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GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 26, 2024
MOAHR Docket No.: 24-006337
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 July 30, 2024, from Lansing, Michigan. Participants on behalf of Petitioner included the Petitioner, [REDACTED] and [REDACTED] Case Manager, Community Mental Health (CMH). Participants on behalf of the Department of Health and Human Services (Department) included Lacey Whitford, Family Independence Manager.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-219. The record was left open for Petitioner to submit additional documentation. The additional documentation has been received and admitted as Exhibit 1, pp. 1-45 and Exhibit 2, pp. 1-10.

ISSUE

Whether the Department properly determined 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 December [REDACTED] 2023, Petitioner applied for SDA. (Exhibit A, pp. 11-16)
2. On May [REDACTED] 2024, the Medical Review Team/Disability Determination Services (MRT/DDS) found Petitioner not disabled. (Exhibit A, pp. 5-6)
3. On June [REDACTED] 2024, a Notice of Case Action Notice was issued informing Petitioner that SDA was denied. (Exhibit A, pp. 7-10)

4. On June ■ 2024, the Department received Petitioner's timely written request for hearing. (Exhibit A, p. 3)
5. Petitioner alleged disabling impairments including: back injury, type 2 diabetes, irregular heartbeat, chronic kidney disease stage 3, neuropathy, anxiety disorder, major depressive disorder, and post-traumatic stress disorder (PTSD). (Exhibit A, p. 81; Petitioner Testimony)
6. At the time of hearing, Petitioner was ■ years old with an October ■ 1973 birth date; was ■ in height; and weighed ■ pounds. (Exhibit A, p. 81; Petitioner Testimony)
7. Petitioner completed the 12th grade, attended some college, and has a work history including inventory supervisor, sales, assembly, gas station assistant manager, job coach supervisor, and head cook. (Exhibit A, p. 84; Petitioner Testimony)
8. 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.

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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.922(a). The individual has the responsibility to provide evidence of prior

work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(a)(1)(iv)(vi)(vii).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity. Therefore, Petitioner is not ineligible for disability benefits under Step 1.

The severity of Petitioner's alleged impairment(s) is considered under Step 2. Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education, and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.922(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* At 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleged disabling impairments including: back injury, type 2 diabetes, irregular heartbeat, chronic kidney disease stage 3, neuropathy, anxiety disorder, major depressive disorder, and PTSD. (Exhibit A, p. 81; Petitioner Testimony).

While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

A September ■ 2023 post operative office visit record indicates Petitioner was injured January ■ 2022, and conservative treatments were tried, such as physical therapy, pain management, and therapeutic injections. Petitioner underwent a lumbar spine fusion L4-5, on April ■ 2023. On examination during this visit, lumbar spine range of motion was decreased, muscle spasm was noted, lumbar facet testing was positive bilaterally, and hypermobility was noted at the offending segment. Motor testing showed mild weakness of the lower extremities. Tandem walking was abnormal. Petitioner walked with a limp, with a stooped gait, unsteady gait, slow and guarded. Petitioner had difficulty getting out of a chair secondary to pain and weakness. Weakness was present bilaterally with heel walking and with toe walking. Floor squat was abnormal with weakness and pain. Petitioner demonstrated abnormal coordination. Diagnoses included: other intervertebral disc degeneration, lumbar region; and intervertebral disc displacement, lumbar region and lumbosacral region; lumbar stenosis with neurogenic claudication; osteoarthritis of the spine; low back pain/lumbago; and radiculopathy lumbar region. (Exhibit A, pp. 17-21, 75-79, and 158-168).

August ■ 2024 records from CMH document diagnosis and treatment of several impairments, including: generalized anxiety disorder; major depressive disorder; and PTSD. Petitioner's appearance and behavior were appropriate. Petitioner's affect was depressed, hopeless, and angry. Petitioner was oriented, speech was within normal limits, thought content was relevant, and thought process was within normal limits. Judgment and reasoning were impaired. There were no hallucinations and intellectual functioning appeared average. Petitioner had decreased energy and sleep difficulties. (Exhibit 1, pp. 1-45; Exhibit 2, pp. 4-10).

An August ■ 2024 EMG and Nerve Conduct Study Report listed diagnoses of lumbar radiculopathy and diabetic peripheral neuropathy. There was electrophysiological evidence of chronic lumbar radiculopathy at L4/5 level mainly to the right side with reduced amplitude and prolonged F-wave test from those nerves tested. There was also evidence of superimposed peripheral neuropathy of axonal type of bilateral lower extremities, however, clinical correlation was recommended. (Exhibit 2, p. 1).

