

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

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Reg. No.: 15-005173
Issue No.: 4009
Case No.: ██████████
Hearing Date: June 08, 2015
County: Saginaw

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Claimant'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, a telephone hearing was held on June 8, 2015 from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Eligibility Specialist.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. The requested documents were received, the record closed on July 8, 2015, and the matter is now before the undersigned for a final determination based on the evidence presented.

ISSUE

Did the Department properly close Claimant's State Disability Assistance (SDA) benefit case based on its determination that Claimant was no longer disabled?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing recipient of SDA benefits based on a Hearing Decision issued by Administrative Law Judge (ALJ) Vicki Armstrong on August 13, 2013, finding that, in reliance on his status post five-vessel bypass surgery, Claimant was incapable of even sedentary work and was accordingly disabled (Exhibit A, pp. 194-201).
2. In October 2014, Claimant's updated medical packet was forwarded to the Medical Review Team (MRT) for review of his ongoing eligibility for disability-based Medical

Assistance (MA-P) and SDA benefits based on allegations of heart disease, back pain, leg pain, depression, anxiety, and post-traumatic stress disorder (PTSD).

3. On March 19, 2015, MRT found Claimant no longer disabled (Exhibit A, pp. 1-3).
4. On March 20, 2015, the Department sent Claimant a Notice of Case Action that his SDA case would close because MRT had determined he was no longer disabled.
5. On April 1, 2015, the Department received Claimant's timely written request for hearing concerning the closure of his SDA case.
6. As of May 18, 2015, Claimant's application with the Social Security Administration continued to be pending (Claimant's Exhibit 1).
7. Claimant alleged physical disabling impairment due heart issues, leg and back issues, hypertension, degenerative disc disease, and asthma.
8. Claimant alleged mental disabling impairments due to depression, anxiety, and post-traumatic stress disorder (PTSD).
9. At the time of hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; he was [REDACTED] in height and weighed [REDACTED] pounds.
10. Claimant completed the [REDACTED] grade and has a [REDACTED]. He can read and write and do basic math.
11. Claimant has an employment history of work as a stagehand, usher and assistant director of operations at a theater.

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 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. 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.

A disabled person is eligible for SDA. BEM 261 (July 2014), 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. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Once an individual has been found disabled, continued entitlement to benefits based on a disability 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(a). In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow an 8 step sequential evaluation. The review may cease and benefits may be continued at any point if there is sufficient evidence to find that the individual is still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5). The steps are as follows:

Step 1. Does the individual have an impairment or combination of impairments which meets or equals the severity of an impairment listed in 20 CFR Appendix 1 of subpart P of part 404? If so, the disability will be found to continue. 20 CFR 416.994(b)(5)(i). If not, continue to Step 2.

Step 2. Has there been medical improvement as defined in paragraph (b)(1)(i) of 20 CFR 416.994? If there has been medical improvement as shown by a decrease in medical severity, go to Step 3. If there has been no decrease in medical severity and no exception in Step 4 applies, there has been no medical improvement.

Step 3. If there has been medical improvement, is it related to the individual's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv); *i.e.*, was there an increase in the individual's residual functional capacity (RFC) based on the impairment(s) that was present at the time of the most recent favorable medical determination? If medical improvement is *not* related to the individual's ability to do work, the analysis proceeds to Step 4. If medical improvement *is* related to the individual's ability to do work, the analysis proceeds to Step 5.

Step 4. If it was found at Step 2 that there was no medical improvement or at Step 3 that the medical improvement is not related to the individual's ability to work, the exceptions in 20 CFR 416.994(b)(3) and (b)(4) are considered. If none of them apply, the disability will be found to continue. If an exception from the first group of exceptions to medical improvement applies, the analysis proceeds to Step 5. If an exception from the second group of exceptions to medical improvement applies, the disability is found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

Step 5. If medical improvement is shown to be related to an individual's ability to do work or if one of the first group of exceptions to medical improvement applies, **all** the individual's current impairments in combination are considered to determine whether they are severe in light of 20 CFR 416.921. This determination considers all the individual's current impairments and the impact of the combination of these impairments on the individual's ability to function. If the RFC assessment in Step 3 shows significant limitation

of the individual's ability to do basic work activities, the analysis proceeds to Step 6. When the evidence shows that all the individual's current impairments in combination do not significantly limit the individual's physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature and the individual will no longer be considered to be disabled.

