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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
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Executive Director

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DIRECTOR

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[REDACTED]
[REDACTED]

Date Mailed: April 1, 2016
MAHS Docket No.: 16-000332
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 March 14, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. His father, [REDACTED], appeared as a witness on his behalf. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED], 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 November 3, 2015, Petitioner submitted an application seeking cash assistance on the basis of a disability (Exhibit A, pp. 2-14).
2. On December 23, 2015, the Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 29-35).
3. On December 23, 2015, the Department sent Petitioner a Notice of Case Action denying the application based on MRT's finding of no disability and because Petitioner had failed to verify requested information (Exhibit A, pp. 406-409).

4. On January 14, 2016, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 410-411).
5. Petitioner alleged disabling impairment due to low back pain, diabetes, foot neuropathy, depression and anxiety.
6. On the date of the hearing, Petitioner was 38 years old with a [REDACTED] birth date; he is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Petitioner completed the [REDACTED] grade.
8. Petitioner has an employment history of work as a factory worker.
9. At the time of application, Petitioner was not employed.
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 Health and 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.

As a preliminary matter, it is noted that the December 23, 2015 Notice of Case Action notified Petitioner that his SDA application was denied because he had failed to provide requested verifications. In the "comments from your specialist" section, the Department indicated that his SDA application was denied because MRT had determined he was not disabled for purposes of the SDA program. At the hearing, the Department only presented a case in support of the SDA denial due to a finding that Petitioner was not disabled. Therefore, to the extent that the Department denied Petitioner's SDA application due to failure to verify, the Department has failed to satisfy its burden that it acted in accordance with Department policy. This Hearing Decision addresses the Department's conclusion that Petitioner was ineligible for SDA due to MRT's finding that he was not disabled.

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 low back pain, diabetes, foot neuropathy, depression and anxiety. The medical evidence presented at the hearing was reviewed and is summarized below.

In February 2008, Petitioner was assaulted and suffered a closed head injury. Based on his poorly controlled aggression, his positive test results for cocaine use, and his violent behavior and suicidal ideations, it was recommended that he would benefit from, and he was transported directly to, inpatient psychiatric evaluation and treatment (Exhibit A, pp. 372-398).

In a July 25, 2012, physical examination performed at the State's request, the examining doctor concluded that Petitioner had elevated blood pressure (175/122 on the date of exam); normal gait and station; 5/5 strength throughout; symmetric reflexes; normal range of motion in the lower back and hip. The doctor noted that Petitioner used a cane but was able to ambulate without the use of an assistive device. He also noted that Petitioner had a sensory gradient from distal to proximal in the lower extremities, likely secondary to his peripheral neuropathy. (Exhibit A, pp. 86-90.)

On August 29, 2012, Petitioner underwent a psychiatric/psychological examination in connection with a previous SSA application. The evaluation licensed psychologist diagnosed Petitioner with a learning disability (by history and without documentation); cognitive disorder; alcohol dependence, reportedly in partial remission; and personality disorder. The psychologist gave Petitioner a global assessment of functioning (GAF) score of 51, noted that he could not manage his benefit funds, and indicated that his prognosis was guarded and somewhat poor. (Exhibit A, pp. 79-84.)

Office notes from Petitioner's visits at Michigan Spine and Pain from November 2012 to January 2013 show ongoing treatment for low back pain, headaches, neuropathy in bilateral lower legs with numbness in the bottoms of the feet and numbness in the fingers (Exhibit A, pp. 219-241.) A January 18, 2013 neuro-diagnostic study showed that, in the awake state, Petitioner's study was normal and there were no focal, diffuse or epileptiform abnormalities seen (Exhibit A, pp. 242-243). An electro-diagnostic study of Petitioner's lumbar spine showed no evidence of lumbar radiculopathy, but the studies were consistent with a lower limb peripheral motor sensory polyneuropathy (Exhibit A, pp. 245-246).

Notes from Petitioner's office visits with his primary care physician from March 2014 to August 2015 show ongoing treatment for inadequately controlled lower back pain, benign essential hypertension, insulin-dependent diabetes mellitus, and diabetic peripheral neuropathy (Exhibit A, pp. 283-287, 315-341). May 20, 2015 lab results show A1C levels of 7.4, a decrease from 7.5 in June 30, 2015 and 7.9 in February 2015 (Exhibit A, pp. 268-270, 342-348).

