RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[redacted]

Date Mailed: April 27, 2016
MAHS Docket No.: 16-001878
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on April 4, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. [redacted] Petitioner's mother, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [redacted] hearing facilitator.

ISSUE

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

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [redacted], Petitioner applied for SDA benefits (see Exhibit E, pp. 1-14).

2. Petitioner's only basis for SDA benefits was as a disabled individual.

3. On an unspecified date, the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibit B, p. 1) based on a Disability Determination Explanation (Exhibit B, pp. 2-29) dated [redacted]

4. On [redacted], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action informing Petitioner of the denial.

5. On [redacted], Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit D, pp. 6-7).

6. As of the date of the administrative hearing, Petitioner was a 39-year-old male.

7. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.

8. Petitioner possesses a bachelor's degree in technology management.

9. Petitioner has a history of semi-skilled employment, with no known transferrable job skills.

10. Petitioner alleged disability based on restrictions related to neck pain, bilateral hand/arm numbness, and headaches.

CONCLUSIONS OF LAW

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

Petitioner requested a hearing to dispute the denial of a SDA application. MDHHS presented a Notice of Case Action (Exhibit D, pp. 2-5) verifying Petitioner's application was denied based on Petitioner not being a disabled individual.

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

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

Id.

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

Generally, state agencies such as MDHHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. SDA differs in that a 90 day period is required to establish disability.

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

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

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

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

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

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational requirement.

20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id*.

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

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

Generally, federal courts have imposed a de minimus standard upon petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen,* 880 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

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

Various primary care physician office visit notes (Exhibit A, pp. 220-231) from 2013 and 2014 were presented. Complaints of headache, finger numbness, and neck pain (among others) were reported.

A radiology report (Exhibit A, p. 257) pf Petitioner's spine dated [redacted], was presented. An impression of mild degenerative arthritis was noted.

A cervical spine MRI report (Exhibit A, pp. 236-237, 255-256, 392-393) dated [redacted], was presented. An impression of multilevel degeneration and discogenic changes was noted. Spinal canal stenosis was noted as absent. Severe left foraminal

narrowing and moderate-to-severe right foraminal narrowing were noted in C3-C4. Severe right-sided foraminal narrowing was noted in C4-C5. Severe bilateral neural foraminal narrowing and uncovertebral hypertrophy were noted at C7-T1.

Physician office visit notes (Exhibit C, pp. 6-7, A pp. 110-111, 202-203, 268-269) dated [redacted], were presented. Ongoing complaints and treatment for neck pain (4/10), headaches (8/10) and bilateral arm numbness was noted. An ongoing assessment of cervical spondylosis was noted.

Physician office visit notes (Exhibit A, pp. 141-144) dated [redacted], were presented. It was noted that Petitioner presented for neurological evaluation. Complaints of radiating back pain, bilateral arm paresthesia, and non-stop headache pain were reported. Assessments included cervicalgia, occipital headache, and neuralgia were noted. An EMG was planned.

Physician office visit notes (Exhibit C, pp. 15-16, A pp. 119-120, 139-140, 192-193, p. 242, 262) dated January 2, 2015, were presented. It was noted that Petitioner underwent EEG testing. An interpretation of an abnormal EEG and mild encephalopathy was noted.

Physician office visit notes (Exhibit A, pp. 136-138, 189-191) dated [redacted]. It was noted that Petitioner reported neck pain radiating to his arms, bilateral arm paresthesia, and ongoing headaches. Petitioner reported little relief from Tramadol. It was noted previous cervical spine injections also provided little pain relief. Various medications were prescribed.

An EMG report (Exhibit C, pp. 12-14, A p. 116-118, pp. 145-147, pp. 239-241, 259-2614) dated [redacted], was presented. An impression of chronic right C5-C7 radiculopathy and bilateral minimal median mononeuropathies of the wrists was noted.

A brain MRI report (Exhibit A, p. 254) dated [redacted], was presented. An impression of no acute abnormality with mild sinus disease was noted.

Primary care physician office visit notes (Exhibit A, pp. 218-219) dated [redacted] were presented. It was noted that Petitioner reported an exacerbation of headache and neck pain. It was noted previous epidural injections were unhelpful. Neurontin was noted as continued.

Physician office visit notes (Exhibit C, pp. 3-5, A pp. 107-109. 199-201, 266-267) dated [redacted], were presented. Hand numbness was noted to be caused by CTS. A positive Tinel's sign was noted. A spinal cord stimulator was recommended to address Petitioner's complaints of headaches.

Primary care physician office visit notes (Exhibit A, pp. 215-217) dated [redacted], were presented. It was noted that Petitioner reported feeling depressed. Ongoing

complaints of neck pain and stiffness, ongoing for several years was noted. Good judgment, good insight, and clear speech was noted.

