

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

IN THE MATTER OF:



MAHS Reg. No.: 15-023167
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: February 24, 2016
County: Wayne (57)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on February 24, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], medical contact worker.

ISSUE

The issue is whether MDHHS properly denied Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner is not a disabled individual.

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 [REDACTED], Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibits 1, pp. 7-15).
4. On [REDACTED], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action (Exhibit 1, pp. 5-8) informing Petitioner of the denial.

5. On [REDACTED], Petitioner requested a hearing disputing the denial of SDA benefits.
6. As of the date of the administrative hearing, Petitioner was a 58-year-old male.
7. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
8. Petitioner's highest education year completed was the 12th grade, with no direct entry into skilled employment.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on restrictions related to schizoaffective disorder and osteoarthritis of the knees.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1. A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
 - resides in a qualified Special Living Arrangement facility, or
 - is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
 - is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*

There was no evidence that any of the above circumstances apply to Petitioner. Accordingly, Petitioner may not be considered for SDA eligibility without undergoing a medical review process (see BAM 815) which determines whether Petitioner is a disabled individual. *Id.*, p. 3.

Generally, state agencies such as MDHHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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. SDA differs in that a 90 day period is required to establish disability.

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id.*, p. 9. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute SGA. *Id.*

The person claiming a physical or mental disability has the burden 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2016 monthly income limit considered SGA for non-blind individuals is \$1,130.00.

Petitioner credibly denied performing current employment; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA. Accordingly, the disability analysis may proceed to the second step.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Petitioner's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented medical documentation.

Hospital emergency room documents (Exhibit A, pp. 5-6, and B, pp. 6-7) dated [REDACTED], were presented. Treatment details were not apparent but Penicillin was prescribed.

A Homeless Services Assessment (Exhibit A, pp. 9-24) dated [REDACTED], was completed by a psychologist. It was noted Petitioner had substance abuse and mental health concerns.

Physician office visit notes (Exhibit 1, pp. 130-135) dated [REDACTED], were presented. It was noted that Petitioner appeared to establish treatment. A complaint of bilateral knee pain, ongoing for several months, was noted. It was noted an x-ray from June 2014 showed a loss of cartilage over both joints. Bilateral crepitus and tenderness was noted. It was noted there was knee locking sensation after repeated

flexion/extension. McMurray testing was negative. It was noted Petitioner may have overused his knees based on a reported history of many hours per day of bike riding and basketball. Degenerative arthritis and a meniscus tear were suspected. Patello femoral syndrome was noted as a possibility also. An MRI was ordered.

Physician office visit notes (Exhibit 1, pp. 136-139) dated [REDACTED], were presented. It was noted Petitioner expressed concern over knee ligaments. Petitioner reported symptoms of knee pain, knees locking if standing for too long, and stiffness in mornings (lasting up to an hour). It was noted Petitioner rode his bicycle and that symptoms appeared after 30 minutes of moderate exertion. Physical examination findings noted a normal appearance of knees. A plan of Petitioner undergoing an MRI (on [REDACTED]) and to see an orthopedist was noted. Active medications included Tylenol Arthritis, naproxen, Protonix, and Vitamin D2.

Various hospital documents from November 2014 (Exhibit 1, pp. 128-161) were presented. It was noted Petitioner complained of rectal bleeding and underwent a colonoscopy.

Physician office visit notes (Exhibit 1, pp. 145-148) dated [REDACTED], were presented. It was noted Petitioner expressed concern over knee ligaments. It was noted a knee MRI showed mild degeneration and a grade IV chondromalacia in right knee. Bilateral cortisone injections were noted as given in November 2014. Petitioner reported knee pain was unchanged though taking Naprosyn helps. Mild pain was noted with bilateral knee motion. A plan to continue Tylenol was noted.

Physician office visit notes (Exhibit 1, pp. 140-144) dated [REDACTED], were presented. It was noted Petitioner expressed concern over knee ligaments. It was noted Petitioner received ongoing treatment for schizoaffective disorder from a mental health facility. Petitioner reported he previously felt suicidal but has better controlled his feelings in recent times. Assessments of schizoaffective disorder and knee pain were noted.

