



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: September 16, 2016
MAHS Docket No.: 16-009702
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 August 25, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

ISSUE

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

FINDINGS OF FACT

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

1. In a Hearing Decision issued June 30, 2014, Administrative Law Judge (ALJ) Lynn Ferris found that Petitioner was disabled for purposes of the SDA program and ordered the Department to assess his non-medical eligibility for SDA benefits and issue supplements if eligible. The Department was ordered to review Petitioner's medical condition for ongoing SDA eligibility in June 2015. (Exhibit C.)
2. Petitioner was issued SDA benefits beginning October 2013 (Exhibit B).
3. Petitioner continued to receive benefits through July 31, 2015 (Exhibit B).
4. On June 21, 2016, the Department sent Petitioner a Benefit Notice notifying him that the Medical Review Team (MRT) had determined that he was not disabled and his "SDA review denied PD5." (Exhibit A, pp. 2-3.)

5. On July 6, 2016, the Department received Petitioner's timely request for hearing disputing the denial of SDA benefits (Exhibit A, p. 2).
6. Petitioner alleged disabling impairment due to back pain, chronic obstructive pulmonary disease (COPD), arthritis in the left hand, and major depression with psychosis.
7. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED], birth date; he is [REDACTED]" in height and weighs about [REDACTED] pounds.
8. Petitioner completed high school.
9. Petitioner has an employment history of work as a pest exterminator.
10. Petitioner had appealed the denial of Social Security disability benefits on July 1, 2015, and submitted a new application with the Social Security Administration on March 16, 2016 (Exhibit A, pp. 13-17Exhibit B).

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 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 lasting, or expected to last, at least 90 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). Once an individual has been found disabled, continued entitlement to benefits based on a disability is periodically reviewed in accordance with the medical improvement review standard in order to make a current determination or decision as to whether disability remains. 20 CFR 416.993(a); 20 CFR 416.994(a).

The hearing initially addressed whether this case involved an application for SDA benefits or the closure of an existing case based on a review finding Petitioner no longer disabled. In the Hearing Decision issued on June 30, 2014, ALJ Ferris found Petitioner

disabled and ordered a review of the case in June 2015 (Exhibit C). Based on the decision, the Department approved Petitioner for SDA benefits in October 2013 (Exhibits B). The eligibility summary showed that the Department stopped issuing SDA benefits to Petitioner August 1, 2015 (Exhibit B). At the hearing, the worker testified that Petitioner's case involved a review of ongoing eligibility, not a new application, despite the reference to a July 1, 2015, "new application date" on the medical social eligibility certification completed by the Disability Determination Services (DDS)/MRT. In fact, because Petitioner received SDA benefits through July 2015, it is unlikely that an application dated July 1, 2015, would be processed. Further, the documentation completed by Petitioner, which includes a medical social questionnaire "update" (Exhibit A, p. 27) supports the conclusion that the DDS/MRT review was in connection with an ongoing case. Petitioner also testified that he had never received a notice that his SDA case was closing prior to the June 21, 2016 Benefit Notice sent to him by the Department. Based on the evidence presented, including the worker's testimony and the June 30, 2014 Hearing Decision ordering a July 2015 medical review, it is found that the June 21, 2016, Benefit Notice notified Petitioner of the closure of his SDA case based on a DDS/MRT finding that he was no longer disabled. Therefore, the instant case involves Petitioner's eligibility for ongoing SDA benefits based on a continued disability.

In connection with reviewing an individual's eligibility for ongoing benefits, if the individual is not engaged in substantial gainful activity (SGA), the trier of fact must apply an eight-step sequential evaluation in evaluating whether an individual's disability continues. 20 CFR 416.994. The review may cease and benefits may be continued at any point if there is sufficient evidence to find that the individual is still unable to engage in SGA. 20 CFR 416.994(b)(5).

In this case, Petitioner has not engaged in SGA at any time since he became eligible for SDA. Therefore, his disability must be assessed to determine whether it continues using the eight-step evaluation:

Step 1. If the individual has an impairment or combination of impairments which meets or equals the severity of an impairment listed in 20 CFR Appendix 1 of subpart P of part 404, the disability will be found to continue. 20 CFR 416.994(b)(5)(i).