An August ■, 2024, neurology consultation documented a current problem list of anxiety disorder, bilateral feet and toes numbness, chronic leg/back pain, depression, irregular heartbeat, right leg pain, and tremors of hands. On examination, Petitioner had increase muscle tone and muscle spasm activity at lumbar paraspinal muscles. Motor exam showed no limb weakness, no tremor, no rigidity, no spasticity. Deep tendon reflexes were 1+, bilateral upper extremities and symmetric; diminished bilateral lower extremities and absent ankle reflexes, no Babinski's. Sensory exam showed reduced sensation for pinprick and temperature of right lower leg with vague margin. Coordination exam was normal, no ataxia, gait was normal, no Romberg's sign. Mental status indicated normal memory, cognitive and comprehension function. Diagnosis codes were lumbar radiculopathy, other spondylosis with radiculopathy, lumbar region, type 2 diabetes with diabetic polyneuropathy, pain in right leg, paresthesia of skin, other specified cardiac

arrhythmias, and presence of cardiac pacemaker. Petitioner was advised to get an MRI of his spine, avoid heavy lifting or carrying heavy stuff, and take precaution when walking to prevent falls or potential injury. (Exhibit 2, pp. 2-3).

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that he does have some limitations on the ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted, or can be expected to last, continuously for 90 days; therefore, Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

The evidence confirms recent diagnosis and treatment of multiple impairments including: other intervertebral disc degeneration, lumbar region; and intervertebral disc displacement, lumbar region and lumbosacral region; lumbar stenosis with neurogenic claudication; osteoarthritis of the spine; low back pain/lumbago; lumbar radiculopathy; type 2 diabetes with diabetic polyneuropathy; pain in right leg; paresthesia of skin; other specified cardiac arrhythmias; presence of cardiac pacemaker; generalized anxiety disorder; major depressive disorder; and PTSD. Based on the objective medical evidence, considered listings included: 1.00 musculoskeletal disorders and 12.00 mental disorders. The medical evidence was not sufficient to meet the intent and severity requirements of the musculoskeletal disorder listings. There was insufficient medical evidence to establish the presence of the "B" and "C" criteria for the mental disorders listings. The medical evidence was not sufficient to meet the intent and severity requirements of any of these listings, or any other listing, or its equivalent. Accordingly, Petitioner cannot be found disabled, or not disabled at Step 3; therefore, Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(c).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally, and other sedentary

criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* 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). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* 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). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered non-exertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, individual's residual functional capacity is compared with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment, along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function 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. can't 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). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The evidence confirms recent diagnosis and treatment of multiple impairments including: other intervertebral disc degeneration, lumbar region; and intervertebral disc displacement, lumbar region and lumbosacral region; lumbar stenosis with neurogenic claudication; osteoarthritis of the spine; low back pain/lumbago; lumbar radiculopathy; type 2 diabetes with diabetic polyneuropathy; pain in right leg; paresthesia of skin; other

specified cardiac arrhythmias; presence of cardiac pacemaker; generalized anxiety disorder; major depressive disorder; and PTSD.

Petitioner's testimony indicated he can walk a couple minutes at a very slow pace; stand 15 minutes; sit 60 minutes with some problems; and can lift/carry a gallon of milk, but not much heavier. Petitioner described difficulties with bending/stooping/squatting, stairs, pain, numbness, sleep, racing thoughts, concentration, panic, crying, anger, being around others, and getting emotionally overwhelmed. (Petitioner Testimony). Petitioner's testimony is somewhat supported by the medical records and is found partially credible. The records do not support the degree of some of the limitations Petitioner described.

Petitioner's case manager indicated she was surprised Petitioner's mental health impairments were found to be mild because he would not be open to CMH services with mild impairment. Petitioner is considered a high intensity case with anxiety and depression. This is tied into his physical impairments as Petitioner cannot do what he could do in the past. Petitioner is not getting better and is not able to function. Petitioner has been on suicide watch, which would not happen if it was mild. (Case Manager Testimony). However, the August █ 2024 CMH records indicated Petitioner was oriented, speech was within normal limits, thought content was relevant, and thought process was within normal limits. Judgement and reasoning were impaired, but intellectual functioning appeared average. (Exhibit 1, pp. 1-45; Exhibit 2, pp. 4-10). Further, the August █ 2024, neurology consultation documented normal memory, cognitive and comprehension function. (Exhibit 2, pp. 2-3).

After review of the entire record it is found, at this point, that Petitioner has a combination of exertional and non-exertional limitations and maintains the residual functional capacity to perform sedentary work as defined by 20 CFR 416.967(a) on a sustained basis.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is considered. 20 CFR 416.960(b)(3).

Petitioner has a work history including inventory supervisor, sales, assembly, gas station assistant manager, job coach supervisor, and head cook. (Exhibit A, p. 84; Petitioner Testimony). As described by Petitioner, the sales work was mostly sitting with no lifting or carrying. Petitioner stated it was mostly typing. (Petitioner Testimony). In light of the entire record and Petitioner's RFC (see above), it is found that Petitioner is able to perform his past relevant work of sales. Accordingly, the Petitioner can be found not disabled, at Step 4.

In this case, the Petitioner is found not disabled for purposes of SDA benefits, as the objective medical evidence does not establish a physical and/or mental impairment that

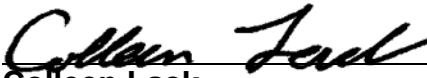
met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Petitioner's impairments did not preclude work at the above stated level for at least 90 days.

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

Accordingly, the Department's determination is AFFIRMED

CL/dm



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

Via-Electronic Mail :

DHHS
Lacey Whitford
Isabella County DHHS
**MDHHS-Isabella-
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KaradshehL

BSC2HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

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