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: September 16, 2016
MAHS Docket No.: 16-007800
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 July 6, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [redacted], Eligibility Specialist.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. A second interim order was issued extending the due date for the records. A DHS-49, medical examination report, completed and signed by Petitioner's cardiologist, was received and marked into evidence as Petitioner's Exhibit 3. The record closed on September 5, 2016, and the matter is now before the undersigned for a final determination based on the evidence presented.

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 April 5, 2016, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On June 3, 2016, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 8-37).

3. On June 7, 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. 2-5).

4. On June 13, 2016, the Department received Petitioner's timely written request for hearing.

5. Petitioner alleged disabling impairment due to congestive heart failure (CHF), chronic kidney disease (CKD) stage 3, shortness of breath, swelling in legs and feet, diabetes, hypertension, hyperlipidemia, valvular heart disease, hypokalemia, anemia, and chest pain.

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

7. Petitioner is a high school graduate and has an Associate's degree.

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

9. Petitioner has an employment history of work as delivery driver, warehouse worker, warehouse driver, and warehouse manager.

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.

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 congestive heart failure, chronic kidney disease stage 3, shortness of breath, swelling in legs and feet, diabetes, hypertension, hyperlipidemia, valvular heart disease, hypokalemia, anemia, and chest pain. The medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below. The page numbers in Exhibit B are in the top left hand corner of each page.

On [redacted], Petitioner went to the emergency department complaining of intermittent shortness of breath and dyspnea on exertion (Exhibit B, pp. 99-100, 340-342). An [redacted] transesophageal echo showed severely dilated left ventricle with severe global hypokinesis, estimated ejection fraction 20%, mild degenerative disease of the mitral valve leaflets with dilated mitral annulus, and a severe mitral valve regurgitation with a moderately dilated left atrium (Exhibit B, pp. 205, 207, 257, 260). He was admitted from [redacted] to [redacted] and diagnosed with CHF with cardiomyopathy exacerbation with systolic dysfunction with ejection fraction less than 30%; severe valvular heart disease with severe mitral regurgitation; acute kidney injury; and type 2 diabetes mellitus. (Exhibit B, pp. 101-103, 140-142, 343-365.)

In a [redacted] letter, Petitioner's primary care physician stated that Petitioner had been a patient since [redacted] and due to his chronic medical conditions of dyspnea, diabetes, CHF, heart valve disorder, and morbid obesity, he had been unable to work since [redacted] and was not able to work. (Exhibit B, pp. 233, 254, 320.)

On [redacted] echocardiogram (ECG) found severe left ventricular dilatation, severe global left ventricular dysfunction, mild concentric left ventricle hypertrophy, left ventricular ejection fraction estimated at 20 to 25%, moderate to severe mitral valve regurgitation, moderate left atrial enlargement, mild tricuspid valve regurgitation, and

normal estimated right ventricular systolic pressure (Exhibit B, pp. 97-98, 138-139, 206, 208).

Petitioner's medical file included notes from visits to his primary care physician between [redacted] and [redacted] with Petitioner reporting ongoing issues with shortness of breath with mild exertion (Exhibit B, pp. 270-311, 116-118, 119-121). At the [redacted] visit, Petitioner reported that, although he had felt depressed for years, he had never reported it but was interested in starting counseling. His diabetes mellitus was well-controlled on medication. His congestive heart failure and heart valve disorder were stable. His chronic kidney disease, stage II had improved from stage III. His hyperlipidemia was at goal. His pitting edema and bilateral leg swelling noted at his first visit had resolved as of the October 28, 2015 visit. (Exhibit B, pp. 270-283, 284-286.) The notes from [redacted] and [redacted] visits indicate that his chronic diabetes mellitus continued to be well-controlled; his chronic kidney disease stage II was minimally worsening with the GFR at 57 and creatine at 1.62; his anemia was improving; and his hyperlipidemia was at goal. He was started on potassium for his hypokalemia and prescribed Biofreeze for his chronic pain to bilateral knees and right shoulder during the wintertime. He was enjoying talking to a counselor regarding his depression. (Exhibit B, pp. 116-118, 119-121.)

On [redacted], Petitioner's primary care physician completed a disability parking placard application on Petitioner's behalf indicating that he had a permanent condition making him unable to walk more than 20 feet without having to stop and rest due to CHF, heart valve disorder, and dyspnea. (Exhibit B, pp. 312-313.)

On [redacted], Petitioner was examined by an independent medical examiner at the Department's request. Petitioner reported early onset heart failure diagnosed in [redacted] and recent CHF exacerbation with admission to the hospital for fluid overload and shortness of breath. He complained of chest pain, shortness of breath, dyspnea, lower extremity edema, shortness of breath, orthopnea, and PND (paroxysmal nocturnal dyspnea). He also had HTN and DM. The doctor reviewed documentation from Petitioner's cardiologist showing an ejection fraction of 20-25% and two discrete coronary lesions that were not intervened on during catheterization. The doctor noted Petitioner was at high risk of sudden cardiac death secondary to his heart failure and had significant limitations. He was scheduled to have an AICD (automatic implantable cardioverter defibrillator) implanted and would require intensive and cardiac rehab prior to improving his heart function. The doctor concluded that, during a normal 8 hour workday, Petitioner had no limitations regarding the number of hours he was able to sit, and he could stand 2 hours and walk one hour. (Exhibit, pp. 244-251.)