Physician notes from a treating mental health center (Exhibit 1, pp. 83-88) dated [REDACTED] were presented. Petitioner reported difficulty sleeping and memory problems. Risperdal, Trazadone, and Busirone were noted as active medications. Observations of Petitioner included normal attitude, normal speech, normal psychomotor activity, normal mood, normal thought proves, normal thought content, normal attention and concentration, normal affect, and adequate judgment. It was noted Petitioner was homeless. Mental health symptoms were reported to have begun approximately 1 year earlier. Axis I diagnoses of schizoaffective disorder and polysubstance dependence were noted. Petitioner's GAF was 45.

Mental health center progress notes from a treating social worker (Exhibit 1, pp. 89-91) dated [REDACTED], were presented. It was noted Petitioner reported financial stress. It was noted Petitioner was considering working part-time.

Mental health center progress notes from a treating mental health center physician (Exhibit 1, pp. 119-125) dated [REDACTED], were presented. It was noted Petitioner appeared for a medication review. All mental health examination assessments of Petitioner were normal. Medications were noted to be continued.

Mental health center progress notes from a treating social worker (Exhibit 1, pp. 80-82) dated [REDACTED], were presented. It was noted Petitioner reported frustration at a SSA denial.

Mental health center progress notes from a treating social worker (Exhibit 1, pp. 77-79) dated [REDACTED], were presented. It was noted Petitioner continued to show unspecified schizoaffective disorder symptoms.

Mental health center progress notes from a treating mental health center physician (Exhibit 1, pp. 113-118) dated [REDACTED] were presented. It was noted Petitioner appeared for a medication review. Medications were noted to be continued.

Physician office visit notes (Exhibit 1, pp. 149-151) dated [REDACTED], were presented. It was noted Petitioner reported knee pain was stable and that he continued to ride his bicycle. Mildly reduced ranges of motions were noted in both knees.

Mental health center progress notes from a treating social worker (Exhibit 1, pp. 74-76) dated [REDACTED], were presented. Petitioner reported feeling purposeless and waking up with nothing to look forward to doing.

Mental health center progress notes from a treating social worker (Exhibit 1, pp. 71-73) dated [REDACTED], were presented. Petitioner reported his body hurt from a fall from the day before. Petitioner reported ongoing financial difficulty.

Physician office visit notes (Exhibit 1, pp. 152-157) dated [REDACTED], were presented. It was noted Petitioner reported stable knee pain and that he continued to ride his bicycle. Mild pain was noted on left knee motion. An assessment of bilateral knee osteoarthritis was noted. Tylenol Arthritis was noted as an active medication.

Mental health center progress notes and a crisis plan from a treating social worker (Exhibit 1, pp. 67-70, 92-99) dated [REDACTED], were presented. Petitioner reported a need for physical therapy for his knee/leg pain. Petitioner's treatment plan was discussed; plan details included stress coping strategies, pursuing SSA benefits, and continuing therapy attendance.

A portion of a biopsychosocial assessment (Exhibit 1, pp. 51-61) dated [REDACTED], [REDACTED] was presented. The assessment was performed by a social worker from a treating mental health agency. It was noted Petitioner received treatment for several years. Reported symptoms included anxiety, anhedonia, hallucinations, paranoia, and

racing thoughts. A history of ETOH abuse was noted; Petitioner reported his last use was December 2013. A history of neglect and abuse while a child was reported by Petitioner. Observations of Petitioner included the following: good grooming, good hygiene, alert, fair judgment, limited insight, illogical thought process, delayed stream of mental activity, appropriate affect, and unremarkable speech. A diagnosis of schizoaffective disorder was noted. A plan of ongoing therapy, ongoing care coordinator appointments, and psychiatric appointments was noted. Petitioner's GAF was noted to be 45.

Mental health center progress notes (Exhibit 1, pp. 62-66) dated [REDACTED], were presented. Petitioner reported a need for physical therapy for his knee/leg pain. Petitioner also expressed a desire to continue therapy. Petitioner reported he limits his socializing, especially when there is nothing to gain from the interaction. It was noted Petitioner avoided using transportation provided by his insurance because he did not want to socialize with others. Petitioner reported continued attendance at substance abuse meetings.

Physician notes from a treating mental health center (Exhibit 1, pp. 100-112) dated [REDACTED], were presented. Petitioner reported concerns of arthritis and an unspecified sinus problem. Smoking cessation was noted as recommended. Prescribed medications were Risperdal, Trazadone, and Klonopin. Petitioner reported ongoing depression, anxiety, memory loss. Petitioner reported being homeless since 1991.

