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

IN THE MATTER OF:

MAHS Reg. No.:	15-019244
Issue No.:	4009
Agency Case No.:	
Hearing Date:	January 27, 2016
County:	Kent-District 1 (Franklin)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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; and 45 CFR 205.10. After due notice, a telephone hearing was held on January 27, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. , Petitioner's girlfriend, and , a family therapist at , appeared as witnesses on Petitioner's behalf. The Department was represented by , Family Independence Manager.

ISSUE

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

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

1. On March 30, 2015, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On September 16, 2015, the Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 8-15).

3. On September 17, 2015, the Department sent Petitioner a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 6-7).

4. On October 13, 2015, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 3).

5. Petitioner alleged disabling impairment due to limited use of hands and arms, cervical and lumbar degenerative disc disease, and essential tremors.

6. On the date of the hearing, Petitioner was ██ years old with a ██████ birth date; he is ██████ in height and weighs about ███ pounds.

7. Petitioner is a high school graduate.

8. At the time of application, Petitioner was not employed.

9. Petitioner has an employment history of work as a factory worker at a manufacturing plant and a foundry.

10. Petitioner has a pending disability claim with the Social Security Administration.

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 disabled person is eligible for SDA. BEM 261 (July 2015), 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).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If

an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

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

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

Step Two

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

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-

workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

In the present case, Petitioner alleges disabling impairment due to limited use of hands and arms, cervical and lumbar degenerative disc disease, and essential tremors. The medical evidence presented at the hearing was reviewed and is summarized below.

From November 13, 2014 to November 21, 2014, Petitioner was hospitalized after making a suicidal statement to his wife. The medical history showed ongoing issues of alcohol abuse, hypertension, arthritis, and nicotine abuse. He was assessed with worsening alcohol abuse, stable hypertension, stable arthritis, worsening nicotine abuse, and worsening cannabis abuse (Exhibit A, pp. 61-64).

On March 9, 2015, Petitioner's doctor at [redacted] completed a letter indicating that Petitioner was currently being evaluated for symptoms of numbness and weakness which prohibited him from working (Exhibit A, p. 46).

Notes from a March 13, 2015 appointment with Petitioner's primary care physician noted an abnormal electrodiagnostic study that showed evidence of (i) moderate median neuropathy at the left wrist involving sensory and motor nerves with demyelinating features; (ii) severe ulnar neuropathy at the elbow involving sensory and motor nerves with demyelination and axonal loss; (iii) mild ulnar neuropathy at the left elbow involving sensory nerve and motor conduction block across the elbow; (iv) mild chronic radicular changes at C7, C6 and C5 in the left upper extremity; and (v) mild old L5 radicular changes in the left lower extremity. The doctor also noted decreased motor strength for bilateral hand intrinsics, finger flexors, wrist flexors and triceps, worse on the left, and decreased sensation in the pinky and left index finger bilaterally. It was noted that Spurling maneuver caused neck pain but not radicular pain and the straight leg raise was not painful. He was referred for surgical evaluation for ulnar neuropathy and median neuropathy. (Exhibit A, pp. 49-54). Petitioner's doctor records also show an active problem including benign essential tumor (Exhibit A, pp. 47-48, 68-69).

An April 22, 2015 exam showed decreased reflexes bilaterally for both upper extremities, worse on the left; restricted range of motion in extension, flexion and lateral rotation of the lumbar spine; tenderness midline at L5-S1; restricted flexion, left lateral rotation of the cervical spine and tenderness at the left C6-7 and Spurlings positive at left. (Exhibit A, pp. 55-60.)

On April 22, 2015, a pain management doctor met with Petitioner and completed a medical examination report, DHS-49, listing Petitioner's diagnoses as cervical radiculopathy and lumbar degenerative disc disease with radiculopathy. The doctor noted that Petitioner had a left antalgic gait, some C5-6 atrophy, and decreased left

hand grip. The doctor observed decreased reflection bilaterally at C5-6 and at the low back L4-5 and L5-S. The doctor concluded that Petitioner's condition was deteriorating and identified the following limitations: (i) he could occasionally lift and carry up to 10 pounds and never more; (ii) he could stand and/or walk less than 2 hours in an 8-hour workday; (iii) he could use neither arm or hand to grasp, reach, push/pull, fine manipulate; and (v) he could use his right foot or leg to operate foot and leg controls. The doctor relied on a cervical x-ray and his physical exam and noted that an MRI was pending (Exhibit A, pp. 43-45).

An April 24, 2015 magnetic resonance imaging (MRI) of Petitioner's cervical spine showed cervical spondylosis with findings as follows: (i) at C3-C4: focal disc protrusion posteriorly on the right resulting in a mild degree of asymmetric dural sac effacement, (ii) at C4-C5, disc osteophyte complex which effaces the dural sac but does not result in cord flattening; (iii) at C5-C6, disc osteophyte complex which effaces the dural sac but does not result in cord flattening; and (iv) at C6-C7, disc osteophyte complex effaces the dural sac anteriorly with no spinal cord flattening or neural foraminal narrowing (Exhibit A, p. 65).

