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

IN THE MATTER OF:

[redacted]

MAHS Reg. No.: 15-020371
Issue No.: 4009
Agency Case No.: [redacted]
Hearing Date: February 01, 2016
County: Genesee-
Union St District

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 February 1, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. His mother, [redacted], appeared as his witness. The Department was represented by [redacted], Eligibility Specialist/Backup Hearing Facilitator.

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. Petitioner was an ongoing recipient of SDA benefits.

2. On June 22, 2015, the Department sent Petitioner a Notice of Case Action notifying him that his SDA benefits were closing effective August 1, 2015 because the Medical Review Team (MRT) had found him not disabled (Exhibit C).

3. On July 10, 2015, Petitioner submitted a new application seeking cash assistance on the basis of a disability.

4. On September 23, 2015, MRT found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 5-11).

5. On September 25, 2015, the Department sent Petitioner a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 449-452).

6. On November 2, 2015, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 2).

7. Petitioner alleged disabling impairment due to necrotizing fasciitis, arthritis, tarsal tunnel syndrome, gout, osteomyelitis, depression and generalized anxiety disorder.

8. On the date of the hearing, Petitioner was [redacted] years old with a [redacted] birth date; he is [redacted] in height and weighs about [redacted] pounds.

9. Petitioner obtained a GED degree.

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

11. Petitioner has an employment history working as a factory worker in the manufacturing industry.

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.

The evidence at the hearing showed that Petitioner had been receiving SDA benefits but, in a June 22, 2015 Notice of Case Action, he was advised that his SDA case was closing effective August 1, 2015 because MRT had found that he was not disabled (Exhibit C). Petitioner reapplied for SDA on July 10, 2015, and the Department denied this application in a September 25, 2015 Notice of Case Action on the basis that he was not disabled (Exhibit A, pp. 449-452). Petitioner filed a hearing request on November 2, 2015 disputing the finding that he was not disabled and ineligible for SDA benefits. A hearing request must be filed within 90 calendar days of the date of the written notice of case action. BAM 600 (April 2015). Because Petitioner's November 2, 2015 hearing request is timely filed within 90 days of only the September 25, 2015 Notice of Case Action denying his July 10, 2015 SDA application, only that Department action is reviewed.

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 necrotizing fasciitis, arthritis, tarsal tunnel syndrome, gout, osteomyelitis, depression and generalized anxiety disorder. The medical evidence presented at the hearing was reviewed and is summarized below. It is noted that page 439 of the medical record does not relate to Petitioner and has been removed from Exhibit A.

Notes from [redacted] indicate that, as of August 11, 2015, Petitioner had the following active problems: osteomyelitis of the jaw, polyarthralgia, tarsal tunnel syndrome, closed fracture of one or more phalanges of the foot, facial pain, toe pain, neck pain, anemia, torticollis, anxiety, necrotizing fasciitis, and back pain (Exhibit A, pp. 257-260).

On August 21, 2014, Petitioner went to the [redacted] complaining of progressive neck swelling, midline and lateral on the right, trismus, and inability to open his mouth. After a neck CT showed complex fluid collection with findings and a mild mass effect on airway with slight displacement to the left side, suspicious for abscess and infectious etiology, the consulting doctor concluded that Petitioner had an odontogenic abscess with gas formation suggestive of a gram-negative anaerobe and recommended surgical intervention and protection of the airway. Petitioner was airlifted to [redacted] for surgical intervention. (Exhibit A, pp. 38-103, 107-108.) At [redacted], Petitioner was diagnosed with necrotizing fasciitis and underwent extensive debridement surgery and a tracheostomy (Exhibit A, p. 202).

A September 8, 2014 lumbar spine x-ray showed degenerative change of the left L5-S1 facet joint but no acute fracture, dislocation or bone destruction. Alignment was maintained. Paraspinal soft tissues were within normal limits. No acute bony change was noted. (Exhibit A, pp. 290, 425.) An October 28, 2014 lumbar spine MRI showed mild inflammatory facet arthropathy at L4-L5 and L5-S1 and no central canal narrowing or a focal lumbar disc herniation (Exhibit A, p. 438).

A November 21, 2014 EMG and nerve conduction studies showed no evidence of proximal or distal neuritis and no evidence of myopathy (Exhibit A, pp. 290, 338, 423-424, 437).

In September 2014 and October 2014, Petitioner went to his primary care physician complaining of back pain with associated bilateral leg numbness and tingling. He denied hip or joint pain. (Exhibit A, pp. 325-334). From December 2014 to June 25, 2015, he also complained of joint pain (Exhibit A, pp. 302-321).