Step 6. If the individual's impairment(s) is severe, the individual's current ability to do substantial gainful activity is assessed in accordance with 20 CFR 416.960; i.e., the individual's RFC based on all current impairments is assessed to determine whether the individual can still do work done in the past. If so, disability will be found to have ended.

Step 7. If the individual is not able to do work done in the past, the individual's ability to do other work given the RFC assessment made under Step 6 and the individual's age, education, and past work experience is assessed (unless an exception in 20 CFR 416.994(b)(5)(viii) applies). If the individual can do past work, the disability has ended. If the individual cannot, the disability continues.

Step 8. Step 8 may apply if the evidence in the individual's file is insufficient to make a finding under Step 6 about whether the individual can perform past relevant work. If the individual can adjust to other work based solely on age, education, and RFC, the individual is no longer disabled, and no finding about the individual's capacity to do past relevant work under Step 6 is required. If the individual may be unable to adjust to other work or if 20 CFR 416.962 may apply, the individual's claim is assessed under Step 6 to determine whether the individual can perform past relevant work.

Step One

In determining whether an individual's disability has ended, Step 1 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.

In the present case, Claimant alleges a disability due to DDD, heart issues, leg issues, hypertension, asthma, depression, anxiety, and PTSD. The medical evidence presented at the hearing is briefly summarized below.

Claimant's medical records from November 2013 indicate that Claimant's status post myocardial revascularization procedure performed in July 2012 showed him to be free from angina and excessive shortness of breath. He had some ongoing intermittent angina symptoms, which did not appear to be worsening in frequency and severity, with a negative stress test in May 2013; well-controlled hypertension; and peripheral vascular disease with status post right-sided endarterectomy doing well. An infection after the procedure healed (Exhibit A pp. 19-38, 88-101, 115-116, 149-172).

Claimant had a right CFA endarterectomy in September 2013 (Exhibit A, p. 102). A March 12, 2014, arterial duplex lower extremity report showed patent right femoral patch (Exhibit A, p. 124). At a March 25, 2014, office visit, the doctor advised Claimant to quit smoking to avoid the escalation of vascular problems (Exhibit A, pp. 125-128). A March 12, 2015, arterial duplex lower extremity report showed short occlusion of the

right common femoral artery. A right femoral endarterectomy with a possible right ileo femoral bypass was scheduled for June 20, 2015 (Exhibit 2).

Claimant's internist's notes from May 2014 to January 2015 show ongoing back and joint complaints, with a herniated disc, and hypertension and anxiety/depression (Exhibit A, pp. 39-46, 60-69, 175-187).

A doctor interpreted an EKG of Claimant's bilateral lower extremities to show right L3-4 radiculopathy without active denervation, chronic and relatively mild (Exhibit A, pp. 49, 70, 188).

On January 22, 2015, Claimant was examined for a physical examination consultation. The reviewing doctor found that Claimant was able to pick up small items and button his clothing without difficulty. He had no restriction of motion of extremities, normal spinal curvature. Claimant could reach over his head, behind his back and across his chest with no restriction. He could bend forward to 45 degrees and back bending was not restricted. He could stand heel to toe. He walked with a normal gait. Although he complained of a ruptured disc, he had negative leg raising signs bilaterally. The doctor noted he ambulated without difficulty, he was not short of breath at the examination, and he had no recent chest pains. There were no limitations on his current abilities or reflexes, and his strength was identified as 50/50 (Exhibit A, pp. 9-15).

Claimant's records show ongoing treatment for mental health issues (Exhibit A, pp. 103-114, 117-123, 129-143). His psychiatrist diagnosed him with PTSD and depression, major, recurrent, severe. The records reflected a current global assessment of functioning (GAF) score of 55-60 as of July 2014 (Exhibit A, p. 131). In the June 2014 medication review, the doctor noted that Claimant was "doing okay overall [on] his current medications, except for some medical problems and psycho-social stressors, remains quite fragile, but denies suicidal or homicidal thinking, currently is not psychotic or manic." (Exhibit A, p. 132).