Step 2. If a listing is not met or equaled, it must be determined whether there has been medical improvement as defined in paragraph (b)(1)(i) of 20 CFR 416.994 and shown by a decrease in medical severity. If there has been a decrease in medical severity, Step 3 is considered. If there has been no decrease in medical severity, there has been no medical improvement unless an exception in Step 4 applies. 20 CFR 416.994(b)(5)(ii).

Step 3. If there has been medical improvement, it must be determined

whether this improvement is related to the individual's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv); *i.e.*, there was an increase in the individual's residual functional capacity (RFC) based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to the individual's ability to do work, the analysis proceeds to Step 4. If medical improvement *is* related to the individual's ability to do work, the analysis proceeds to Step 5. 20 CFR 416.994(b)(5)(iii).

Step 4. If it was found at Step 2 that there was no medical improvement or at Step 3 that the medical improvement is not related to the individual's ability to work, the exceptions in 20 CFR 416.994(b)(3) and (b)(4) are considered. If none of them apply, the disability will be found to continue. If an exception from the first group of exceptions to medical improvement applies, the analysis proceeds to Step 5. If an exception from the second group of exceptions to medical improvement applies, the disability is found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(iv).

Step 5. If medical improvement is shown to be related to an individual's ability to do work or if one of the first group of exceptions to medical improvement applies, **all** the individual's current impairments in combination are considered to determine whether they are severe in light of 20 CFR 416.921. This determination considers all the individual's current impairments and the impact of the combination of these impairments on the individual's ability to function. If the RFC assessment in Step 3 shows significant limitation of the individual's ability to do basic work activities, the analysis proceeds to Step 6. When the evidence shows that all the individual's current impairments in combination do not significantly limit the individual's physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature and the individual will no longer be considered to be disabled. 20 CFR 416.994(b)(5)(v).

Step 6. If the individual's impairment(s) is severe, the individual's current ability to do substantial gainful activity is assessed in accordance with 20 CFR 416.960; *i.e.*, the individual's RFC based on all current impairments is assessed to determine whether the individual can still do work done in the past. If so, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

Step 7. If the individual is not able to do work done in the past, the individual's ability to do other work given the RFC assessment made under Step 6 and the individual's age, education, and past work experience is assessed (unless an exception in 20 CFR 416.994(b)(5)(viii)

applies). If the individual can, the disability has ended. If the individual cannot, the disability continues. 20 CFR 416.994(b)(5)(vii).

Step 8. Step 8 may apply if the evidence in the individual's file is insufficient to make a finding under Step 6 about whether the individual can perform past relevant work. If the individual can adjust to other work based solely on age, education, and RFC, the individual is no longer disabled, and no finding about the individual's capacity to do past relevant work under Step 6 is required. If the individual may be unable to adjust to other work or if 20 CFR 416.962 may apply, the individual's claim is assessed under Step 6 to determine whether the individual can perform past relevant work. 20 CFR 416.994(b)(5)(viii).

Step One

Step 1 in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue with no further analysis required.

The medical record presented was reviewed and is briefly summarized below.

On [REDACTED], Petitioner's family doctor completed a DHS-49, Medical Examination Report, indicating that Petitioner was diagnosed with bipolar disorder, hypertension (HTN), COPD, and back pain. The doctor indicated that Petitioner had bilateral rhonchi, expiratory wheezing, tachycardia, tenderness to palpitation of the lumbar spine, and right paravertebral muscle flexion of 80 degrees. The report indicates there were limitations expected to last more than 90 days. (Exhibit A, pp. 18-20.)

On [REDACTED], Petitioner was examined by an independent medical examiner at the Department's request. The doctor noted that Petitioner reported a history of arthritis and chronic back pain. His range of motion of the cervical spine, lumbar spine and all joints was normal except for bilateral hip forward flexion which was 0 to 50 degrees (normal is 0 to 100 degrees). The doctor observed that Petitioner did not use a cane or other walking aid. He was observed to slowly get on and off the examination table; to slowly tandem, heel and toe walk; to squat to 70% of the distance and recover; and to bend to 90% of the distance and recover. His straight leg raise was 0 to 50 degrees while lying and 0 to 90 degrees while sitting. The doctor did not identify any limitations in Petitioner's abilities, including the ability to sit, stand, bend, stoop, carry, push, and pull. (Exhibit A, pp. 51-58.)