On [redacted], Petitioner consulted with the cardiologist regarding AICD implantation. The doctor noted Petitioner's history of dilated cardiomyopathy and severe LV (left ventricular) systolic dysfunction with no significant improvement in ejection fraction despite optimal medical treatment as recommended by guidelines for

heart failure management. The doctor recommended AICD implantation for management of sudden cardiac death. (Exhibit B, p. 96.)

From [redacted] to [redacted], Petitioner was hospitalized, and a single chamber defibrillator was successfully implanted on [redacted] to address his congestive heart failure with severely depressed left ventricular ejection fraction of less than 30%. Additionally, Petitioner had diagnoses of severe valvular heart disease with severe MR (mitral regurgitation), acute kidney injury, and type II diabetes mellitus. His discharge diagnosis was CHF, NYHA (New York Heart Association) class III (Exhibit 1, pp. 1-8; Exhibit B, 168-, 195, 228-230.)

In a [redacted] physicians certification completed in connection with a discharge of federal student loans, Petitioner's primary care physician indicated that Petitioner suffered from CHF with ICD placement, HTN, valvular heart disease, and DM and that he had severe shortness of breath and weakness from his chronic heart failure that made him unable to work at all (Exhibit B, pp. 106). In a letter dated [redacted], Petitioner's primary care physician stated that Petitioner had a medical history significant for CKD3 (chronic kidney disease, stage III), dyspnea, heart failure, anemia, diabetes, valvular heart disorder, hypertension, hypokalemia, and hyperlipidemia. The doctor indicated that Petitioner was permanently disabled due to his conditions. (Exhibit 1, p. 11; Exhibit B, p. 107.)

In [redacted] office notes, Petitioner's primary care physician indicated that Petitioner was doing very well since his AICD procedure the prior month. Petitioner reported feeling much better after the procedure and only occasionally feeling palpitations which then quickly subside. He was very compliant with medication regimen and had no other complaints. (Exhibit B, pp. 108-110.) In [redacted] office notes, Petitioner's primary care physician indicated that Petitioner's diabetes mellitus was well-controlled; his congestive heart failure, heart valve disorder, and dyspnea were stable following the [redacted] AICD implantation; his chronic kidney disease it stage III was worsening with GFR of 53 and creatine at 1.72 as of [redacted]; his anemia was improving; his vitamin D deficiency was at goal; his chronic bilateral knee pain and right shoulder pain worse with cold weather was continuing to be treated with topical Biofreeze; his hyponatremia was minimally decreased but improving; his GERD was stable on Pepcid; and his hypokalemia was resolved. Petitioner reported always being depressed but never having mentioned it; he enjoyed seeing a counselor and talking to someone. (Exhibit B, pp. 122-124)

Notes show Petitioner was treated between [redacted] and [redacted] by a MA LPC (Master of Arts Licensed Professional Counselor), who diagnosed him with major depressive disorder, recurrent, moderate severity. (Exhibit B, pp. 147-156, 237-242.)

On [redacted], Petitioner was evaluated by psychiatrist at the Department's request. The psychiatrist diagnosed Petitioner with depressive disorder due to medical conditions (congestive heart failure, ventricular septal defect, diabetes, defibrillator in

place) with major depressive-like features. The psychiatrist indicated that Petitioner's condition was extensively affected by a number of debilitating medical conditions and opined that the lingering fatigue and weakness with lack of energy resulting from his diabetes and heart condition, as well as medications prescribed to him, would adversely affect his ambition, mood, spirit, and motivation making it unlikely that he would be able to adapt to assignments at work and would overtly affect his cognitive ability, concentration, and focus. The psychiatrist indicated that Petitioner's prognosis was guarded. (Exhibit, pp. 81-84, 86-88.)

On [redacted], Petitioner's cardiologist completed a medical examination report, DHS-49, listing Petitioner's diagnoses as coronary artery disease, ASHD (atherosclerotic heart disease), diabetes mellitus, moderate to severe mitral regurgitation, cardiomyopathy, palpitations, status post AICD [redacted]. The doctor noted that Petitioner's LVEF (left ventricular ejection fraction) was 20% and he had a systolic murmur. He also noted that Petitioner got short of breath with less than 50 feet of activity. Petitioner had been referred to cardiac rehab phase II. The doctor concluded that Petitioner's condition was stable and identified the following limitations: (i) he could not lift any weight; (ii) he could stand and/or walk less than 2 hours in an 8-hour workday; (iii) he could sit less than 6 hours in an 8-hour workday; (iv) he could use neither arm or hand to reach or push/pull; and (v) he could use neither foot or leg to operate foot and leg controls. (Exhibit 3.)