A Mental Residual Functional Capacity Assessment (Exhibit 1, pp. 23-24) dated [REDACTED], was presented. The assessment was noted as completed by a SSA psychiatrist. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". Petitioner had no marked restrictions. Moderate restrictions were noted in the following abilities: understanding and remembering detailed instructions, carrying out detailed instructions, maintaining concentration for extended periods, interacting appropriately with the general public, getting along with others without exhibiting behavioral extremes, and responding appropriately to changes in the work setting. Petitioner was noted as continuing therapy with remission of symptoms. Petitioner was opined to be capable of performing simple, routine, and repetitive tasks with simple decision making, consistent routine, occasional social interaction, and without a fast pace.

A Physical Residual Function Capacity Assessment (Exhibit 1, pp. 41-48) dated [REDACTED], was presented. The report was completed by a "single decisionmaker" (opposed to a medical consultant) with unknown credentials. Petitioner was deemed capable of occasional lifting/carrying 50 pounds and frequent lifting/carrying of 25 pounds. Over an 8 hour workday, Petitioner was deemed capable

of sitting for 6 hours and/or standing/walking for 6 hours. Petitioner was restricted from crawling and balancing.

Petitioner presented various Patient Information Leaflets (Exhibit A, pp. 1-4). Clonazepam, Trazadone, and Risperidone were noted as received by Petitioner on [REDACTED]. Duloxetine was received by Petitioner as of [REDACTED].

A letter from a staff person at a soup kitchen (Exhibit A, p. 26) was presented. The letter was undated but is presumed to have been written on [REDACTED] as it was stated Petitioner would be one year sober as of tomorrow, [REDACTED]. It was stated Petitioner regularly attended group meetings which were held at the soup kitchen. It was noted Petitioner was helpful in setting up and cleaning up after the meetings.

Petitioner testified he has a history of crack cocaine addiction. Petitioner testified he has been sober over a year. Petitioner testified he had a relapse a little over a year ago, but was sober six months before his relapse. Petitioner testified he became sober with assistance from outpatient therapy which included attendance at group meetings. Petitioner's testimony was credible and consistent with presented records. Petitioner's past ETOH abuse is found not to be relevant to the disability analysis.

Petitioner alleged severe impairments, in part, due to recurring knee pain. Petitioner testified he takes arthritis medication for his knees. Petitioner testified his ambulation, standing, and lifting/carrying are restricted due to knee pain. Petitioner's testimony was consistent with Petitioner's treatment history for knee pain and diagnoses for bilateral knee osteoarthritis and loss of cartilage.

Petitioner alleged severe impairments, in part, due to psychological symptoms. Petitioner testified he used to have hallucinations, but not since taking Risperidone and Trazadone. Petitioner testified he can get stressed; as an example, Petitioner testified he quit a job as a janitor due to stress. Petitioner testified he finds social interactions to be stressful and has a short attention span. Petitioner testified he sees a psychiatrist and a therapist on a monthly basis. Petitioner testified he wants to see his therapist more often but has difficulty with transportation.

Petitioner sufficiently established exertional and non-exertional restrictions related to knee restrictions and schizoaffective disorder. Based on Petitioner's treatment history, the restrictions were sufficiently established to have lasted longer than 90 days and at least since the date of SDA application. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

The third step of the sequential analysis requires determining whether the Petitioner's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a petitioner's impairments are listed and

deemed to meet the durational requirement, then the petitioner is deemed disabled. If the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

A listing for joint dysfunction (Listing 1.02) was considered based on Petitioner's complaints of knee pain. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively.

A listing for psychotic disorders (Listing 12.03) was considered based on treatment for schizoaffective disorder. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Petitioner required a highly supportive living arrangement, suffered repeated episodes of decompensation, or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

It is found that Petitioner failed to establish meeting a SSA listing. Accordingly, the analysis moves to the fourth step.

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 it is determined that a petitioner can perform past relevant work. *Id.*

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 not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Petitioner testified he has not had a full-time job since 2000. Petitioner's written statements indicated differently.

A Work History Questionnaire (Exhibit 1, pp. 172-178) dated [REDACTED], was presented. The form was signed by Petitioner, presumably as part of his SSA application process. Petitioner stated he worked as a janitor in 2011. Petitioner reported he worked 30 hours/week for \$8.50/hour. Petitioner also reported work as a dishwasher of 40+ hours/week across 2003-2004; a wage was not stated but it is presumed Petitioner made at least minimum wage. Petitioner's wages would exceed SGA limits for both former jobs.