On January 22, 2015, Claimant participated in a consultative psychiatric/psychological examination and, based on an examination, the doctor concluded that Claimant had no abnormalities in mental capacity and met the diagnostic criteria for PTSD, persistent depressive disorder with anxious distress and specific phobia (to cars and auto locking car doors). The doctor noted that Claimant's emotion reaction was depressed. The doctor concluded that Claimant's ability to relate and interact with others, including coworkers and supervisors is impaired, especially during flare ups, and his depression and anxiety could affect his interpersonal relationships in the workplace, especially during flare-ups. The doctor noted that Claimant's ability to understand, recall and complete tasks and expectations did not appear to be significantly impaired and he would be able to perform simple and complex tasks with no major limitations and would not struggle with familiar routines and tasks, even those with multiple steps and increased complexity, except during flare ups which would likely impair his effectiveness

and performance. The doctor concluded that Claimant's prognosis was poor (Exhibit A, pp. 4-8).

On June 10, 2015, Claimant's psychiatrist completed a psychiatric/psychological examination report confirming Claimant's diagnoses of major depression, severe; PTSD; general anxiety disorder with panic attacks; and bipolar disorder and listed a current global assessment of functioning score (GAF) of 31 to 41, with a similar score the prior year. The doctor noted that Claimant was angry and abrasive and irritable; his hygiene was unkempt; his speech was tense and pressured; and his judgment was poor. The doctor noted angry daily outbursts, depression, feelings of hopelessness, mood swings, anxiety, and flashbacks. The doctor completed a mental residual functional capacity assessment, DHS-49-E, regarding Claimant's mental impairments and how they affected his activities. The psychiatrist concluded that Claimant had no, or no significant, limitations regarding his ability to remember locations and work-like procedures; understand and remember one or two-step instructions; carry out simple one or two step instructions; carry out detailed instructions; make simple work-related decision; ask simple questions or request assistance; travel in unfamiliar places or use public transportation; and set realistic goals or make plans independently of others. The psychiatrist concluded that Claimant had moderate limitations regarding his ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; sustain an ordinary routine without supervision; accept instructions and respond appropriately to criticisms from supervisors; and respond appropriately to change in the work setting. The psychiatrist concluded that Claimant had marked limitations regarding his ability to understand and remember detailed instructions; maintain attention and concentration for extended periods; work in coordination with or proximity of others without being distracted by them; complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods; interact appropriately with the general public; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; and be aware of normal hazards and take appropriate precautions. The doctor opined that Claimant was unable to work do to his mental health conditions (Exhibit 4).

On July 1, 2015, Claimant's internist completed a medical examination report, DHS-49, identifying Claimant's diagnoses as asthma, nicotine abuse, hypertension, anxiety/depression, irritable bowel syndrome/gastroesophageal reflux disease, right lower extremity claudication, degenerative disc disease, torn left lumbar, coronary artery bypass grafting. The doctor indicated that Claimant's condition was stable and identified the following restrictions: (i) Claimant could occasionally left up to 20 pounds but never more; (ii) he could stand and/or walk less than 2 hours in an 8-hour day; (iii) he had no sitting restrictions; (iv) he could not use either hand or arm to reach or push/pull; and (v) he could not use his right leg to operate foot/leg controls (Exhibit 5).

The medical evidence presented has been reviewed but does not meet the level necessary to meet, or equal, the severity of a listing under Appendix 1. Listings 1.02 (major dysfunction of a joint); 1.04 (disorders of the spine); 3.02 (chronic pulmonary insufficiency); 3.03 (asthma); 4.04 (ischemic heart disease); 4.11 (chronic venous insufficiency); 12.04 (affective disorders); and 12.06 (anxiety-related disorder) were considered.

Because the medical evidence presented in this case was insufficient to meet or equal any of the listings considered, a disability is not continuing under Step 1 of the analysis, and the analysis proceeds to Step 2.

Step Two

If the impairment(s) does not meet or equal a Listing under Step 1, 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 none of the exceptions listed below in Step 4 applies, then an individual's disability is found to continue.

In this case, Claimant was found disabled in the August 13, 2013, Hearing Decision issued by ALJ Armstrong based on the conclusion that Claimant was incapable of even sedentary work due to his status post five-vessel bypass surgery (Exhibit A, pp. 194-201). Claimant's medical records from November 2013 indicate that Claimant's status post myocardial revascularization procedure performed in July 2012 showed him to be free from angina and excessive shortness of breath. He had some ongoing intermittent angina symptoms, which did not appear to be worsening in frequency and severity, with a negative stress test in May 2013; well-controlled hypertension; and peripheral vascular disease with status post right-sided endarterectomy doing well. An infection after the procedure healed (Exhibit A pp. 19-38, 88-101, 115-116, 149-172).