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 4.02 (chronic heart failure), 4.04 (ischemic heart disease), and 6.05 (chronic kidney disease with impairment of kidney function) were considered. Because there is no exercise tolerance test, or an explanation that Petitioner's performance of such a test poses a significant risk to him, and no evidence of three or more separate episodes of acute congestive heart failure within a consecutive 12-month period, Petitioner's condition does not meet a listing under 4.02. Because there is no exercise tolerance test, angiographic evidence showing a narrowing of coronary arteries or bypass graft vessel, or medical evidence of three separate ischemic episodes within a 12-month period,

Petitioner's condition does not meet a listing under 4.04. Because laboratory evidence does not show reduced glomerular filtration as defined in 6.05A, Petitioner's condition does not meet a listing under 6.05.

Because the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds.

20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

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

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner testified that he could walk a block but experienced shortness of breath, could sit although he would occasionally experience heart racing and shortness of breath, and could stand up to two hours but would then need to sit. He believed he could lift 20 pounds, but indicated his left arm was still sore from his surgery. He lived alone and could bathe and dress himself and slowly do chores, sometimes over the course of several days. He had someone assist him with shopping because it tired him and he needed assistance with loading and unloading groceries. He limited his driving because of his medication. He napped because of fatigue. He was participating in cardiac rehab.

Petitioner's medical record shows diagnoses of CAD, ASHD, diabetes mellitus, moderate to severe mitral regurgitation, cardiomyopathy, palpitations, and CKD stage II/III. Therefore, there was a medically determinable impairment supporting his symptoms of fatigue and shortness of breath. At the [redacted] examination by an independent medical examiner, the doctor concluded that Petitioner's conditions did not limit the number of hours he could sit and would allow him to stand two hours and walk one hour. However, the doctor indicated that Petitioner was scheduled to have an AICD implanted which would require intensive cardiac rehab prior to improving his heart function. Petitioner had the AICD implanted in [redacted]. Petitioner's cardiologist, who had treated Petitioner since [redacted], noted in his [redacted] report that Petitioner's LVEF (left ventricular ejection fraction) was 20%, he had a systolic murmur, and he experienced shortness of breath with less than 50 feet of activity. The cardiologist concluded that Petitioner he could not lift any weight; could

stand and/or walk less than 2 hours in an 8-hour workday; could sit less than 6 hours in an 8-hour workday; could use neither arm or hand to reach or push/pull; and could use neither foot or leg to operate foot and leg controls.

Generally, more weight is given to the opinion of a treating source, especially where the treater gives an opinion related to his area of specialty. 20 CFR 416.927(c). Therefore, the opinion of Petitioner's cardiologist is given controlling weight. Further, following his AICD implantation, Petitioner's condition was classified NYHA class III, which indicates a "marked limitation of physical activity. Comfortable at rest. Less than ordinary activity causes fatigue, palpitation, or dyspnea." http://www.heart.org/HEARTORG/Conditions/HeartFailure/AboutHeartFailure/Classes-of-Heart-Failure_UCM_306328_Article.jsp#.V9F9g01THL9. While it is anticipated that with additional cardiac rehab, the exertional limitations due to Petitioner's impairments will lessen, it is found based on a review of the entire record, particularly the opinion of Petitioner's cardiologist, that Petitioner currently maintains the physical capacity to perform less than sedentary work.

Petitioner also alleges nonexertional limitations due to his mental condition. He testified that he had anger issues, a loss of interest in activities, a tendency to isolate, crying spells and sleeplessness. Notes indicate that Petitioner was diagnosed with major depressive disorder, recurrent, moderate severity. The psychiatrist who examined Petitioner at the Department's request concluded that the lingering fatigue, weakness, and lack of energy resulting from Petitioner's diabetes, heart condition, and medications prescribed to him would adversely affect his ambition, mood, spirit, and motivation, making it unlikely that he would be able to adapt to assignments at work and affecting his cognitive ability, concentration, and focus. Based on the medical record presented, as well as Petitioner's testimony, Petitioner has moderate limitations on his mental ability to perform basic work activities. Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id*.; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a delivery driver and warehouse worker, driver, and manager. Petitioner testified that his past employment required standing substantially all of the work day and regularly lifting at least 50 pounds. Therefore, his past prior employment required at least medium physical exertion. Because Petitioner's exertional RFC limits him to less than sedentary

work activities, Petitioner is incapable of performing 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 [redacted] years old at the time of application and [redacted] old at the time of hearing, and, thus, considered to be a younger individual ([redacted]) for purposes of Appendix 2. He is a high school graduate with an Associate's degree and a history of unskilled work experience. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform less than sedentary work activities. In this case, the Medical-Vocational Guidelines, Appendix 2 do not support a finding that Petitioner is not disabled based on his exertional limitations, age, education, and vocational skills. Further, Petitioner has nonexertional limitations posed by his mental condition. The Department has failed to counter with evidence of significant numbers of jobs in the national economy which Petitioner could perform despite his limitations. Therefore, the Department has failed to establish that, based on his RFC and age, education, and work experience, Petitioner can adjust to other work. Therefore, Petitioner is 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 **disabled** for purposes of the SDA benefit program.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reregister and process Petitioner's April 5, 2016 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;

2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;

3. Review Petitioner's continued eligibility in March 2017.

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

DHHS

[redacted]

Petitioner

[redacted]

Via Email:

[redacted]