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: December 29, 2016
MAHS Docket No.: 16-015972
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 December 1, 2016, from Lansing, Michigan. The Petitioner was represented by himself and his friend, [redacted] The Department of Health and Human Services (Department) was represented by [redacted] Hearing Facilitator.

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. On April 1, 2016, the Petitioner applied for SDA.

2. On August 26, 2016, the Medical Review Team (MRT) denied Petitioner's application for SDA per BEM 261 because the nature and severity of the Petitioner's impairment's would not preclude work activity at the above stated level for 90 days and is capable of performing other work under Medical Vocation Grid Rule 202.17 per 20 CFR 416.920(f).

3. On August 29, 2016, the Department Caseworker sent the Petitioner a notice that his application was denied.

4. On October 26, 2016, the Department received a hearing request from Petitioner, contesting the Department's negative action.

5. Petitioner is a 53 year-old man whose date of birth is [redacted]. Petitioner is 5' 10" tall and weighs 190 pounds. He has lost 40 to 50 pounds in the past year because he can't keep food down. Petitioner completed High School and one year of college. Petitioner can read and write and do basic math. Petitioner was last employed as a [redacted] driver in January 2016 at the medium to light level. He was also employed as a stock person at the heavy level and a maintenance person at the medium level.

6. The Petitioner's alleged impairments are anxiety, degenerative disc disease (ddd), chronic back pain, pancreatitis, loss weight, and nausea from medications. He is scheduled for surgery to remove part of his small intestines and bypass biliary tubes.

7. The Petitioner's hospital physician wrote him a note on January 27, 2016, that he was hospitalized from January 19, 2016, through January 27, 2016. He was given the medical clearance to return to work on February 1, 2016, based on the improvement of his symptoms. Department Exhibit 1, pg. 663.

8. On April 6, 2016, Petitioner's treating specialist submitted an evaluation of his tests. Petitioner did not have cancer and the cells were atypical, but felt more to be likely benign and inflammatory rather than precancerous or cancerous. His specialist requested that he be tested every 2 to 3 months and a clinic visit. Department Exhibit 1, pg. 664.

9. On May 31, 2016, Petitioner was treated for an endoscopy procedure at [redacted] where a biopsy was taken of his stomach and his gastroesophageal junction. His pathological diagnosis was duodenum biopsy showed mild non-specific chronic duodenitis and negative for villous blunting. His stomach biopsy showed mild chronic gastritis and negative for H. pylori. Finally, his gastroesophageal junction biopsy showed Barrett's metaplasia and negative for dysplasia. In addition, the clinical impression was chronic calcific pancreatitis with pancreatic divisum and a stone at the minor papilla with upstream ductal dilation. Stones were extracted with a balloon sweep and a stent was placed. In the region of the pancreatic tail, a calcified cyst was noted. He was negative for sludge or stone. Department Exhibit 1, pgs. 114-123.

10. On August 18, 2016, Petitioner was seen for an independent medical examination at [redacted] His chief complaints were diabetes mellitus, pancreatitis, high blood pressure, high cholesterol, biliary obstruction, bilateral shoulders, back and ankle fracture. He had some abdominal distention combined with tenderness in the peri-umbilical region as well as the in the lower thoracic spine area. Petitioner walks with a normal gait without the use of an

assistive device. He does not have hepatosplenomegaly today. Petitioner has been undergoing biliary stenting every 3 months. He does not appear encephalopathic. Petitioner is at risk for acute hepatic failure if his stents become blocked. He has abstained from alcohol use. Department Exhibit 1, pgs. 100-106.

11. On November 2, 2016, Petitioner's treating specialist submitted an evaluation of his tests. Petitioner did not have cancer and the cells were atypical, but felt more to be likely benign and reactive to inflammation. A clinic visit to discuss surgery options was recommended. Petitioner Exhibit 1, pg. 1.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of 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 purusant 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 impariment 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.

The Department conforms to State statute in administering the SDA program.

> 2000 PA 294, Sec. 604, of the statute states:
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> Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:
>
> (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
>
> (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the

> disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Petitioner does not have a severe medically determinable impairment or combination of impairments, the Petitioner is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Petitioner's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the trier must consider all of the Petitioner's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of his past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner has the residual functional capacity to do past relevant work, then the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Petitioner has satisfied requirements as set forth in steps one and two of the sequential evaluation. However, Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for step 3. Therefore, vocational factors will be considered to determine Petitioner's residual functional capacity to do relevant work and past relevant work.

