presented from Petitioner's treating physicians, was completed. Petitioner testified at the hearing that he is unable to work due to chronic pain in his neck and back. However, Petitioner reported consistently to his PCP at every appointment in 2022, that his pain was managed with his medication. At Petitioner's physical examination on [REDACTED] 2022, Petitioner was able to complete all tasks asked of him with only mild difficulty due to pain. Petitioner's range of motion and motor strength was intact throughout. Additionally, the medical records



presented were limited with respect to Petitioner's headaches. Petitioner had CT scans but did not have any diagnoses other than headaches.

Due to Petitioner's physical limitations, he is unable to stand for long periods, had some difficulty walking, squatting and bending. Petitioner had some chronic pain, but he self-reported that his pain is managed with medication. There was no indication in the medical records that Petitioner had significant limited mobility. With respect to Petitioner's exertional limitations, it is found based on a review of the entire record, that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(a).

For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3), to which a five-point scale is applied (none, mild, moderate, marked, and extreme). 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner primarily reported physical impairments as the reason for which he could not work. Per the medical records provided, Petitioner was diagnosed as bipolar with manic symptoms/delusional thinking. However, Petitioner stated he is not receiving any ongoing treatment. Petitioner's medical records are severely limited in regard to mental impairments.

Based on the medical records presented, as well as Petitioner's testimony, Petitioner has only mild limitations with respect to his ability to understand, remember, or apply information; interact with others; in his ability to concentrate, persist, or maintain pace; and his ability to adapt or manage oneself. Thus, Petitioner has mild limitations on his nonexertional ability to perform basic work activities.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

#### **Step Four**

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists

in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner stated he had a work history as a food delivery driver, dispatcher, a charity poker dealer and taxi driver. Petitioner's employment as a delivery driver is defined by the Dictionary of Occupational Titles as requiring medium work. As a taxi driver and gambling dealer, Petitioner's employment required light work. As a dispatcher, Petitioner's employment required sedentary work. Therefore, Petitioner's past employment requires sedentary, light and medium work.

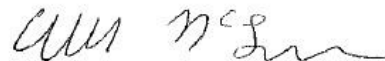
Based on the RFC analysis above, Petitioner's exertional RFC limits him to light work activities. Additionally, Petitioner's nonexertional impairments only imposed mild limitations. Therefore, Petitioner is not precluded from performing past relevant work due to the exertional and nonexertional requirements of his prior employment. Because Petitioner is capable of performing past relevant work, it is found that Petitioner is not disabled at Step 4 and the assessment ends.

#### **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 SDA benefit program.

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

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**Ellen McLemore**  
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

**Via-Electronic Mail :**

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