From March 18, 2015 to March 21, 2015, Petitioner, who was scheduled for a right-tooth extraction by an oral surgeon the following week, was hospitalized at [redacted] complaining of right-sided neck pain of 10/10, difficulty opening his mouth, and headache in the temporal region. Based on neck CT, he was diagnosed with odontogenic abscess with significant facial cellulitis secondary to mandibular right molar #31. The CT also noted a right second molar tooth periapical abscess with adjacent bony erosions. A physical exam noted decreased range of motion of the neck. It was noted that Petitioner had necrotizing fasciitis from his previous dental infection. He underwent incision and drainage with an external drain and a tooth extraction and before discharge was able to eat and drink with no limitation. His discharge diagnoses were right odontogenic cellulitis and abscess status post drainage, depression, anxiety, and tobacco abuse. He was released in good condition with instructions to follow up with oral surgery for further care. (Exhibit A, pp. 104-106, 117-153.)

Beginning May 22, 2015, Petitioner complained of a painful right big toe and heel pain and was observed to have a pronated antalgic gait (Exhibit A, pp. 378-380). A June 22, 2015 x-ray of Petitioner's right foot was negative (Exhibit A, p. 337). June 25, 2015 x-rays of Petitioner's hips and sacroiliac joints were unremarkable (Exhibit A, pp. 335-336, 420-421). Petitioner was diagnosed with tarsal tunnel syndrome and toe pain due to abnormal increased motion in the IP joint due to functional hallux limitus (Exhibit A, pp. 294-298). He was prescribed crutches to manage his tarsal tunnel (Exhibit A, p. 263).

On June 4, 2015, Petitioner was interviewed by a licensed psychologist at the Department's request. Petitioner reported chronic depression with suicidal feelings and an attempted overdose October 2014 but denied any history of psychiatric hospitalizations. Based on the examination and Petitioner's reporting, the psychologist concluded that Petitioner suffered from bipolar disorder with possible hallucinations and delusion and history of chronic drug dependency and alcoholism. The psychologist assigned Petitioner a global assessment functioning (GAF) score of 46 and

recommended that Petitioner receive some assistance in managing any assigned benefits. The psychologist also recommended that Petitioner continue to be involved in outpatient psychiatric treatment, with ongoing use of psychotropic medication to reduce psychiatric symptoms and stabilize daily functioning, and address any ongoing substance abuse issues, suggesting that such treatment was necessary for any successful long-term attempt at vocational rehabilitation. (Exhibit A, pp. 433-435.)

On June 5, 2015, Petitioner was examined by a doctor at the Department's request. The doctor noted that Petitioner reported ongoing numbness in the lower part of his face involving the bilateral cheek area following his 2014 and March 2015 hospitalizations and headaches. Petitioner also complained of chronic back pain and right foot and inner thigh pain and stated that he walked with a cane since October 2014. He reported a history of anxiety and depression and being under the care of a psychologist and psychiatrist. In examining Petitioner, the doctor noted that jaw movements were painful but no tenderness outside on the face or in the neck area; no lymphadenopathy; a bunion or chronic gouty arthritis on the right big toe; tenderness over the right groin area and inner thigh region; normal knee joint, spine, and hip joint movements; and some tenderness in the lower spine of the lumbar region. The doctor diagnosed paresthesia on the lower part of the face, with no paralysis or pain; status post necrotizing fasciitis of the left upper neck in remission state; chronic low back pain mostly musculoskeletal in origin; and chronic gout arthritis of the big toe. The doctor noted the multiple medical problems but no compression neuropathy. He suggested that Petitioner be found partially disabled, capable of a sitting job but none with prolonged standing, walking or climbing. (Exhibit A, pp. 430-431.)

From July 2, 2015 to July 8, 2015, Petitioner was hospitalized after complaining of right facial swelling. A CT scan confirmed the presence of an abscess in the right master muscle with surrounding inflammation and cellulitis and showed areas of erosion of the right mandibular cortex. A consult concluded that, based on his complex history of odontogenic infection, Petitioner had osteomyelitis of the mandible with sequestrum versus neoplastic activity. On July 5, 2015, he underwent a right facial abscess incision and drainage. A PICC line was put in on July 8, 2015 for medication administration. An infectious disease consult recommended that Petitioner be on Ertapenem intravenously for six weeks. Petitioner was discharged in good condition.

On July 23, 2015, Petitioner went to his primary care physician complaining of ongoing jaw pain (Exhibit A, pp. 283-286). On August 7, 2015, Petitioner went to a follow-up appointment with his primary care physician concerning his tarsal tunnel (Exhibit A, pp. 280-283). On August 19, 2015, the PICC line was removed. The doctor noted that cultures from his March 2015 and July 2015 procedures both included Streptococcus. Petitioner continued to complain of pain and numbness in the right lower jaw. The doctor noted that Petitioner's face was symmetrical; the right jaw area had no signs of inflammation; there was some tenderness; and there was no abnormality intraorally. (Exhibit A, pp. 225-229, 237-244.)

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 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), 1.08 (soft tissue injury), 12.04 (affective disorders), 12.06 (anxiety-related disorders) were considered. Because there was no medically acceptable imaging of joint space narrowing, bony destruction or ankyloses of a major peripheral weight-bearing joint, the evidence does not support a listing under 1.02. There was no evidence of nerve root compression, spinal arachnoiditis or lumbar spinal stenosis to support a listing under 1.04. Because there is no evidence that a major function of the face and head, namely vision, hearing, speech, mastication, or the initiation not the digestive process, was affected, or that there was continuing surgical management of Petitioner's tarsal tunnel, a listing under 1.08 cannot be established. The file does not contain evidence of sufficient severity to establish a listing under 12.04 or 12.06.

