



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: November 14, 2016
MAHS Docket No.: 16-011083
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 [REDACTED], from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Coordinator.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. The Petitioner applied for SDA benefits on [REDACTED].
2. The Medical Review Team denied the Petitioner's request on [REDACTED].
3. The Department sent the Petitioner a Notice of Case Action on [REDACTED].
4. The Petitioner filed a timely hearing request on [REDACTED].
5. An Interim Order was issued on [REDACTED], requesting the Petitioner to provide an additional DHS-49 from his treating doctor.
6. The Petitioner has alleged physical disabling impairments, which include a rod and screws in his right leg and left ankle, a rotator cuff tear which cannot be repaired,

leg swelling, pain in his left ankle and hip. The Petitioner has not alleged any mental disabling impairments.

7. The Petitioner last worked in [REDACTED]. For the last [REDACTED] years, the Petitioner has worked in asbestos removal and abatement. In his last position, he served as a field supervisor.
8. The Petitioner, at the time of the hearing, was [REDACTED] years of age with a birth date of [REDACTED]. The Petitioner is 5'10" and weighs 215 pounds. The Petitioner has a high school education.
9. The Petitioner's impairments have lasted or are expected to last 90 days or more.

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. 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 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). 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 (e.g., 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 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). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 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 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 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 and, therefore, 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 916.920(a)(4)(ii); 20 CFR 916.920(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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(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 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).

The Petitioner has alleged physical disabling impairments including placement of a rod and two screws in his right leg due to an accident as a pedestrian which involved a car running over his leg. The Petitioner also has two screws in the ankle. The Petitioner suffers from hip pain on the left and has right foot numbness and leg swelling. The Petitioner's right ankle is sore. The Petitioner has had multiple surgeries for his torn rotator cuff, which can no longer be repaired.

A summary of the medical evidence presented follows:

A Medical Examination report was completed on [REDACTED]. The Report was completed by the Petitioner's treating orthopedic specialist. The current diagnosis was right rotator cuff tear with current medications noting Norco for pain. The report indicates that the patient was first seen on [REDACTED]. The examination of the patient, revealed continuing limited range of motion with right shoulder, right leg swelling. Limitations were imposed and the Petitioner's condition was deteriorating and was

expected to last 90 days or more. The report noted the Petitioner could stand or walk less than two hours in an eight-hour work day and sit approximately six hours in an eight-hour workday. The Petitioner could operate foot and leg controls on the left side only. The Petitioner was also limited to use of his hands and arms on the left side. The Petitioner could lift occasionally up to 25 pounds. The laboratory and x-ray findings noted moderate degenerative changes of knee, acromion of the right shoulder. In addition the medical findings noted right leg swelling, right shoulder limited range of motion and weakness. The Petitioner was noted as capable of meeting his needs in the home.

The Petitioner was seen for a reevaluation on [REDACTED], regarding his irreparable rotator cuff. At the time of the evaluation, the Petitioner's right shoulder pain was 9 out of 10. Reports of cracking and popping in the joint were also noted some difficulty reaching top shelves, in doing yardwork, carrying less than 10 pounds, and dressing. Sleep difficulty was also noted. Range of motion deficits were noted with pain in the shoulder for all ranges of motion with tightness and stiffness at the end of the range. The examiner noted that the patient lacked endurance and the strength in his shoulders limited due to pain and decreased scapular stabilization. Also noted the decreased grip/pinch strength with some strength improvement. The report notes that although the arm was capable of being raised to 90° full function was not available due to pain and difficulty as was ability to reach to the side. This examination was done post surgery. The evaluation was done after the patient had completed 20 sessions of physical therapy.

The Petitioner was seen for an independent medical exam on [REDACTED]. The examination notes that Petitioner was able to carry, push, pull, but had limitations on the right side secondary to complaint of right shoulder pain. The impression was complaint of all over pain but especially right shoulder, right-sided neck pain and right leg pain status post pedestrian hit by motor vehicle in [REDACTED] requiring right tibia left fibula open reduction and right ankle open reduction and two surgeries to right shoulder. Range of motion in right shoulder is accompanied with pain. Patient was found to be able to ambulate without a cane.

The Petitioner was seen on [REDACTED], regarding post open rotator cuff debridement with acromioplasty, distal clavicle excision and biceps tenodesis. At the time of the visit, the impression was irreparable right rotator cuff tear, biceps tenodesis, distal clavicle excision and acromioplasty. The report notes that the doctor performing the surgery discussed condition with patient and anticipated patient will have issues with right shoulder in the future given massive, irreparable right rotator cuff tear. Anticipate permanent limitations with right shoulder. Also noted was history of right tibia fracture and fasciotomy with episodic symptoms and left ankle injury. The doctor's note indicates, "He works in construction and given the above, unlikely to return to previous unrestricted activities." The post-operative diagnosis was massive irreparable right rotator cuff tear, right shoulder impingement, right acromioclavicular joint arthritis and biceps tendinopathy.