On October 5, 2015, Petitioner participated in a mental status examination at the Department's request and a report was prepared. The limited licensed psychologist administered the Wechsler adult intelligence scale and concluded that he scored in the extremely low range in verbal comprehension, perceptual reasoning, working memory, processing speed and full scale IQ. He showed more ability in perceptual reasoning, or more hands-on tasks, than in verbal comprehension, or more language-based skills. While his general ability index was significantly higher than his full scale IQ, it nevertheless was also in the extremely low range. The psychologist concluded that the results of the testing were consistent Petitioner's adaptive functioning in the conceptual, practical, and social domains. The psychologist diagnosed Petitioner with mild intellectual disability; unspecified depressive disorder; unspecified anxiety disorder; and antisocial personality traits. The psychologist concluded as follows:

Based on this examination, [Petitioner] would be able to understand simple, repetitive tasks, but his intellectual disability would make it difficult for him to understand more complex instructions. His ability to complete instructions on a sustained basis would be limited by anxiety and depression, interfering with his ability to concentrate. Problem solving and judgment are limited due to personality features as well as intellectual disability. His ability to manage a normal amount of stress is poor. He would have significant difficulty interacting and communicating with coworkers, authority figures, and the public due to personality features and intellectual disability.

The psychologist also concluded that, due to intellectual deficits, Petitioner would need help managing his benefit funds. (Exhibit A, pp. 293-298.)

On November 19, 2015, Petitioner's doctor completed a letter indicating that Petitioner had been a patient since 2013 and that he had severe, uncontrolled type 2 diabetes that

had resulted in sustained, permanent nerve damage to his legs/feet as documented by EMG; preexisting back problems from an auto accident 10 years ago; and dyslexia and in special education in school. The doctor noted that Petitioner had been unable in the last two years to perform his work as a laborer, janitor, or factory worker because of his constant back and leg pain that was intolerable even with medication. The doctor stated that walking, standing or sitting for more than an hour was unrealistic for Petitioner and his chronic pain/sedation from pain medication made it hard for him to learn new skills. The doctor opined that “[Petitioner] is disabled from the only jobs he is capable of performing (laborer) due to advance diabetic neuropathy and back pain.” (Exhibit A, pp. 251, 257.)

On December 12, 2015, Petitioner was examined by a doctor at the Department’s request who prepared a report. The doctor noted that Petitioner reported a disability due to diabetes with neuropathy, back pain, and anxiety. He reported periodically needing a cane because of discomfort in his feet, but the doctor noted that, though he brought a cane to the exam, he left it behind when he left and had to return to retrieve it. His visual acuity in both eyes was 20/30 without correction. Petitioner’s Jamar testing revealed compressions of 58 pounds in the right hand and 64 pounds in the left hand. His dexterity was unimpaired: he could pick up a coin, button his clothing, and open a door. He was observed to have no difficulty getting on and off the examination table, no difficulty heel and toe walking, and mild difficulty squatting. His range of motion of the dorsolumbar spine was within normal limits. He had normal motor strength and function. He reported decreased sensation to pinprick, vibratory sense and monofilament testing distal to the distal calves. The doctor concluded that Petitioner (i) had a history of diabetes with poor glycemic control, decreased sensation and reflexes in the feet but no motor weakness noted in the lower extremities and no evidence of diabetic retinopathy; (ii) history of hypertension with blood pressure on the day of examination (150/100) at State 1 elevated, with no evidence of hypertensive retinopathy, peripheral vascular disease or heart failure; (iii) although Petitioner reported a history of arthralgia involving the lower back and had tenderness with movement in all planes of the lumbar spine and walked with a slightly small-stepped gait, there did not appear to be evidence of ongoing nerve root impairment in the lumbar spine in light of no asymmetric reflex changes, motor weakness or sensory loss and, while he had mild difficulty squatting secondary to back discomfort, other orthopedic maneuvers were performed without difficulty. (Exhibit A, pp. 74-77.) A December 12, 2015 x-ray of the lumbar spine showed minor narrowing of the lumbosacral at L4-5 disc spaces without end plate spurring or eburnation and otherwise well-maintained disc spaces. There were no abnormalities affecting posterior elements or S1 joints. (Exhibit A, p. 78.)