This evidence was sufficient to establish a medical improvement. Therefore, Claimant's disability cannot be found to be continuing at Step 2 and the analysis proceeds to Step 3.

Step Three

When medical improvement is found in Step 2, Step 3 calls for a determination of whether there has been an increase in the individual's 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). In other words, a determination must be made whether there has been an increase in the individual's 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). RFC is the most an individual can do, based

on all relevant evidence, despite the limitations from the impairment(s), 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).

In this case, ALJ Armstrong concluded that Claimant had the RFC to perform less than sedentary work and found him disabled based on exertional limitations.

If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect 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 exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

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.

Light work.

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 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. 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. If someone can do light work, ... he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, ... he or she can also do sedentary and light work.

Heavy work.

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

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. If someone can do very heavy work, ... he or she can also do heavy, medium, light, and sedentary work.

20 CFR 416.967.

At the hearing, with respect to his physical impairments, Claimant testified that he had pain in his back and down his leg that limited his sitting to one to two hours and made him unable to walk further than 1 ½ blocks; he could lift about 10 pounds; he could stand for up to 2 hours if he put his weight on his left leg; he could dress and bathe himself; and he did some of the household chores.

In the January 22, 2015 consultative physical examination, the consulting doctor found that Claimant was able to pick up small items and button his clothing without difficulty; had no restriction of motion of extremities and normal spinal curvature; could reach over his head, behind his back and across his chest with no restriction; could bend forward to 45 degrees and had no restrictions to back bending; he could stand heel to toe; and walked with a normal gait. Although he complained of a ruptured disc, he had negative leg raising signs bilaterally. The doctor noted that Claimant ambulated without difficulty, he was not short of breath at the examination, and he had no recent chest pains. There were no limitations on his current abilities or reflexes and his strength was identified as 50/50 (Exhibit A, pp. 9-15). Claimant's doctor completed a DHS-49 indicating that Claimant could lift and carry 20 pounds occasionally and had no sitting restrictions (Exhibit 4).

Based on the medical evidence and Claimant's testimony, Claimant is capable of light work as defined by 20 CFR 416.967(b). Therefore, there was at the time of the review an increase in Claimant's exertional RFC from the time of the August 2013 favorable Hearing Decision.

Step Four

Step 4 applies if no medical improvement was found in Step 2 or if, under Step 3, medical improvement is not related to the individual's ability to work. Step 4 evaluates whether any listed exception described in 20 CFR 416.994(b)(3) and (b)(4) applies to the individual. 20 CFR 416.994(b)(5)(iv). If no exception applies, disability is found to continue. *Id.*

Because there was a medical improvement in Claimant's condition at Step 2, Step 4 is not relevant in this case.

Step Five

When it is found under Step 3 that a medical improvement is related to the individual's ability to do work, in Step 5 **all** of the current impairments and the impact of the combination of these impairments on the individual are assessed to determine whether all the current impairments in combination are severe. 20 CFR 416.994(b)(5)(v). If the RFC assessment in Step 3 shows significant limitation of the individual's ability to do basic work activity, the analysis proceeds to Step 6. *Id.* When the evidence shows that all the current impairments in combination do not significantly limit the individual's physical or mental abilities to do basic work activities, the impairment will not be considered severe and the individual is no longer considered disabled. *Id.*

The medical evidence presented in this case, as summarized under Step 1, is sufficient to establish that Claimant's current impairments, and the impact of the combination of these impairments, is severe. Therefore, the analysis proceeds to Step 6.

Step 6

In Step 6, the individual's current ability to do substantial gainful activity is assessed in accordance with § 416.960. 20 CFR 416.994(b)(5)(vi). At this step, the individual's RFC based on all **current** impairments is assessed to determine whether the individual can still do work done in the past. *Id.* If so, the disability has ended. *Id.*

In determining RFC, both exertional (or physical) and nonexertional limitations are considered. As discussed above, Claimant has established that his physical RFC is limited to performing no more than light work.

Claimant has also alleged nonexertional limitations to his ability to perform basic work activities. 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., 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).

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). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

At the hearing, Claimant testified that he suffered from anxiety, particularly with respect to fire and locked cars after witnessing a car accident several years ago in which he witnessed individuals burned alive. He also has issues controlling his anger.