The patient was seen on [REDACTED], due to right shoulder pain and symptoms. The injury was sustained in a motor vehicle accident, and the symptoms as were described as severe. The symptoms were noted as worsening. The report notes shoulder surgery was performed [REDACTED] years prior to the visit. At the time, the prior surgery was for a torn rotator cuff. The report also notes cervical spondylosis. Pain is noted as radiating down the forearm and hand. Noted limitation on active elevation or external rotation of the right shoulder. An MRI was performed on [REDACTED], which noted rotator cuff tear right shoulder.

A return visit on [REDACTED], noted the MRI results with a note that suspicion for some tearing of the biceps as well. The impression at the time of the follow-up was right supraspinatus and A C joint arthritis. At the time, the doctor recommended open rotator cuff repair with acromioplasty and distal clavicle excision.

The initial visit with the Petitioner's orthopedic specialist was conducted on [REDACTED] [REDACTED]. After examination, the Petitioner was prescribed to obtain an MRI of the shoulder due to pain at shoulder with motion. There was also noted a positive impingement sign. An MRI was completed [REDACTED] which noted a hypertrophic change of the A C joint which appears to abut the underlying rotator cuff. A surgical anchor from prior rotator cuff surgery was visualized and created artifact limiting evaluation of the humeral head. A full thickness tear of the supraspinatus tendon, with retraction of a problem tear approximately 2.7 cm was noted. This full thickness tear appears to extend into the infraspinatus tendon. The impression was right supraspinatus tear and A C joint arthritis. The plan was to perform an open rotator cuff repair with acromioplasty and distal clavicle excision. The Petitioner was also given an injection into the shoulder.

In [REDACTED], the Petitioner was independently examined to determine whether his current rotator cuff injury required further treatment and whether the reinjury was due in any way to a prior automobile accident in [REDACTED] at which time the Petitioner was hit by a car while walking. The prognosis of the rotator cuff tear right shoulder at the time of the evaluation and review of medical records was guarded. This report was pre-rotator cuff surgery. The doctor evaluating the Petitioner at the time noted a significant injury to right shoulder and lower extremity as a result of the [REDACTED] accident with re-tear likely caused by the prior automobile injury related accident.

The Petitioner was seen by his then treating specialist in orthopedics on [REDACTED] [REDACTED]. At that time, the patient reported swelling about the right leg and pain and left ankle pain. The report notes that as a result of the motor vehicle accident, the Petitioner underwent reconstruction of his leg with fasciotomy on the right. Mild pain in the left ankle was noted without instability. The impression on examination was cervical spondylosis, right shoulder pain status post previous surgery, right chronic pain and swelling status post-surgical reconstruction and fasciotomy and left ankle pain status post ORIF of medial malleolus fracture.

During the hearing, the Petitioner credibly testified that he could stand 15 to 20 minutes, but then he required a break so that he could sit. The Petitioner indicated he could sit approximately 30 minutes and then would have to move around. As regards walking, the Petitioner could walk between 10 and 15 minutes; however, at times, he would have to take a break and sit, and then resume walking. Petitioner can perform a limited squat, bend at the waist and can shower and dress himself. He can tie his shoes and touch his toes while doing so. At times, the level of pain he experiences is a 10 if he does not take his medication, which he uses Motrin and Norco when severe. The pain in his arm and shoulder is continuous. Petitioner is right-handed, and his right shoulder has been affected. The Petitioner does have difficulty climbing stairs due to pain in his legs and swelling in right foot numbness. The Petitioner does not smoke, drink or use illegal drugs. The Petitioner further credibly testified that he was advised by his Doctor to stay off his leg when it was swollen.

As previously noted, the Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Petitioner has presented objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, 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 continuously for 90 days and more; 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.

As part of the required review several pertinent listings are considered below as part of the Step 3 analysis. All of the listings involve the Musculoskeletal System. The listings 1.03, 1.06, and 1.07 require:

1.03 *Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint*, with inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset.

1.06 *Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones*. With:
A. Solid union not evident on appropriate medically acceptable imaging and not clinically solid;

and

B. Inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

1.07 *Fracture of an upper extremity* with nonunion of a fracture of the shaft of the humerus, radius, or ulna, under continuing surgical management, as defined in 1.00M, directed toward restoration of functional use of the extremity, and such function was not restored or expected to be restored within 12 months of onset.

After analysis it is determined that the severity requirement of the above referenced listings has not been demonstrated in this case. In addition the requirement that there be an inability to ambulate effectively on a sustained basis required by Listing 1.03 is not demonstrated by the Petitioner's objective medical evidence.

1.00 Musculoskeletal System

A. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases.

B. Loss of function.

1. General. Under this section, loss of function may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other neurological deficits; amputation; or fractures or soft tissue injuries, including burns, requiring prolonged periods of immobility or convalescence. The provisions of 1.02 and 1.03 notwithstanding, inflammatory arthritis is evaluated under 14.09 (see 14.00D6). Impairments with neurological causes are to be evaluated under 11.00ff.