On June 25, 2015, Petitioner participated in a mental status examination at the Department's request. The psychologist indicated that Petitioner reported becoming depressed since his mother went into a coma, having low energy, having difficulty falling and staying asleep, being irritable, being less sociable and more withdrawn, having panic attacks, and worrying more. Petitioner denied current drug use but admitted drinking weekly, but not heavily. The psychologist reported that Petitioner did not show signs of psychosis or thought disorder; his affect was within normal limits; and he was oriented to person, place and time. The psychologist diagnosed Petitioner with major depression-recurrent, exacerbated by his health problems; anxiety disorder secondary to pain; chronic back and neck pain; and nerve damage in his hands. He concluded that Petitioner's prognosis was fair, his mood problems did not overwhelm him or limit his functioning in any way, and his primary limitations with respect to employability were his physical limitations (Exhibit A, pp. 16-20).

On July 28, 2015, Petitioner was examined by a doctor at the Department's request. In examining Petitioner's musculoskeletal system, the doctor noted that there was no evidence of joint laxity, crepitance, or effusion; his grip strength was decreased in the left hand (with Jamar Dynamometer at 32 pounds) versus the right hand (with Jamar Dynamometer at 42 pounds); there was interosseous atrophy on the left; dexterity was unimpaired; Petitioner could pick up a coin, button clothing, and open a door; he had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, mild difficulty squatting, and mild difficulty standing 3 seconds on either foot. Range of motion studies were all normal except as follows: right and left lateral flexion of the cervical spine was 40 degrees (normal is 45 degrees); flexion of the dorso-lumbar spine was 80 degrees (normal is 90); extension and right and left lateral flexion of the dorso-lumbar spine was 20 degrees (normal is 25). The flexion and extension measurements of joints in the hands and fingers were all within normal ranges. The doctor also noted

intact motor strength and normal muscle tone but sensory loss at C7-8 on the left and C8 on the right. There was diminished toe tapping bilaterally. Petitioner walked with a normal gait without the use of an assistive device. The doctor concluded that Petitioner has possible spinal stenosis in the cervical spine with some interosseous atrophy with neuropathy at C7-8 and might have degenerative disc disease at this level but without active radicular symptoms; had findings suggestive of dorsal column dysfunction in the lower extremities; had degeneration in the lumbar spine; had mild difficulty doing orthopedic maneuvers; did not need an assist device; was at risk for further decline over time; and was not on pain management but might require operative intervention if he continued to deteriorate (Exhibit A, pp. 21-26).

On December 29, 2015, Petitioner had a surgical procedure to address his left cubital tunnel syndrome. Following the surgery, the doctor limited Petitioner to lifting less than 10 pounds and avoiding heavy or repetitive arm use. The doctor noted that Petitioner might need decompression of the right arm as well due to the similar, but less severe, pain he was experiencing in his right arm (Exhibit 1).

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

Step Three

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

Based on the medical evidence presented in this case, listings 1.04 (disorders of the spine), 11.14 (peripheral neuropathies), 12.04 (affective disorders), and 12.06 (anxiety-related disorders) were considered. Because Petitioner's medical evidence did not show evidence of nerve root compression, spinal arachnoiditis or lumbar spinal stenosis resulting in pseudoclaudication, Petitioner's impairments do not meet, or equal, a listing under 1.04. Petitioner's medical file fails to establish that his mental impairments met the required level of severity to meet a listing under 12.04 or 12.06.

A disability under listing 11.14 requires disorganization of motor function as described in listing 11.04B, which requires significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movement, or gait and station as described in 11.00C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movement, ataxia and sensory disturbances is assessed on the degree of interference with

locomotion and/or interference with the use of fingers, hands and arms. While Petitioner had paresis affecting both hands, there was not medical evidence of sustained disturbance of gross and dexterous movement to substantiate a finding that Petitioner's impairments satisfied, or equaled, a listing under 11.04B.

Because the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration, Petitioner is not disabled under Step 3 and the disability analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

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

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

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of

the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). 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 this case, Petitioner alleges both exertional and nonexertional limitations due to his impairments. Petitioner testified that he could stand or walk less than two hours and then would experience numbness and pain in his back. He could sit no more than three hours. His most significant issues were with the use of his both hands. He initially had almost no use of either hand when he was first struck with numbness in December 2014. Petitioner is left-handed and the pain affected his left hand more. He testified that his ability to use his hands has improved but everything takes considerably longer. His girlfriend explained that Petitioner tries to do basic chores, such as washing dishes, but he has difficulty successfully completing his tasks in an acceptable manner. Petitioner also testified that he was unable to write legibly until he had surgery on his left ulnar nerve on December 29, 2015. The worker who assisted Petitioner in completing the medical social questionnaire on April 14, 2015 noted that she had to complete the form for him because he was unable to write. Petitioner testified that, while he was recovering from surgery, his doctor had limited him from lifting more than 10 pounds and from using his arms in repetitive movement. He noted that, because he was experiencing similar, though not as severe, problems with his right hand, he might need to have surgery on his right ulnar nerve once he recovered from the surgery on his left. He could take care of his personal hygiene and dressing himself but had assistance with chores and shopping.