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 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). 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 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. 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 medical condition. Petitioner testified that he used crutches to walk and, because of pain in his feet and fatigue, could walk no more than five minutes. The Department worker noted that Petitioner had difficulty walking. He complained that this pain

continued even when he put no pressure on his feet or when his feet were elevated. He could sit no more than 15 minutes because of back and hip pain. He could stand not longer than 10 minutes. He could lift between 10 and 15 pounds. He suffers from facial numbness and headaches since his August 2014 surgery. His ability to turn his neck is limited and he has daily spasm in which his neck "locks up." Petitioner testified that he lived with his mother since his August 2014 surgery and, because of his problems standing, she did most of the chores and shopping. He could wash up but did not in the shower or tub and was able to dress himself slowly. He did not drive because of the medication he was taking.

The medical record shows that Petitioner had a considerable medical issues beginning with the August 2014 surgery after he was airlifted from [redacted] to [redacted], where he was diagnosed with necrotizing fasciitis and had extensive debridement surgery of the jaw and a tracheostomy. From March 18, 2015 to March 21, 2015, he was hospitalized with odontogenic cellulitis and abscess and the abscess was drained. Notes from the hospitalization showed that Petitioner was able to drink and eat with no limitation before discharge. A physical exam showed decreased range of motion of the neck. Although the doctor at the June 5, 2015 consultative exam noted that Petitioner's necrotizing fasciitis of the left upper neck was in remission, Petitioner was subsequently hospitalized from July 2, 2105 to July 8, 2015 with an abscess and cellulitis of the jaw that required incision and drainage. He was diagnosed with osteomyelitis. A PICC line was inserted for a six-week intravenous antibiotic administration. When the PICC line was removed on August 2015, Petitioner continued to complain of pain and numbness but the doctor noted that Petitioner's face was symmetrical, his right jaw area had no signs of inflammation, and there was no abnormality intraorally. Therefore, the record, as well as Petitioner's testimony, reflected that Petitioner had limitations in the range of motion of his neck as a consequence of his necrotizing fasciitis and resulting osteomyelitis but no additional physical limitations affecting his ability to perform basic work activities due to this impairment.

The record supported Petitioner's complaints of back and foot pain. A September 8, 2014 lumbar spine x-ray showed degenerative change of the left L5-S2 facet and an October 28, 2014 lumbar spine MRI showed mild inflammatory facet arthropathy at L4-L5 and L5-S1. Petitioner was diagnosed with tarsal tunnel syndrome and functional hallux limitus that resulted in painful right big toe and heel pain. He was observed to have a pronated antalgic gait. The doctor who performed the consultative exam also observed that Petitioner had tenderness over the right groin area and in the lower lumbar spine and concluded that he could not engage in prolonged standing, walking or climbing.

The medical evidence supports limitations in Petitioner's ability to stand or walk but not the limitations reported by Petitioner concerning his ability to sit. 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 sedentary work as defined by 20 CFR 416.967(a).

Petitioner also testified that, since his August 2014 surgery, he has suffered from ongoing anxiety and decreased attention span. He reported hearing things and seeing images or silhouettes. He reported seeing a therapist twice weekly. A licensed psychologist who interviewed Petitioner on June 4, 2015 at the Department's request concluded that Petitioner suffered from bipolar disorder (by history) with possible hallucinations and delusions and a history of chronic drug dependency and alcoholism. The psychologist recommended that Petitioner receive assistance in managing funds. He assigned Petitioner a GAF score of 46. Based on the medical record presented, as well as Petitioner's testimony, Petitioner has mild to moderate 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. This prior employment, which involves substantial standing and lifting up to 70 pounds on a regular basis, is properly characterized as heavy. Based on the RFC analysis above, Petitioner is limited to no more than sedentary work activities. Therefore, based on his exertional RFC, Petitioner is unable to perform past relevant work. As such, 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, at the time of application and hearing, Petitioner was [redacted] years old and, thus, considered to be a younger individual (age 18-44) for purposes of Appendix 2. He has a GED and a history of unskilled work experience. 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. The Medical-Vocational Guidelines do not result in a disability finding based on Petitioner's exertional limitations. Petitioner also has nonexertional limitations resulting in mild to moderate restrictions in his mental ability to perform basic work activities. The evidence, including Petitioner's testimony, was not sufficient to establish that these limitations would preclude Petitioner from being able to engage in basic work activities involving sedentary work.

After review of the entire record, including Petitioner's testimony, and in consideration of Petitioner's age, education, work experience, physical as well as mental RFC, Petitioner is found not disabled at Step 5.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner **not** disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED.**

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

Date Signed: **3/01/2016**

Date Mailed: **3/01/2016**

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: [redacted]