Physician office visit notes (Exhibit A, pp. 133-135) dated [redacted], were presented. It was noted that Petitioner reported ongoing neck pain and headaches. A recent MRI was noted to show diffuse spondylosis. Norco was prescribed for pain.

Pain management physician notes (Exhibit A, pp. 379-380) dated [redacted], were presented. A SCS stimulation trial was noted as performed.

Physician office visit notes (Exhibit A, pp. 130-132) dated [redacted] were presented. It was noted that Petitioner reported ongoing neck pain, headaches, and sensitivity to light and sound. It was noted Petitioner had an intact gait. Petitioner reportedly stopped taking Norco due to ineffectiveness. Petitioner's medications were adjusted.

Physician office visit notes (Exhibit A, pp. 404-405) dated [redacted], were presented. Petitioner reported a long history of brain injuries and headaches. Topamax, celexa, and maxalt were prescribed. A brace was prescribed for Petitioner's right wrist.

Pain management physician notes (Exhibit A, pp. 377-378) dated [redacted], were presented. An observational mechanical gateway trial was noted as performed

Pain management physician notes (Exhibit A, p. 376) dated [redacted], were presented. It was noted Petitioner considered a trial of spinal cord stimulation to be successful. A stimulator implant was recommended.

Medical center physician office visit notes (Exhibit A, pp. 213-214) dated [redacted], were presented. Assessments of GERD and headaches were noted. Petitioner was prescribed Celexa for reported depression.

Medical center physician office visit notes (Exhibit A, pp. 211-212) dated [redacted], were presented. It was noted that Petitioner was cleared for cervical spine surgery.

Hospital documents (Exhibit A, pp. 114-115, 121-124, 156-174, 180-188, 194-195, 312-368; Exhibit C, 10-11, pp. 17-20) from an admission dated [redacted]5, were presented. Pre-operative and post-operative diagnoses of chronic ongoing neck pain, headaches, and upper extremity dysethesias were noted. It was noted Petitioner underwent placement of a cervical spinal cord stimulator. It was noted Petitioner reported "severe" post-operative pain and spasms (see Exhibit A, p. 155), particularly in the left C5 distribution. On [redacted], it was noted Petitioner had ambulation, balance, and self-care restrictions. It was noted Petitioner may benefit from inpatient rehabilitation. A discharge date of [redacted] was noted.

Various resident notes (Exhibit A, pp. 281-311) from a rehabilitation center admission dated [redacted], were presented. On [redacted], it was noted Petitioner

needed 24 hour care and he was unable to return home. On [redacted], it was noted Petitioner's PT "went well" though he is limited due to neck pain. It was noted Petitioner received treatment for depression during his admission. Petitioner was discharged on [redacted], and scheduled for outpatient treatment.

Medical center physician office visit notes (Exhibit A, pp. 209-210) dated [redacted], were presented. It was noted that Petitioner reported ongoing severe neck pain despite recent surgery. Left arm paresthesia and weakness were reported. It was noted Petitioner lost his health insurance and, as a result, scheduled in-home therapy was cancelled. Various medications were prescribed.

Physician office visit notes (Exhibit C, pp. 1-2, A pp. 105-106, 196-198, 263-265) dated [redacted], were presented. It was noted that Petitioner reported increased right hand numbness and left arm pain (6/10). It was noted Petitioner developed bilateral C5 cervical palsy following surgery. Significant weakness was noted in Petitioner's left arm. An assessment of cervical spondylosis was noted. Numerous medications were noted as continued.

A CT report of Petitioner's cervical spine (Exhibit C, pp. 8-9, A pp. 112-113) dated [redacted] was presented. Moderate disc space loss with moderate foraminal narrowing was noted at C3-C4; mild central canal narrowing was also noted. It was noted there was at least mild-to-moderate right foraminal narrowing at C4-C5. Mild disc space narrowing was noted at C5-C6.

Physician office visit notes (Exhibit A, pp. 400-403) dated [redacted], were presented. Petitioner reported left arm weakness and numbness following recent surgery. Full muscle strength and reflexes were noted. Assessments included traumatic brain injuries, slowed processing speeds, and memory deficits. It was noted Petitioner would begin therapy to help with concentration and memory.

Medical center physician office visit notes (Exhibit A, pp. 207-208) dated [redacted] were presented. It was noted Petitioner reported ongoing severe neck pain despite recent surgery. Left arm paresthesia and weakness were reported. It was noted Petitioner was scheduled for physical therapy. Various medications were prescribed.

A Medical Examination Report (Exhibit D, pp. 8-10, A pp. 102-104) dated [redacted], was presented. The form was completed by a neurosurgeon with an approximate 8 month history of treating Petitioner. Petitioner's physician listed diagnoses of cervical spondylosis and cervical spine palsy. Right hand numbness and left arm weakness were noted. It was noted Petitioner experienced no relief following recent SCS surgery. An impression was given that Petitioner's condition was stable. It was noted that Petitioner needed assistance with cooking; difficulty with dressing was also noted. It was noted that Petitioner did not need an assistive device for ambulation.

Petitioner testified he sustained dozens of concussions form his youth while engaging in activities such as wrestling and football. Petitioner testified he later became a

professional bull rider, which caused further brain trauma. Medical documents noted approximately 500 bull rides (see Exhibit A, p. 400). Petitioner testified he most recently had a concussion 2 years earlier when he blindly walked into a hanging air conditioner.

Petitioner alleged disability, in part, due to chronic headaches, ongoing for 6 years. Petitioner testified his headaches never cease. Petitioner estimated his typical pain level was 3/10. Petitioner testified his headaches, in part, make it very difficult for him to concentrate. As an example of concentration difficulty, Petitioner testified he is unable to multi-task. Petitioner also testified his memory is adversely affected; as an example, he testified he sometimes immediately forgets if he put on deodorant. Petitioner also testified he has to see a speech therapist to help with his word-finding. Petitioner further testified he will sometimes get lost at the store and forget why he began shopping.

Petitioner testified he recently obtained a bachelor's degree. Petitioner was asked how he was able to obtain a degree if his concentration level was low. Petitioner responded that he had to spend 12-15 hour days dedicated to studying because he often had to reread his texts.

Petitioner testimony expressed a suspicion that his headaches are related to his neck problems. Petitioner conceded his brain MRIs are not compelling, however, Petitioner contended his EMGs were compelling. Petitioner testified he was told by a physician that several neck surgeries would be required to reduce Petitioner's pain. Petitioner expressed skepticism over surgical options because of his previous surgery results.

Petitioner testified surgical implantation of a spinal stimulator worsened his back pain and resulted in cervical palsy. Petitioner also testified the surgery adversely affected his left arm. Petitioner testified he can only lift his left arm to his shoulder and that he lost considerable strength in the arm and his grip. Petitioner testified his right arm is comparably weak and he sometimes has difficulty opening a car door. Petitioner testified his physicians have not expressed optimism about a recovery.

Presented evidence sufficiently established a probability of restrictions to Petitioner's ability to ambulate, lift/carry, concentrate, and function with his left arm. The restrictions were established to have lasted for at least 90 days or more. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

The third step of the sequential analysis requires determining whether the Petitioner's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a petitioner's impairments are listed and deemed to meet the durational requirement, then the petitioner is deemed disabled. If the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

Claimant's most prominent impairment appears to be back pain. Spinal disorders are covered by Listing 1.04 which reads:

> **1.04** ***Disorders of the spine*** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:
> A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);
> OR
> B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;
> OR
> C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Looking at Part C, the inability to ambulate effectively is a requirement. SSA defines this as follows:

> Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

Petitioner’s cervical spine appeared to have improved from 2014. In 2014, “severe” foraminal narrowing was noted at C3-C4 and C7-T1. Radiology from 2015 indicated no severe narrowing, though moderate narrowing was noted at C3-C4. Radiology from 2015 indicated C7-T1 was “unremarkable”- a substantial improvement from previous radiology indicating severe narrowing. Generally, an absence of severe narrowing at any vertebrae space is indicative of failing to meet listing requirements.

Medical records did not verify any need for a walking assistance device. The absence of a walking assistance device is suggestive of not meeting listing requirements.

A listing for joint dysfunction (Listing 1.02) was considered based on Petitioner’s complaints of shoulder dysfunction. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively or an inability to perform fine and gross movements with both upper extremities.

A listing for cerebral trauma (Listing 11.18) was considered based on Petitioner's allegation of traumatic brain injuries. The listing was rejected due to an inability to meet Listings 11.02, 11.03, 11.04, or 12.02.

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

The fourth and fifth step of the disability analysis requires an assessment of Petitioner's functional capacity. Physician statements of restriction were provided.

SSR 96-2p states that if a treating source's medical opinion is well-supported and not inconsistent with the other substantial evidence in the case record, it must be given controlling weight (i.e. it must be adopted). Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner,* 486 F. 3d 234 (6th Cir. 2007)*; Bowen v Commissioner.*

On a Medical Examination Report dated [redacted], Petitioner's physician stated Petitioner had various limitation(s) expected to last 90 days. Petitioner's physician opined that Petitioner was restricted to about 2 hours of standing/walking over an eight-hour workday. Sitting restrictions were not noted. Petitioner was restricted to occasional lifting/carrying of 10 pounds, never 20 pounds or more. Petitioner's physician opined that Petitioner was restricted from performing the following left-sided repetitive actions: reaching, pushing/pulling, grasping, and fine manipulating. In response to a question asking for the stated basis for restrictions, Petitioner's physician cited 4/5 left arm grip strength, 3/5 left deltoid strength, 4-/5 right deltoid strength, and 4/5 left hand strength.

Stated ambulation restrictions are consistent with presented medical history and radiology. Multiple areas of foraminal narrowing in Petitioner's cervical spine were verified by radiology. It was also established that spinal stimulator surgery appeared to exacerbate Petitioner's pain. Petitioner's need for nursing care following surgery, the post-surgical diagnosis of cervical palsy, and surgical complications resulting in decreased left arm function are indicative of restrictions in ambulation to 2 hours per workday.

Left-sided arm restrictions were well established. Petitioner and his mother each gave compelling and credible testimony concerning Petitioner's daily activity restrictions. Left arm weakness was verified by Petitioner's physician. Petitioner's physician reasonably restricted Petitioner from left arm activities.

Petitioner testified he is very weak. Petitioner testified he utilizes a cane to prevent falls from being weak. Petitioner testified he still sometimes falls despite usage of a cane. A need for a cane was not verified.

Petitioner testified he can shower himself but cannot use his left hand to shampoo his hair. Petitioner testified he has difficulty with buttoning and tying shoes also because of

left arm dysfunction. Petitioner testified he tries to help with cleaning but is limited; for example, Petitioner testified he could not pull a perforated bag when he tried to change garbage bags. Petitioner testified he can shop by himself, but he limits his shopping because long trips will make him confused. Petitioner testified he drives, but uses only his right hand.

Petitioner's mother testified she helps Petitioner with all activities that require use of both hands (e.g. opening a bottle of water, buttoning, tying shoes, or cutting food). Petitioner's mother testified her son used to hike, fish, date, but no longer does.

Petitioner testified he can walk less than a mile; any longer makes him dizzy and causes soreness in his upper body. Petitioner testified he is limited to sitting 20-30 minutes before his neck and hip hurt. Petitioner testified he needs bilateral hip replacements.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a petitioner can perform past relevant work. *Id*.

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Petitioner testified he performed past employment as a warehouse assistant, firebrick laborer, and warehouse transportation manager. Petitioner credibly testified that his past employment routinely involved lifting/carrying of heavy weights (presumed to be 50 pounds, at minimum). Petitioner's ongoing lifting/carrying restrictions would preclude the performance of past employment.

It is found Petitioner is not capable of performing past employment. Accordingly, the analysis may proceed to the final step.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform

specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id*.

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered non-exertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the

rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Petitioner's age, education and employment history a determination of disability is dependent on Petitioner's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

A standing restriction of 2 hours was found to be supported by presented evidence. Petitioner's physician found no sitting restrictions. The restrictions are consistent with performing a full range of sedentary employment; other restrictions would lessen Petitioner's sedentary employment opportunities.

It was found Petitioner is restricted from employment reliant on repetitive left arm/hand motion. Employment such as typing or assembly would be difficult for Petitioner to competitively perform if he cannot even dress himself or shampoo his hair.

Petitioner also alleged ongoing headaches are a persistent obstacle. Medical records verified regular complaints of Petitioner's headaches. The complaint was not supported by radiology which only verified a mild sinus problem. Given Petitioner's complex cervical spine history, credible testimony of brain injury, and persistent reporting of headaches, Petitioner's complaint of headaches appears to be justified. Due to Petitioner's persistent headaches, it is reasonable to infer concentration difficulties which preclude Petitioner from performing complex and/or detailed employment. Examples of such employment would include employment requiring degrees, bookkeeping, and/or proof-reading. It should be noted that the inability to perform complex employment would preclude the performance of employment within Petitioner's college degree field.

It is plausible sedentary employment exists which Petitioner can perform. The extent of erosion to Petitioner's sedentary base would have to be quantified. It is MDHHS' burden to verify the quantity of employment available to Petitioner. MDHHS presented no vocational evidence of jobs available to Petitioner. In the absence of such evidence, it must be found that potential jobs are not available to Petitioner in sufficient number. Accordingly, Petitioner is disabled and it is found MDHHS improperly denied Petitioner's SDA application.

DECISION AND ORDER

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

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

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

CG/hw

Christian Gardocki
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

DHHS

[redacted]

Petitioner

[redacted]