In the DHS-49D completed on June 10, 2015, Claimant's psychiatrist listed Claimant's diagnoses as PTSD; depression, major, recurrent, severe; general anxiety disorder with panic attacks, and bipolar disorder and assigned him a GAF score of 31 to 41, showing a decline in the prior GAF of 50-55 Claimant was assigned in the past (Exhibit 4; Exhibit A, p. 137). A GAF score between 31 and 41 is indicative of no better than serious symptoms or impairment of social or occupational functioning. The doctor also expressed concerns regarding Claimant's ability to function in a work setting, noting that he was angry, abrasive and irritable; his hygiene was unkempt; his speech was tense and pressured; and his judgment was poor. The doctor noted Claimant suffered from angry daily outbursts, depression, feelings of hopelessness, mood swings, anxiety, and flashbacks. In the DHS-49-E he completed, the doctor indicated that Claimant did not have any impairments in understanding and carrying out simple one or two step or detailed instructions but had moderate limitations regarding his ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; sustain an ordinary routine without supervision; accept instructions and respond appropriately to criticisms from supervisors; and respond appropriately to change in the work setting and marked limitations regarding his ability to understand and remember detailed instructions; maintain attention and concentration for extended periods; work in coordination with or proximity of others without being distracted by them; complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods; interact appropriately with the general public; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; and be aware of normal hazards and take appropriate precautions.

The January 22, 2015, psychiatric/psychological consultative examination supports Claimant's doctor's position. The consulting doctor concluded that Claimant had no abnormalities in mental capacity but met the diagnostic criteria for PTSD, persistent depressive disorder with anxious distress and specific phobia (to cars and auto locking car doors). The doctor noted that Claimant's ability to understand, recall and complete tasks and expectations did not appear to be significantly impaired and he would be able to perform simple and complex tasks with no major limitations and would not struggle with familiar routines and tasks, even those with multiple steps and increased complexity. However, the doctor concluded that Claimant's ability to relate and interact with others, including coworkers and supervisors was impaired, especially during flare ups, and his depression and anxiety could affect his interpersonal relationships in the workplace, especially during flare-ups which would likely impair his effectiveness and performance. The doctor concluded that Claimant's prognosis was poor (Exhibit A, pp. 4-8).

Based on the evidence presented, particularly the consultative exam which limited Claimant's ability to function in full-time employment, Claimant's nonexertional RFC

showed he had moderate to marked limitations on his mental ability to perform basic work activities.

Based on his exertional RFC limiting him to light work and the moderate to marked limitation in his mental RFC, Claimant would be unable to perform his prior work as a theatre stage hand, usher, or assistant operations director, which would require significant interactions with the public and colleagues. Accordingly, Claimant's disability cannot be found as ending at Step 6 and the assessment continues to Step 7.

Step 7

In Step 7, an assessment of an individual's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.994(5)(B)(vii). If the individual can adjust to other work, then the disability has ended. *Id.* If the individual cannot adjust to other work, then the disability continues. *Id.*

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules in Appendix 2 pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, for purposes of Appendix 2, Claimant was ■ years old at application and ■ years old at time of hearing, making him a younger individual (ages 18-44). He can read and write and has basic math skills. His past employment skills are not transferable. 20 CFR 416.968(d). As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform up to light work activities. Appendix 2 of the Medical-Vocational Guidelines do not result in a disability finding based on Claimant's exertional limitations (202.18). However, Claimant also has at least moderate limitations in his mental ability to perform basic work activities. Both Claimant's doctor and the consulting doctor noted limitations in Claimant's ability to perform in a work environment with coworkers and supervisors. Because of Claimant's limited mental RFC which affect his ability to function in the workplace, Claimant is incapable of doing other work. Therefore, Claimant's disability is found to continue at Step 7.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant has continuing disability for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING 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:

1. Reinstate Claimant's SDA case effective the date of closure;
2. Issue supplements to Claimant for any lost SDA benefits that he was entitled to receive from the date of closure ongoing if otherwise eligible and qualified in accordance with Department policy;
3. Notify Claimant of its decision in writing; and
4. Review Claimant's continued SDA eligibility in January 2016 in accordance with Department policy.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/24/2015**

Date Mailed: **7/24/2015**

ACE / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;

- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

CC:

[REDACTED]