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 20, 2016
MAHS Docket No.: 16-003087
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 April 28, 2016, from Detroit, Michigan. Petitioner was present and testified on his behalf. He was represented by [redacted] authorized hearing representative (AHR). The Department of Health and Human Services (Department) was represented by [redacted], Hearing Facilitator.

ISSUE

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

FINDINGS OF FACT

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

1. On August 28, 2015, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On February 10, 2016, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 11-22).

3. On February 26, 2016, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 9-10).

4. On March 10, 2016, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 3-10).

5. Petitioner alleged disabling impairment due to back and neck pain, left knee arthritis, restless leg syndrome, carpal tunnel syndrome, posttraumatic stress disorder (PTSD), and anxiety.

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

7. Petitioner is a GED recipient.

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

9. Petitioner has an employment history of work as printing press operator.

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.

In this case, the Department denied Petitioner's SDA application in a November 26, 2016 Notice of Case Action. The notice indicated that the reason for the denial was Petitioner's failure to provide proof of information requested in a verification checklist sent to him. In the comments from your special section on the front page of the notice, the Department stated that the August 28, 2015 SDA application was denied and a disability determination was made by the Department. At the hearing, the Department acknowledged that Petitioner provided all requested verifications and that the denial of the application was not due to failure to verify but due to DDS/MRT's finding that Petitioner was not disabled. Therefore, the issue concerning the denial of the application was limited to whether the Department properly determined that Petitioner was not disabled and therefore ineligible for SDA.

Petitioner applied for cash assistance alleging a disability. 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 was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he 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 back and neck pain, left knee arthritis, restless leg syndrome, carpal tunnel syndrome, PTSD, and anxiety. The medical evidence presented at the hearing was reviewed and is summarized below.

On January 2, 2012, Petitioner was examined by a licensed psychologist. He was diagnosed with cognitive disorder due to closed head injury, mood disorder, polysubstance abuse (Vicodin, Soma and Xanax), and panic disorder. He was assigned a global assessment of functioning (GAF) score of 45 to 50. His prognosis was guarded. It was strongly suggested that an IQ test be administered to determine his present cognitive functioning. (Exhibit A, pp. 73-75). On February 13, 2012, Petitioner was examined by a doctor for IQ testing at the Department's request and administered the Wechsler Adult Intelligence Scale. The doctor concluded that Petitioner had a full-scale score of 80, indicating that he functioned within the low average range of intellectual functioning. He was diagnosed with a cognitive disorder. (Exhibit A pp. 58-60.)

From November 16, 2013 to November 25, 2013, Petitioner was hospitalized in the psychiatric unit complaining of major depression and suicidal ideations. The primary diagnosis at discharge was drug induced disorder, opioid dependence, episodic use. A psychiatric review of symptoms showed hopelessness, anxiety, questionable depression, suicidal ideation but no homicidal ideation, and no hallucinations or delusions. It was noted that he had hypertension, knee pain, back pain and cervical pain secondary to a 2004 car accident. (Exhibit A pp. 51-57.)

On December 21, 2015, Petitioner was examined by an independent medical examiner at the Department's request. Petitioner complained of neck and back pain and mental issues. Petitioner reported that he had undergone arthroscopic surgery on the left knee three years ago to repair a torn meniscus and his left knee was essentially better since then. He also reported mental problems consisting of depression, frequent panic attacks, poor sleep, frequent crying, and desires to die resulting in hospitalization five or six times because he was suicidal, most recently about 2 years ago. He did not see a psychiatrist except when hospitalized; his family doctor prescribed antidepressants. He reported mild hypertension, under control at the present time, and bilateral restless leg syndrome, which responded well to medication. The doctor observed lumbosacral spine in good alignment, minimally tender, with essentially full range of motion in all directions. He was able to perform fine and gross manipulation. His gait was essentially normal, and he did not use a cane when walking. The doctor noted minimal decrease on pinprick and vibratory sensation on the left lower limb. The doctor concluded that that Petitioner could sit, stand, bend, stoop, carry, pull, or push but had some restrictions on his left side. He also had knee and back pain upon pushing and neck pain when buttoning. Petitioner could not squat and arise from squatting. The doctor identified the following limitations in Petitioner's cervical spine: flexion was 0 to 45° (normal is 0 to 50°); extension was 0 to 50° (normal is 0 to 60°); right and left lateral flexion was 0 to 40° (normal is 0 to 45°); right and left rotation were 0 to 70° (normal is 0 to 80°). The doctor identified the following limitations in Petitioner's lumbar spine: flexion was 0 to 80° (normal is 0 to 90°); extension was 0 to 20° (normal is 0 to 25°); and right and left lateral flexion were 0 to 20° (normal is 0 to 25°). The doctor also observed that petitioner's right knee flexion was 0 to 110° and left knee flexion was 0 to 130° (normal is 0 to 150°). A left knee x-ray appeared to show an old fracture but the examination was limited due to underexposure. The doctor concluded that Petitioner had the following diagnosis: (1) history of herniated cervical disc, without clear evidence of radiculopathy; (2) degenerative the disc disease of the lumbar spine, with very mild left-sided radiculopathy; and (3) mental issues. (Exhibit A, pp. 61-68.)