2. How we define loss of function in these listings.

a. General. Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. When there is an inability to perform these activities due to a mental impairment, the criteria in 12.00ff are to be used. We will determine whether an individual can ambulate effectively or can perform fine and gross movements effectively based on the medical and other evidence in the case record, generally without developing additional evidence about the individual's ability to perform the specific activities listed as examples in 1.00B2b(2) and 1.00B2c.

b. What we mean by inability to ambulate effectively.

(1) Definition. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.)

(2) To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

Thus, based upon the foregoing analysis of the Listings, it is determined that the Petitioner is not disabled at Step 3.

As the Petitioner has not been found disabled or not disabled at Step 3, the analysis will proceed to Step 4.

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 are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

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 additional 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, e.g., 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 to the demands of past relevant work must be made. *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 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 (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The

determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

During the hearing, the Petitioner credibly testified that his prior work experience has been as a worker, foreman and supervisor for an asbestos remediation and abatement company. The Petitioner has a 12th grade education. The Petitioner has worked for one employer for the last [REDACTED] years prior to his last working in [REDACTED]. In general the work was described as physical requiring lifting, climbing ladders, carrying pipes, putting in barrels weighing hundred pounds and sometimes moving barrels weighing up to 300 pounds with assistance. The Petitioner noted standing and walking most of the day and at times working with the work crews when serving as a foreman. Prior to the hearing, the Petitioner completed a work history questionnaire on [REDACTED], which noted his position as a foreman supervisor for a company which removed asbestos, lead, mold and small demolition jobs. The evaluation notes that sometimes the Petitioner was required as a foreman to work alongside the crew. As part of his job, the Petitioner had to use tools, load rebar and equipment weighing between 30 pounds and 300 pounds with help and also noted he could no longer lift with help 300 pounds. Frequent lifting was between 30 and 50 pounds. An evaluation of the functional physical requirements, noted lots of walking and standing and climbing and reaching. Given the strenuous nature of this work and the Petitioner's current limitations as outlined by the objective medical evidence previously discussed above, and Petitioner's credible testimony regarding his current physical limitations, the Petitioner's past RFC was for medium work. In further considering his educational background, the evidence supports a determination that the Petitioner can no longer perform his past relevant work.

If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. Because Petitioner's past work involved work of a medium level of exertion, Petitioner does not maintain the RFC to perform past relevant work. In consideration of the Petitioner's testimony, medical records, and current limitations, it is found that the Petitioner is not able to return to past relevant work. Thus, the fifth step in the sequential analysis is required.

In Step 5, an assessment of the individual'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). The Petitioner is [REDACTED] years old and, thus, is considered to be a person of closely approaching advanced age for SDA purposes. The Petitioner has a [REDACTED] grade education. 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).

In this case, the evidence reveals that the Petitioner has a medical impairment due to limitations due to open reduction surgeries of the right leg, and ankle and pain in his major affected joints as well as irreparable rotator cuff repair with limitations in range of motion and lifting. Petitioner's impairments, support limitations of function which result in a finding that he maintains the physical capacity to perform sedentary work as defined in 20 CFR 416.967(a). Petitioner's RFC to perform sedentary exertional work is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g). In this case, Petitioner was ■ years old at the time of application and ■ years old at the time of hearing, for purposes of Appendix 2. He has a high school education with a history of unskilled and semi-skilled work experience as a supervisor. However, his skills are nontransferable as he has only had experience in the asbestos abatement industry; and his work experience has only involved this type of employment. As discussed above, he maintains the RFC for work activities on a regular and continuing basis to meet the physical and mental demands to perform sedentary work activities. Based on his age, education, work experience, and exertional RFC, the Medical-Vocational Guidelines, 201.14, result in a finding that Petitioner is disabled based on his exertional limitations.

This Administrative Law Judge does take into account Petitioner's complaints of pain and that the diagnoses do support the claims. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a Petitioner's limitations. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529, 416.929. This determination also gave weight to the Petitioner's treating doctor's evaluation. He has seen this doctor since 2014.

After review of the entire record, the Findings of Fact and Conclusions of Law, and in consideration of the Petitioner's age, education, work experience and residual functional capacity, it is found that the Petitioner is disabled for purposes of the SDA program at Step 5 pursuant to Rule 201.14.

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.

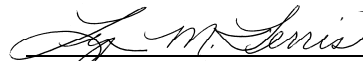
DECISION AND ORDER

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 OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall process the Petitioner's SDA application dated [REDACTED] to determine whether all non-medical eligibility requirements are met.
2. The Department shall supplement the Petitioner for any SDA benefits he is otherwise entitled to receive in accordance with Department policy.
3. A review of this case shall be conducted in [REDACTED].

LMF/jaf



Lynn M. Ferris

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]

[REDACTED]