Petitioner's janitorial job indicated he was expected to stand and walk 6 hours per day. It is presumed Petitioner intended to report sitting or walking of 6 hours/day. Petitioner listed that he frequently lifted 15-30 pounds.

Petitioner stated he stood and/or walked 40+ hours per day at his dishwashing job; presumably Petitioner intended to list 40+ as a weekly expectation of standing/walking. Petitioner checked he was expected to frequently lift/carry 25-50 pounds.

Petitioner verified a fairly regular treatment history for his knees. Petitioner's treatment was relatively conservative. Less conservative treatments of physical therapy and/or surgery were not documented. One knee injection was verified. Despite Petitioner's complaints of knee pain, all evidence supported Petitioner was still able to ride his bike. Radiology verified mild degeneration which is not particularly indicative of knee pain that would prevent employment as a janitor or dishwasher. These considerations support a finding that Petitioner can perform past employment.

Radiology also verified a grade IV chondromalacia in Petitioner's right knee. A grade IV chondromalacia is understood to be the most painful grade of chondromalacia; it is understood to mean that cartilage is destroyed all the way to the subchondral bone. The grade is highly indicative of an inability to perform the standing requirements of janitorial or dishwashing employment.

Petitioner's exertional restrictions should not be considered independently from exertional restrictions. Petitioner was diagnosed with schizoaffective disorder. Generally, such a diagnosis is highly indicative of disability. Petitioner appears to be highly functional (despite a low GAF) as mental examination findings consistently noted normal function in all areas. Petitioner's apparently high psychological function level is somewhat deceptive.

Petitioner is 58 years old and has very little employment history and long periods of homelessness. Petitioner reported he quit one janitorial job due to stress. Petitioner testified and verified (see Exhibit A, p. 7) he was discharged from the military due to "bad conduct"; Petitioner testified he did things "his own way" and was kicked-out for it. Petitioner's history is indicative of difficulties dealing with stress and authority. Petitioner's psychological obstacles likely hinder Petitioner in overcoming his physical restrictions.

Based on presented evidence, it is found Petitioner is unable to stand/ambulate for 6 hours per day. Accordingly, Petitioner cannot perform past employment and the analysis may proceed to the final step.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial

evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, 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). To determine the physical demands (i.e. 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 are considered non-exertional. 20 CFR 416.969a(a). Examples of non-exertional limitations 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 (e.g. 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.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Petitioner's age, education and employment history a determination of disability is dependent on Petitioner's ability to perform medium employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday. Medium employment requires comparable standing and walking standards, but with a heavier lifting requirement than light employment.

Petitioner testified he can only walk a block before his legs get shaky. Petitioner testified he can stand 30 minutes before his legs get weak and prevent further standing. Petitioner estimated he could sit for 2 hours before becoming anxious. Petitioner testified he can lift/carry a maximum of 40 pounds.

Petitioner testified he tries to bike rather than walk. Petitioner testified he performs ADLs such as bathing, grooming, laundry, cleaning, and shopping without assistance or problem.

Physician statements of Petitioner restrictions were not presented. Provided restrictions from a "single decisionmaker" were presented. The restrictions are not insightful as they appear to be nothing more than the opinion of a non-medical source.

At the fourth step, it was found Petitioner was incapable of standing/walking of 6 hours. The finding would render Petitioner incapable of performing any employment other than sedentary employment. Given Petitioner's psychological restrictions, it is questionable whether even sedentary jobs exist within Petitioner's abilities. For purposes of this decision, it will be presumed such opportunities exist.

Based on Petitioner's exertional work level (sedentary), age (advanced age), education (high school with no direct entry into skilled employment), employment history (unskilled), Medical-Vocational Rule 201.04 is found to apply. This rule dictates a finding that Petitioner is disabled. Accordingly, it is found that MDHHS improperly found Petitioner to be not disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly denied Petitioner's application for SDA benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's SDA benefit application dated [REDACTED];
- (2) evaluate Petitioner's eligibility subject to the finding that Petitioner is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Petitioner is found eligible for future benefits.

The actions taken by MDHHS are **REVERSED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **MARCH 7, 2016**

Date Mailed: **MARCH 7, 2016**

CG / hw

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