The medical record supports Petitioner's testimony concerning the limitations in his use of his hands and his December 2015 surgery. An April 24, 2015 cervical spine MRI showed that Petitioner had cervical spondylosis. An electrodiagnostic study on March 13, 2015 was abnormal showing moderate neuropathy at the left wrist, severe ulnar neuropathy at the elbow, and mild chronic radicular changes at C6, C7 and C5 in the left upper extremity. A physical exam on March 13, 2015 showed decreased motor strength at both hands, worse at the left. An April 22, 2015 exam showed restricted range of motion in extension, flexion and lateral rotation of the lumbar spine and restricted flexion and left lateral rotation of the cervical spine. The July 28, 2015 consultative exam concluded that Petitioner had possible spinal stenosis in the cervical spine with some interosseous atrophy with neuropathy at C7-8; findings suggestive of dorsal column dysfunction in the lower extremities; degeneration in the lumbar spine; and mild difficulty doing orthopedic maneuvers. The consulting doctor noted that Petitioner was not on pain management but might require operative intervention if he continued to deteriorate. In fact, he did have surgical intervention on December 29, 2015 to address his left cubital tunnel syndrome. Following surgery, the doctor limited Petitioner to lifting less than 10 pound and avoiding heavy or repetitive arm use. These restrictions are similar to those identified by the pain management doctor in the DHS-49 completed on April 22, 2015.

With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform, at best, sedentary work as defined by 20 CFR 416.967(a).

With respect to his mental impairments, Petitioner testified that he was depressed over his physical and economic condition and experienced lots of anxiety. In an April 9, 2015 clinical services assessment, Petitioner was diagnosed with alcohol use disorder moderate, cocaine use disorder moderate, cannabis use disorder mild, and generalized anxiety disorder and assessed him with a GAF score of 42. In the consultative mental status examination completed at the Department's request on June 25, 2015, Petitioner was diagnosed with major depression-recurrent, exacerbated by his health problems, and anxiety disorder secondary to pain. The psychologist concluded that Petitioner's prognosis was fair and his mood problems did not overwhelm him or limit his functioning in any way. Based on the medical record presented, as well as Petitioner's testimony, Petitioner has mild limitations on his mental ability to perform basic work activities.

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

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not

disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a factory worker in a manufacturing company and work at a foundry. Petitioner's work in his previous employment involved heavy work. Based on the RFC analysis above, Petitioner is limited to no more than sedentary work activities and has mild limitations in his mental capacity to perform basic work activities. In light of Petitioner's exertional RFC, it is found that Petitioner is unable to perform past relevant work. Accordingly, Petitioner cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Petitioner's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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). However, 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). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules 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, Petitioner was ██ years old at the time of application and ██ years old at the time of hearing, and, thus, considered to be closely approaching advanced age (██ ███) for purposes of Appendix 2. He is a high school graduate. He has a history of unskilled work, and, as such, no transferable skills. As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities and has mild limitations on his mental ability to perform work activities.

In this case, the Medical-Vocational Guidelines, 201.12, result in a disability finding based on Petitioner's exertional limitations. While there is the possibility of an improvement in Petitioner's condition, particularly in light of the surgical procedure he has had and may have in the future, as of the hearing date, he remains incapable of performing basic work activities.

Notwithstanding the conclusion that the medical evidence shows that Petitioner is disabled at Step 5, 42 USC 423(d)(2)(C) of the Social Security Act provides that an individual is not considered disabled if alcoholism or drug addiction is a contributing factor material to the determination that the individual is disabled. Because evidence in the medical record, specifically the April 9, 2015 [redacted] assessment, refers to Petitioner's use of marijuana, cocaine and alcohol, 20 CFR 416.935(a) requires a determination of whether drug addiction or alcoholism (DAA) is a contributing factor material to the determination of disability.

The key factor in determining whether DAA is a contributing factor material to the determination of disability is whether the client would be disabled if he or she stopped using drugs or alcohol. 20 CFR 416.935(b)(1). This requires consideration of whether the current disability determination would remain if the client stopped using drugs or alcohol. 20 CFR 416.935(b)(2). If the remaining limitations would not be disabling, the DAA is a contributing factor material to the determination of disability. 20 CFR 416.935(b)(2)(i). If the remaining limitations are disabling, the individual is disabled independent of the DAA and, as such, the individual's DAA is not a contributing factor material to the determination of disability. 20 CFR 416.935(b)(2)(ii). The client continues to have the burden of proving disability throughout the DAA materiality analysis. SSR 13-2p(5)(a).

In this case, Petitioner's DAA may affect his mental condition. However, in this case, he is found disabled due to his physical limitations. There was no evidence in the record to suggest that Petitioner's physical impairments are due to his drug or alcohol use or that his abstaining from use of those substances would resolve his physical impairments. Therefore, Petitioner's substance use is not a contributing factor material to the determination that he is disabled.

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 **disabled** 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. Reregister and process Petitioner's March 30, 2015 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;

2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;

3. Review Petitioner's continued eligibility in August 2016.

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

Date Signed: **2/12/2016**

Date Mailed: **2/12/2016**

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: