



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 25, 2016
MAHS Docket No.: 16-004005
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 May 4, 2016, from Lansing, Michigan. [REDACTED], the Petitioner, appeared on his own behalf. [REDACTED], Grandmother, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator. [REDACTED], Eligibility Specialist, appeared as a witness for the Department. [REDACTED], Eligibility Specialist, was present as an observer.

A request for adjournment of the May 4, 2016, hearing was received from Petitioner on May 3, 2016. Petitioner's request for adjournment to obtain additional medical documentation was denied because the option of leaving the hearing record open to obtain additional medical documentation could be discussed during the May 4, 2016, hearing.

During the May 4, 2016, hearing, this issue of jurisdiction to proceed in light of a final determination by the Social Security Administration (SSA) that Petitioner was not disabled was discussed. In this case, the Department's Medical Review Team denied Petitioner's September 8, 2015, application for MA and SDA based on disability on or about January 12, 2016, based on a determination that Petitioner did not meet the disability requirements for either program. (Exhibit A, pp. 1 and 4) On or about December 15, 2015, SSA had denied Petitioner's application for disability benefits and Petitioner did not appeal the SSA denial. (Exhibit A, pp. 6-16; Grandmother Testimony)

SSA's determination that disability or blindness does **not** exist for SSI is **final** for MA if:

- The determination was made after 1/1/90, **and**

- No further appeals may be made at SSA; see EXHIBIT II in this item, **or**
- The client failed to file an appeal at any step within SSA's 60 day limit, **and**
- The client is **not** claiming:
 - A totally different disabling condition than the condition SSA based its determination on, **or**
 - An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**.

BEM 260, July 1, 2015, p 3 (emphasis in original)

The medical evidence of record does not show any other impairments not considered by SSA nor does the record demonstrate objective findings which would show significant change or worsening of Petitioner's condition that SSA has not made a determination on. Based upon 42 CFR 435.541, and BEM 260 policy, SSA has made a final determination. Accordingly, there would be no jurisdiction to review disability for MA because SSA denied the grant of benefits and an appeal of that determination was not made within 60 days.

However, a person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for a shortened time frame of at least ninety days, rather than 12 months. Accordingly, there is still jurisdiction regarding the denial of SDA because SSA would not have considered whether Petitioner met the disability criteria for the shortened timeframe.

The following Exhibits were entered into the record during the hearing:

Department Exhibits:

- Department's April 4, 2016, Hearing Summary. (Exhibit A, p. 1)
- Petitioner's April 4, 2016, Hearing Request. (Exhibit A, p. 2)
- January 12, 2016, Notice of Case Action regarding the SDA denial. (Exhibit A, p. 3)
- Undated and unsigned, portion of Medical-Social Eligibility Certification. (Exhibit A, pp. 4-5)
- December 15, 2015, Disability Determination Explanation. (Exhibit A, pp. 6-16)
- October 22, 2015, Report of SGA Determination. (Exhibit A, pp. 17-19)

- September 22, 2015, Medical Social Questionnaire. (Exhibit A, pp. 20-23)
- September 22, 2015, Authorization to Release Protected Health Information. (Exhibit A, pp. 24-26)
- September 22, 2015, Work History Questionnaire. (Exhibit A, pp. 27-32)
- September 22, 2015, Activities of Daily Living. (Exhibit A, pp. 33-37)
- October 7, 2015, Function Report- Adult – Third Party. (Exhibit A, pp. 38-45)
- October 7, 2015, Work History Report. (Exhibit A, pp. 46-53)
- October 7, 2015, Function Report- Adult. (Exhibit A, pp. 54-61)
- September 29, 2015, Work Activity Report – Employee. (Exhibit A, pp. 62-68)
- May 7, 2015 through July 16, 2015, Paycheck History. (Exhibit A, p. 69)
- Undated Disability Report- Adult. (Exhibit A, pp. 70-79)
- September 21, 2015, Disability Report – Field Office. (Exhibit A, pp. 80-82)
- September 22, 2015, through December 16, 2016, Case Development Sheet. (Exhibit A, pp. 83-88)
- October 2015, Medical Records from [REDACTED]. (Exhibit A, pp. 89-94)
- December 13, 2015, consultative Psychological Medical Report. (Exhibit A, pp. 95-97)
- July 2014 and April 2015, medical records from [REDACTED]. (Exhibit A, pp. 98-101)
- June 16, 2015, medical records from [REDACTED]. (Exhibit A, pp. 102-103)
- March 31, 2015, medical records from [REDACTED]. (Exhibit A, pp. 104-107)
- September 3, 2015, medical record from [REDACTED]. (Exhibit A, pp. 108-109)
- May 2015 through October 2015, Medical records from [REDACTED], includes records from other providers. (Exhibit A, pp. 110-138)
- March 31, 2015, medical records from [REDACTED] [REDACTED] Documentation. (Exhibit A, pp. 139-147)
- Undated Request for Administrative Information. (Exhibit A, pp. 148-149)
- September 3, 2015, medical record from [REDACTED]. (Exhibit A, pp. 150-154)
- August 17, 2015, medical records from [REDACTED]. (Exhibit A, pp. 155-162)

Petitioner Exhibits:

- January 18, 2016, medical record from [REDACTED]. (Exhibit 1, pp. 1-2)

The hearing record closed on May 4, 2016. As discussed during the hearing proceedings, the hearing record was not left open to obtain additional medical evidence for records from upcoming appointments or procedures.

ISSUE

Whether the Department properly determined 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 or about September 8, 2015, Petitioner applied for SDA. (Exhibit A, p. 1)
2. On or about January 12, 2016, the Department's Medical Review Team found Petitioner not disabled. (Exhibit A, pp. 1 and 4-5)
3. On January 12, 2016, a Notice of Case Action was issued to Petitioner regarding the SDA denial. (Exhibit A, p. 3)
4. On April 4, 2016, the Department received Petitioner's timely written request for hearing. (Exhibit A, p. 2)
5. Petitioner alleges disabling impairments including learning disability and loin pain hematuria syndrome. (Petitioner Testimony)
6. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED] [REDACTED], birth date; was [REDACTED] in height; and weighed [REDACTED] pounds. (Petitioner Testimony)
7. Petitioner attended special education classes, completed the 12th grade, and has a high school diploma. (Petitioner Testimony)
8. Petitioner has a work history including machine operator and maintenance. (Petitioner Testimony)
9. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program. Disability is defined as the inability to do any substantial gainful activity 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(a). The person claiming a physical or mental disability has the burden to establish it 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 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-

step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Petitioner is not involved in substantial gainful activity. Therefore, Petitioner is not ineligible for disability benefits under Step 1.

The severity of the Petitioner's alleged impairment(s) is considered under Step 2. The Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;

3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

Petitioner alleges disabling impairments including learning disability and loin pain hematuria syndrome. (Petitioner Testimony)

On July 31, 2014, Petitioner was seen by [REDACTED] for a head injury. Petitioner reported he had been in an auto accident and he was sent to the emergency room. (Exhibit A, pp. 100-101)

On March 31, 2015, Petitioner was seen at [REDACTED]. Final diagnoses were: acute episode of gross hematuria; and a prior history of episodic hematuria. (Exhibit A, pp. 104-107 and 139-147)

On April 16, 2015, Petitioner was seen by [REDACTED] for hematuria. (Exhibit A, pp. 98-99)

On May 13, 2015, Petitioner was seen by [REDACTED] for chronic intermittent gross hematuria and flank pain. (Exhibit A, pp. 136-138)

On June 16, 2015, Petitioner underwent cystoscopy and bilateral retrograde pyelogram for long term chronic hematuria and abdominal pain right flank. (Exhibit A, pp. 102-103 and 117-119)

A June 22, 2015, CT abdomen/Pelvis report showed: suspected mild bilateral medullary nephrocalcinosis, no obstructive uropathy; and no renal mass or urinary bladder abnormality. (Exhibit A, pp. 115-116)

June and July 2015, telephone encounter notes from [REDACTED] indicates Petitioner underwent angiography of his kidneys to rule out and treat an AV fistula. (Exhibit A, pp. 129-134)

On August 17, 2015, Petitioner was seen by [REDACTED] for gross hematuria and renal colic. It was noted that these diagnoses were likely related to loin pain hematuria syndrome. (Exhibit A, pp. 124-125 and 155-162)

A September 3, 2015, record from [REDACTED] documents diagnosis and treatment of thoracic spine pain, lumbago, and loin pain hematuria syndrome. Petitioner reported pain at a 7 out of 10, which is constantly present and worse with physical activities including sitting, standing, walking, bending, twisting, lifting, and climbing stairs. Several treatment options were discussed. Petitioner underwent a sympathetic block in the lumbar epidural region on the right side at L1/L2. (Exhibit A, pp. 108-109, 121-122, and 150-154)

October 2015 records from [REDACTED] document diagnosis and treatment of flank pain and loin pain hematuria syndrome. It was documented that previous treatments included sympathetic block at L1/L2 on September 3, 2015, with 0% relief. Petitioner reported pain at a 7 out of 10, which is constantly present and worse with physical activities including sitting, standing, walking, bending, twisting, lifting, and climbing stairs. The office visit notes indicate an upcoming trial for spinal cord stimulation. (Exhibit A, pp. 89-94)

A December 13, 2015, consultative Psychological Medical Report documents diagnoses of: average IQ; somatic syndrome disorder with predominant pain, persistent; ADHD, predominantly inattentive presentation; generalized anxiety disorder; specific learning disorder with impairment in reading (dyslexia); and neurocognitive disorder (past history of meningitis). The prognosis section starts by stating it appears Petitioner is capable of understanding instructions/directions meant to lead to the completion of a task provided he has the opportunity for clarification. However, it is then stated that Petitioner's anxiety and learning disability may combine compromise his ability to retain/recall information and/or follow through in a consistent and timely manner. Further, it states that Petitioner's loin hematuria with subsequent chronic pain appears to be a restriction to his ability to perform simple, repetitive tasks requiring a sustained physical effort. It was noted that increasing the probability that Petitioner's performance in a competitive environment can be viewed as successful will depend, in part, on the alleviation/resolution/management of his chronic pain, a psychiatric medication review, and accommodations/modifications when reading and/or writing are required. (Exhibit A, pp. 95-97)

Petitioner was seen by the [REDACTED] on January 18, 2016, for loin pain hematuria syndrome. It was noted that this diagnosis is extremely rare and there are very few studies available to help guide management. However, the doctor wanted to make sure they were not missing an alternative diagnosis and ordered additional

testing. Potential surgical management options were discussed, but they would be a last resort once pain management strategies have all failed. Petitioner was referred to the [REDACTED] and will need to work through pain management strategies before any surgical intervention is even considered. (Exhibit 1, pp. 1-2)

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that he does have limitations on the ability to perform basic work activities. The medical evidence has established that the Petitioner has an impairment, or combination thereof, that has more than a de minimis effect on the Petitioner's basic work activities. Further, the impairments have lasted, or can be expected to last, continuously for 90 days; therefore, the Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms diagnosis and treatment of loin pain hematuria syndrome; average IQ; somatic syndrome disorder with predominant pain, persistent; ADHD, predominantly inattentive presentation; generalized anxiety disorder; specific learning disorder with impairment in reading (dyslexia); and neurocognitive disorder (past history of meningitis).

Based on the objective medical evidence, considered listings included: 6.00 Genitourinary Disorders and 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Petitioner cannot be found disabled, or not disabled, at Step 3 based on the objective medical evidence available; therefore, the Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (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 (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function 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. 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.*

The evidence confirms diagnosis and treatment of loin pain hematuria syndrome; average IQ; somatic syndrome disorder with predominant pain, persistent; ADHD, predominantly inattentive presentation; generalized anxiety disorder; specific learning disorder with impairment in reading (dyslexia); and neurocognitive disorder (past history of meningitis). Petitioner testified he can walk for 15 minutes, stand for 15 minutes, sit for 15 minutes, and lift a gallon of milk, but nothing heavier. Petitioner described having difficulty with writing and reading, but indicated verbal instruction would be okay. The

medical records discussed above support that Petitioner's impairments and chronic pain preclude work activities. Petitioner's treatment records from [REDACTED] from September and October 2015 documented that Petitioner reported pain at a 7 out of 10, which is constantly present and worse with physical activities including sitting, standing, walking, bending, twisting, lifting, and climbing stairs. The September 3, 2015, sympathetic block at L1/L2 did not provide any relief. The October 2015 office notes indicate an upcoming trial for spinal cord stimulation. (Exhibit A, pp. 89-94 and 108-109) The December 13, 2015, consultative Psychological Medical Report indicates that Petitioner's anxiety and learning disability may compromise his ability to retain/recall information and/or follow through in a consistent and timely manner. Further, it was stated that Petitioner's loin hematuria with subsequent chronic pain appears restrict to his ability to perform simple, repetitive tasks requiring a sustained physical effort. The consultative Psychological examiner also indicated that Petitioner's performance in a competitive environment being successful will depend, in part, on the alleviation/resolution/management of his chronic pain, a psychiatric medication review, and accommodations/modifications when reading and/or writing are required. (Exhibit A, pp. 95-97) The medical records do not document success with any of the pain relief treatments thus far. The January 18, 2016, [REDACTED] record indicates potential surgical management options for treating loin pain hematuria syndrome were discussed, but they would be a last resort once pain management strategies have all failed. Petitioner was referred to the [REDACTED] and will need to work through pain management strategies before any surgical intervention is even considered. (Exhibit 1, pp. 1-2) Overall, Petitioner's testimony was consistent with the medical records and is found credible. After review of the entire record it is found, at this point, that Petitioner does not maintain the residual functional capacity to perform sedentary work as defined by 20 CFR 416.967(a) on a sustained basis.

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 he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). 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 considered. 20 CFR 416.960(b)(3).

Petitioner has a work history including machine operator and maintenance. (Petitioner Testimony) In light of the entire record and Petitioner's RFC (see above), it is found that Petitioner is not able to perform his past relevant work. Accordingly, the Petitioner cannot be found disabled, or not disabled, at Step 4; therefore, the Petitioner's eligibility is considered under Step 5. 20 CFR 416.905(a).

In Step 5, an assessment of Petitioner's residual functional capacity 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). At the time of hearing, Petitioner was [REDACTED] years

old and, thus, considered to be a younger individual for disability purposes. Petitioner completed the 12th grade and has a work history including machine operator and maintenance. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Petitioner to the Department to present proof that the Petitioner has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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).

The evidence confirms diagnosis and treatment of loin pain hematuria syndrome; average IQ; somatic syndrome disorder with predominant pain, persistent; ADHD, predominantly inattentive presentation; generalized anxiety disorder; specific learning disorder with impairment in reading (dyslexia); and neurocognitive disorder (past history of meningitis). As noted above, Petitioner does not maintain the residual functional capacity to perform sedentary work as defined by 20 CFR 416.967(a) on a sustained basis.

After review of the entire record, and in consideration of the Petitioner's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, Petitioner is found disabled at Step 5.

In this case, the Petitioner is found disabled for purposes SDA benefits as the objective medical evidence establishes a physical or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Petitioner's impairments did preclude work at the above stated level for at least 90 days.

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 INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Initiate a review of the application dated September 8, 2015, for SDA, if not done previously, to determine Petitioner's non-medical eligibility. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for September 2016.



CL/mc

Colleen Lack

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]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]