In the present case, Petitioner's hospital physician wrote him a note on January 27, 2016, that he was hospitalized from January 19, 2016, through January 27, 2016. He was given the medical clearance to return to work on February 1, 2016 based on the improvement of his symptoms. Department Exhibit 1, pg. 663.

On April 6, 2016, Petitioner's treating specialist submitted an evaluation of his tests. Petitioner did not have cancer and the cells were atypical, but felt more to be likely benign and inflammatory rather than precancerous or cancerous. His specialist requested that he be tested every 2 to 3 months and a clinic visit. Department Exhibit 1, pg. 664.

On May 31, 2016, Petitioner was treated for an endoscopy procedure at [redacted] where a biopsy was taken of his stomach and his gastroesophageal junction. His pathological diagnosis was duodenum biopsy showed mild non-specific chronic duodenitis and negative for villous blunting. His stomach biopsy showed mild chronic gastritis and negative for H. pylori. Finally, his gastroesophageal junction biopsy showed Barrett's metaplasia and negative for dysplasia. In addition, the clinical impression was chronic calcific pancreatitis with pancreatic divisum and a stone at the minor papilla with upstream ductal dilation. Stones were extracted with a balloon sweep and a stent was placed. In the region of the pancreatic tail, a calcified cyst was noted. He was negative for sludge or stone. Department Exhibit 1, pgs. 114-123.

On August 18, 2016, Petitioner was seen for an independent medical examination at [redacted] His chief complaints were diabetes mellitus, pancreatitis, high blood pressure, high cholesterol, biliary obstruction, bilateral shoulders, back and ankle fracture. He had some abdominal distention combined with tenderness in the peri-umbilical region as well as the in the lower thoracic spine area. Petitioner walks with a normal gait without the use of an assistive device. He does not have hepatosplenomegaly today. Petitioner has been undergoing biliary stenting every 3 months. He does not appear encephalopathic. Petitioner is at risk for acute hepatic failure if his stents become blocked. He has abstained from alcohol use. Department Exhibit 1, pgs. 100-106.

On November 2, 2016, Petitioner's treating specialist submitted an evaluation of his tests. Petitioner did not have cancer and the cells were atypical, but felt more to be likely benign and reactive to inflammation. A clinic visit to discuss surgery options was recommended. Petitioner Exhibit 1, pg. 1.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that Petitioner testified that he does perform some of his daily living activities. Petitioner does feel that his condition has worsened because he is in constant pain and his stent gets clogged with bacterial build up, sludge, and a fungus. The objective medical evidence on the record did not reflect that. Petitioner stated that he does have mental impairments where he is taking medication, but not in therapy. Petitioner smokes 1 pack of cigarettes per day. He stopped drinking on December 27, 2015, which before he drank 8 to 10 beers per night. He stopped using illegal and illicit drugs of marijuana and cocaine 10 years ago. Petitioner did not feel there was any work he could do.

At Step 4, this Administrative Law Judge finds that Petitioner has not established that he cannot perform any of his prior work. He was previously employed as a hi-lo driver in January 2016 at the medium to light level. He was also employed as a stock person at the heavy level and a maintenance person at the medium level. Petitioner is taking medication for his mental impairments. Petitioner should be able to perform light work. He is being treated for chronic pancreatitis with surgery pending. See MA analysis at Step 2. Therefore, Petitioner is disqualified from receiving disability at Step 4. Petitioner is capable of performing his past work at the light level. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether Petitioner has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

The objective medical evidence on the record is insufficient that Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. Petitioner's testimony as to his limitation indicates his limitations are non-exertional and exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, Petitioner testified that he has anxiety. Petitioner is taking medication for his mental impairments. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors.

In the final step of the analysis, the trier of fact must determine if the Petitioner's impairment(s) prevent the Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon the Petitioner's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

> Sedentary work. 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. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).
>
> Light work. 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. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

> Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, Petitioner can meet the physical requirements of light work, based upon the Petitioner's physical abilities. Under the Medical-Vocational guidelines, a closely approaching advanced retirement age individual with a high school education, and a semi-skilled and unskilled work history, who is limited to light work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 203.07. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as anxiety. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to Petitioner's mental and physical impairments, the Administrative Law Judge finds that Petitioner could perform light work and that Petitioner does not meet the definition of disabled under the SDA program.

DECISION AND ORDER

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. Petitioner could perform light work and Petitioner does not meet the definition of disabled under the SDA program.

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

Carmen G. Fahie

CF/mc

Carmen G. Fahie
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]