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

Date Mailed: December 28, 2023
MOAHR Docket No.: 23-006724
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 December 20, 2023, via conference line. Petitioner was present and was unrepresented. The Department of Health and Human Services (Department) was represented by Zelia Cobb, Medical Contact 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 ██████████, 2023, Petitioner submitted an application seeking cash assistance benefits on the basis of a disability.
2. On or around October 3, 2023, the Disability Determination Service (DDS) found Petitioner not eligible for the SDA program for his failure to cooperate and insufficient evidence (Exhibit A, pp. 4-6).
3. On October 4, 2023, the Department sent Petitioner a Notice of Case Action denying Petitioner's application for SDA benefits.
4. On October 17, 2023, Petitioner submitted a timely written Request for Hearing disputing the Department's denial of his SDA application (Exhibit A, p. 3)

5. Petitioner alleged disabling impairments due to sleep apnea, and back and knee pain.
6. As of the hearing date, Petitioner was ■ years old with a ■ 1973 date of birth.
7. Petitioner obtained a high school diploma and had some college credits but did not obtain a college degree. Petitioner had employment history as a line worker and delivery driver. Petitioner has reportedly not been employed since 2009.
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 the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the de minimis standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. Id.; SSR 96-3p.

The medical evidence presented was thoroughly reviewed and is briefly summarized below:

Petitioner had been diagnosed with sleep apnea and had received treatment at Henry Ford Sleep Specialists (Exhibit A, pp. 221-262). Petitioner completed a sleep study on [REDACTED], 2018. Petitioner was diagnosed with obstructive sleep apnea. Petitioner was prescribed a continuous positive airway pressure (CPAP) machine. Petitioner's last visit to the clinic was on [REDACTED] 2020. Petitioner reported he had not been using his CPAP machine since May 2020 due to excess pressure. Petitioner was given an order to repair and replace his CPAP machine and was advised to follow-up in 1 month.

Petitioner testified that he received medical services at Sinai-Grace (Exhibit a, pp. 165-194). Petitioner had a consultative examination on [REDACTED], 2020. Petitioner was diagnosed with Non-ST-elevation myocardial infarction (NSTEMI), a partial blockage to one of his coronary arteries. Petitioner was advised to have a Myocardial Perfusion Imaging (MPI) test on that date. Petitioner reported feeling weak. Petitioner had an electrocardiogram (EKG) performed showing sinus rhythm, poor R wave progression, upright T waves in V1 but otherwise normal. Petitioner's EKG showed no sign of ischemia. Petitioner was also diagnosed with dehydration, obstructive sleep apnea and gastroesophageal reflux disease (GERD). Petitioner was admitted for observation and was discharged on [REDACTED], 2020. On N[REDACTED]1, 2022, Petitioner had a new patient physical examination. Petitioner reported he had a history of obstructive sleep apnea, lumbar spine osteoarthritis and obesity. Petitioner appeared at the clinic to establish a primary care physician (PCP). Petitioner reported he had not been under the care of a PCP for years and was only seen at the emergency room or urgent care. Petitioner's prescriptions included albuterol. Petitioner's systems review was normal. Petitioner's physical examination was normal, including his musculoskeletal examination,

with the exception of some mild anterior spurring in his lumbar spine. Petitioner was diagnosed with lumbar spine osteoarthritis and was encouraged to continue strengthening exercises of his quadriceps. Petitioner was diagnosed with severe obstructive sleep apnea. Petitioner reported he was not using his CPAP machine and he was advised to continue using his CPAP machine and to follow-up with pulmonary medicine. Petitioner was also diagnosed with obesity and GERD and was encouraged to lose weight and maintain daily exercise.

Petitioner had a medical evaluation at IMA evaluations on ██████████ 2022 (Exhibit A, pp 210 -217). Petitioner reported that he could not work because he falls asleep in 20 to 30 minutes. Petitioner reported he had been diagnosed with narcolepsy. Petitioner's gait was normal and he could walk on heels and toes without difficulty. Petitioner's stance was normal, and he did not need the use of any assistive devices. Petitioner did not need help with changing or getting on and off the examination table. Petitioner was able to rise from his chair without difficulty. Petitioner's physical examination was normal including his skin and lymph nodes; head and face; eyes; ears, nose and throat; neck; chest and lungs; heart; abdomen; musculoskeletal; neurologic; extremities; and fine motor of his hands.

A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. 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. The duty to submit all evidence known that relates to the disability is ongoing. 20 CFR 416.912(a). When applying for benefits through the SSA, the client may be asked to attend one or more consultative examinations. CFR 416.912(b)(2).

Petitioner's SDA application was denied as a result of his failure to cooperate with DDS and insufficient evidence. Per the DDS denial, the medical evidence submitted by Petitioner was extremely limited. DDS requested that Petitioner obtain an additional medical evaluation. Petitioner failed to appear at the medical evaluation. As a result, Petitioner's SDA application was denied.

Upon review of the evidence, Petitioner has failed to establish a severe impairment under Step 2. A majority of Petitioner's medical evidence is not current. The evidence provided by Petitioner from his current medical history prior to his application does not show that he has a severe impairment. On ██████████ 2022, Petitioner's full medical examination was normal. Petitioner self-reported that he had narcolepsy but there was no medical evidence to support his assertion. Petitioner's only medical visit with his PCP on ██████████, 2022, showed that Petitioner had sleep apnea and obesity, which is insufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected

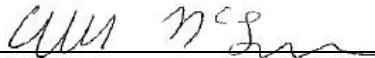
to last for a continuous period of not less than 90 days. Therefore, Petitioner has not satisfied the requirements under Step 2, and the analysis ends.

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.

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**.

EM/tm



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