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), 12.02 (organic mental disorders), 12.04 (affective disorders), and 12.06 (anxiety-related disorders) were considered. 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. Therefore, 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 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 medical condition. Petitioner testified that he had two crushed discs in his back and foot neuropathy leading to falls and requiring that he walk with a cane. He also has diabetes and a blurry eye. He testified he might possibly be able to walk a block if he used his cane. He could stand no more than 10 minutes before his legs would go out and sit for no more than 15 minutes before his back began hurting. He could lift a gallon of milk if he used both hands, but he had problems dropping things because of numbness in his fingertips. He lived with his girlfriend who did all of the household chores although he admitted that he could cook on the grill. He could drive, depending on his pain, and sometimes shopped. He bathed himself, although there was a grab bar in the shower to help prevent falls. He could dress himself although his girlfriend had to tie the special shoes he wore because of his foot numbness. His father noted that Petitioner often fell and had difficulty with stairs. The Department also noted that he moved slowly and deliberately.

Petitioner's doctor stated in his November 19, 2015 letter that Petitioner's diabetes had resulted in sustained, permanent nerve damage to his legs/feet. A January 2013 EMG showed results consistent with a lower limb peripheral motor sensory polyneuropathy. The consulting doctor in the December 12, 2015 examination noted decreased sensation and reflexes in the feet. Petitioner also had an ongoing history of back pain. Petitioner, who at [REDACTED] and [REDACTED] pounds has a body mass index of [REDACTED], is obese and his obesity is likely to exacerbate any musculoskeletal impairments. Listing 1.00(Q).

Petitioner's doctor noted that the pain prevented Petitioner from walking, standing or sitting for more than an hour. However, the consultative doctor noted that, although Petitioner had tenderness with movement in all planes of the lumbar spine and walked with a slightly small-stepped gait, there did not appear to be any evidence of ongoing nerve root impairment in the lumbar spine, motor weakness or sensory loss and, while he had mild difficulty squatting secondary to back discomfort, other orthopedic maneuvers were performed without difficulty. Although Petitioner used a cane, it does not appear that he needed it on a consistent basis. Petitioner also alleged that he had difficulty gripping things because of numbness in his fingertips, but there was no medical evidence to support his testimony. To the contrary, the consultative doctor found that his dexterity was unimpaired: he could pick up a coin, button his clothing, and open a door. 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 alleged nonexertional limitations due to his depression and anxiety. He admitted he was not engaged in regular therapy, explaining that he had inadequate transportation. He testified that he very bad memory loss, anger issues, racing thoughts, and difficulty concentrating and making sense of things.

In the October 5, 2015, consultative mental status examination, the psychologist who evaluated Petitioner diagnosed him with mild intellectual disability; unspecified depressive disorder; unspecified anxiety disorder; and antisocial personality traits. He concluded that Petitioner would be able to understand simple, repetitive tasks but his intellectual disability would make it difficult for him to understand more complex instructions. He further concluded that Petitioner's anxiety and depression limited his ability to complete instructions on a sustained basis and his personality features and intellectual disability limited his problem solving and judgment and created significant difficulty in his ability to interact and communicate with coworkers and authority figures. Based on the medical record presented, as well as Petitioner's testimony, Petitioner's nonexertional RFC prevents him from being able to perform more than unskilled, simple work activities, deal with normal stress amounts, and concentrate on a sustained basis. It also requires that his exposure to other people be limited.

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 employment, which required standing 8 hours daily and lifting 30 pounds consistently, is characterized as involving medium work. Based on the exertional RFC analysis above, Petitioner is limited to no more than sedentary work activities. Because Petitioner is unable to perform past relevant work due to his exertional RFC, he 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 at hearing, Petitioner was ■ years old and, thus, considered to be a younger individual (age 18-44) for purposes of Appendix 2. He completed the ■ grade and has 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.

In this case, the Medical-Vocational Guidelines, 201.24, result in a finding that Petitioner is not disabled based on exertional limitations. Petitioner also has nonexertional limitations due to intellectual deficits and personality features that result in an ability to perform only unskilled, simple work activities but additionally prevent him from dealing with normal stress amounts, concentrating on a sustained basis, or interacting with

other people. The Department has failed to present significant numbers of jobs in the national economy that Petitioner could perform despite these nonexertional limitations. Therefore, the Department has failed to establish that, based on his RFC, age, education and work experience, Petitioner can adjust to other work. Petitioner's testimony that he had been unable to maintain any employment for more than a short period of time supports the conclusion that his nonexertional RFC prevents him from being able to engage in other work. Because Petitioner cannot adjust to other work, he is disabled at Step 5 for purposes of the SDA benefit program.

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 November 3, 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 September 2016.



ACE/tlf

Alice C. Elkin

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

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

[REDACTED]

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