Petitioner was diagnosed as of [REDACTED], with major depressive disorder, recurring, severe with psychosis. As of [REDACTED], his global assessment of functioning (GAF) score was 52. He had a psychiatric re-evaluation on [REDACTED]. Although his past complaints included increased sadness, insomnia, decreased appetite,

increased appetite, low energy, hopelessness, guilt, loss of interest, anxiety, racing thoughts, forgetfulness, poor concentration, loss of libido, seeing hallucinations and paranoia, he was asymptomatic at the time of evaluation. Petitioner reported being off his medication for over two months. The psychiatrist observed unremarkable general appearance, posture, behavior, speech, eye contact, memory and cognition. He observed blunted affect, anxious and sad mood, paranoid ideation, non-commanding hallucinations, fair insight, and fair judgement. A diagnosis of major depressive disorder, recurring, severe with psychosis was continued as active. (Exhibit A, pp. 42-46.) A DHS-49E, mental residual functional capacity assessment, was not signed by Petitioner's psychiatrist and is therefore not an opinion from an acceptable medical source that can be used to establish a medically determinable impairment. SSR 06-3p.

On [REDACTED], Petitioner was evaluated for a mental status examination at the Department's request. The psychologist observed that Petitioner was in touch with reality and his stream of mental activity was logical, goal-directed, and organized. Petitioner described hearing bangs and booms outside his house and seeing shadows out the windows but denied any commanding auditory/visual hallucinations or suicidal or homicidal ideation. The psychologist's medical source statement found that Petitioner was not presenting with any problems in the areas of short-term working memory or concentration; he was generally independent with his activities of daily living; and there were no current psychiatric problems that would prevent him from appropriately interacting with others. The psychologist diagnosed Petitioner with grief bereavement disorder following the 2015 death of his mother and son, resolving and managed with medication. His prognosis was fair. (Exhibit A, pp. 48-50.)

In light of the medical evidence presented, listings 1.04 (disorders of the spine), 3.02 (chronic pulmonary insufficiency), 12.03 (schizophrenic, paranoid and other psychotic disorders), and 12.04 (affective disorders) was considered. There was no evidence of compromise of a nerve root or spinal cord to support a listing under 1.04. A listing under 3.02 cannot be established because there was no documentation of pulmonary function testing as described in 3.00E or chronic impairment of gas exchange as described in 3.00F. A listing under 12.03 cannot be established because of the absence of medically documented marked limitations of activities of daily living; maintaining social functioning; or maintaining concentration, persistence or pace evidenced by an acceptable medical source, and because of the absence of evidence of repeated episodes of decompensation; residual disease process resulting in marginal adjustment; or current history of one or more years' inability to function outside a highly supportive living arrangement. There was no medically documented persistence of depressive syndrome and manic syndrome to support a listing under 12.04.

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, a disability is not continuing under Step 1 of the analysis, and the analysis proceeds to Step 2.

Step Two

If the impairment(s) does not meet or equal a Listing under Step 1, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1). 20 CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). For purposes of determining whether medical improvement has occurred, the current medical severity of the impairment(s) present at the time of the most recent favorable medical decision that found the individual disabled, or continued to be disabled, is compared to the medical severity of that impairment(s) at the time of the favorable decision. 20 CFR 416.994(b)(1)(vii). If there is medical improvement, the analysis proceeds to Step 3, and if there is no medical improvement, the analysis proceeds to Step 4. 20 CFR 416.994(b)(5)(ii).