On December 21, 2015, Petitioner was examined by a psychiatrist at the Department's request. Petitioner reported panic attacks 4 to 5 times weekly and depression resulting in hospitalization a few times in a psychiatric hospital. He was never on any kind of antidepressant medication on a regular basis because he did not follow up with any psychiatrist after the hospitalization. He reported that his primary care doctor prescribed Klonopin, which helped him sleep, and Xanax, which helped calm him when he had anxiety attacks. He also took Norco for back and neck pain. The psychiatrist observed that Petitioner was in contact with reality, had low self-esteem, had normal psychomotor activity, had poor motivation, had limited insight into his illness, and did not tend to exaggerate his symptoms. His thought process was well organized and easy to follow and his speech was spontaneous, logical, well organized, and goal-directed. Petitioner denied auditory and visual hallucinations or paranoid delusions. He also denied suicidal or homicidal ideations. He stated that he felt helpless and suffered from sleep disturbance. His immediate and recent memory were adequate. He was diagnosed with

major depressive disorder and assigned a global assessment of functioning score of 48. His prognosis was guarded. (Exhibit A, pp. 69-72.)

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

Step Three

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

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), 12.04 (affective disorders), 12.05 (intellectual disability), 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 this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner testified that he could walk no more than a block and would need to use a cane. He could stand up to an hour and sit up to 45 minutes before needing to stand. He could lift up to 15 pounds. He had difficulty gripping and grasping with his right hand. He lived with a friend and was able to care for his personal hygiene and dressing himself. He made simple meals and could clean up after himself. He could shop with the assistance of the AHR.

The doctor who conducted the consultative exam identified some limitations in Petitioner's range of motion of the cervical spine, lumbar spine, and knees but concluded that the lumbosacral spine had essentially full range of motion in all directions. The doctor noted that Petitioner was able to perform fine and gross manipulation, his gait was essentially normal, and he did not use a cane when walking.

The doctor noted minimal decrease on pinprick and vibratory sensation on the left lower limb. The doctor concluded that Petitioner had a history of herniated cervical disc, without clear evidence of radiculopathy, and degenerative disc disease of the lumbar spine with very mild left-sided radiculopathy. There was no medical evidence presented supporting Petitioner's testimony that he had carpal tunnel syndrome of the right hand or that he suffered from restless leg syndrome. Petitioner's medically determinable impairments could reasonably be expected to produce the alleged symptoms of back and neck pain; however, Petitioner's statements concerning the intensity, persistence and limiting effects of these symptoms are not fully supported by the clinical findings in the file.

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 light work as defined by 20 CFR 416.967(b).

Petitioner also alleged that he had nonexertional limitations due to his mental condition that prevented him from being able to engage in basic work activities. He testified that he suffered from posttraumatic stress disorder (PTSD), and anxiety attacks. He had concentration and memory issues following a closed head injury due to a September 2011 seizure. He did not get together with any friends or family or participate in any social activities. He testified he had been hospitalized in the psychiatric ward sometime between 2011 and 2013. He had last seen a mental health therapist in 2014.

The February 2012 IQ testing shows that Petitioner functions at the within the low average range of intellectual functioning. The psychiatrist who evaluated Petitioner at the Department's request in December 2015 diagnosed Petitioner with major depressive disorder and assigned him a GAF score of 48, with a guarded prognosis. He noted that Petitioner had low self-esteem and poor motivation but observed that Petitioner was in contact with reality; his thought process was well organized and easy to follow; his speech was spontaneous, logical, well organized, and goal-directed; and his immediate and recent memory were adequate. Petitioner was not engaged in psychiatric treatment.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has nonexertional RFC resulting in mild to moderate limitations on his mental ability to perform basic work activities.

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

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has

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

Petitioner testified that he had worked as a printing press operator for ten years ending in 2007 and in 2015 worked for a couple of months at a car wash folding towels where he made $3.50 an hour working between 20 and 40 hours weekly. Because Petitioner made less than $1,000 per month in his employment at the car wash and Petitioner testified that the employment ended because he was not able to maintain the work standard, that employment is properly categorized as unsuccessful work activity (UWA) that did not amount to SGA. SSR 05-02. Petitioner's employment as a press operator, which involved standing most of the day and lifting 20 pounds regularly and up to 30 pounds, is properly categorized as involving medium work.

Based on the RFC analysis above, Petitioner is limited to no more than light work activities and has mild to moderate limitations in his mental capacity to perform basic work activities. Because Petitioner's past relevant work required medium exertion, Petitioner lacks the exertional RFC to perform his past relevant work. Accordingly, Petitioner cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

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

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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).*

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). However, if the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not

disabled. 20 CFR 416.969a(c)(2). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was 41 years old at the time of application and [redacted] years old at the time of hearing, and, thus, considered to be a younger individual (age 18-44) for purposes of Appendix 2. He is a GED recipient with a history of semiskilled work experience. However, his skills are tied to medium work and are not transferable.

As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform light work activities. In this case, the Medical-Vocational Guidelines, 202.21, result in a finding that Petitioner is not disabled based on exertional limitations. Petitioner also has a nonexertional RFC which imposes mild to moderate limitations on his mental ability to perform work activities. Petitioner's mental RFC does not preclude his ability to engage in simple, basic work-related activities. Therefore, Petitioner can adjust to other work. Because the evidence presented shows that Petitioner is able to adjust to other work, Petitioner is not disabled at Step 5.

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

DECISION AND ORDER

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

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]

[redacted]

[redacted]

[redacted]