Petitioner was initially determined disabled in the June 30, 2014, Hearing Decision issued by ALJ Ferris based on a finding that his mental condition met or equaled the requirements of listings 12.03 and 12.04. At that time, ALJ Ferris relied on a [REDACTED], psychiatric evaluation completed by Petitioner's psychiatrist that found that Petitioner had a GAF score of 49 and a diagnosis of major depressive disorder with psychosis. A mental residual functional capacity assessment completed at the time by the psychiatrist identified Petitioner as markedly limited in almost all areas concerning his ability to function in the workplace, including his ability to remember locations and work like procedures; to understand and remember one or two-step instructions; to understand and remember detailed instruction; to carry out detailed instructions; to maintain attention and concentration for extended periods; to perform activities within a schedule; to maintain regular attendance and be punctual; to sustain an ordinary routine without supervision; to work in coordination with or proximity of others without being distracted by them, to make simple work-related decision; and to complete a normal workday and worksheet without interruptions from psychologically based symptoms; and to perform at a consistent pace without an unreasonable number and length of rest periods.

In the [REDACTED], psychiatric re-evaluation, Petitioner's psychiatrist continued to identify Petitioner's diagnosis as major depressive disorder, recurring, severe with psychosis. However, his GAF score slightly increased to 52 as of [REDACTED]. The mental residual function capacity assessment completed [REDACTED], though not, as discussed above, an acceptable medical source because it was not signed by Petitioner's psychiatrist, is considered to evaluate the severity of Petitioner's impairment and how it affects his ability to function. The assessment completed on [REDACTED], showed marked limitations in most of the factors considered in assessing an individual's ability to function in the workplace. However, because it was not completed by an acceptable medical source, it is not an opinion of a treating source entitled to controlling weight. SSR 06-3p. Because the mental residual functional capacity assessment is not entitled to controlling weight, it must be considered in light of the other medical evidence presented.

This assessment is inconsistent with the [REDACTED], mental status examination performed by a consulting psychologist. The consulting psychologist concluded that Petitioner suffered from a grief bereavement disorder due to his son's and mother's 2015 deaths, but the issue was resolving and managed with medication. The psychologist concluded that Petitioner had no problems with short-term memory or concentration, was generally independent with his activities of daily living, and had no current psychiatric problems that would prevent him from appropriately interacting with others. The identification of Petitioner as markedly limited in most abilities associated with workplace behaviors is also inconsistent with Petitioner's psychiatrist's note in the [REDACTED] re-evaluation that Petitioner was asymptomatic. Although Petitioner testified that he continued to experience issues with anxiety, hearing sounds, isolating, and having bad or sad moods, he admitted that his medication helped with his condition.

Based on all of the medical evidence presented, there has been a decrease in the medical severity of Petitioner's mental impairment from the time of the June 30, 2014, Hearing Decision to the July 2015 review. Because there was a decrease in the medical severity of the impairment which was present at the time of the most favorable medical decision that the individual was disabled, there was a medical improvement in Petitioner's mental condition. Therefore, the evaluation of Petitioner's continuing disability must proceed to step 3.

Step Three

At step 3, if there has been medical improvement, it must be determined whether there is an increase in the individual's residual functional capacity (RFC) based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to the individual's ability to do work, the analysis proceeds to Step 4. If medical improvement *is* related to the individual's ability to do work, the analysis proceeds to Step 5. 20 CFR 416.994(b)(5)(iii).

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. 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 addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

In this case, though the mental residual functional capacity assessment showed marked limitations, Petitioner's psychiatrist indicated that Petitioner was asymptomatic, and Petitioner admitted that his mental condition was improved while on medication. The evaluation by the independent licensed psychologist concluded that Petitioner had no problems with short-term memory or concentration, was generally independent with his activities of daily living, and had no current psychiatric problems that would prevent him from appropriately interacting with others. At the hearing, Petitioner testified that he was able to dress and bathe himself, do personal chores, and interact with family. The evidence presented supports the conclusion that Petitioner has mild limitations in activities of daily living; social functioning; and concentration, persistence or pace; and no episodes of decompensation.

In light of the June 20, 2014, Hearing Decision finding that Petitioner's mental condition met or equaled a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20 and resulted in a disabling condition rendering him unable to engage in basic work activities and the current finding that he has mild limitations in activities of daily living; social functioning; concentration, persistence or pace; and no episodes of decompensation, there has been an increase in Petitioner's RFC based on the impairment that was present at the time of the most recent favorable medical determination. Accordingly, the review of Petitioner's current condition proceeds to Step 5.

Step Five

If under Step 3 medical improvement is shown to be related to an individual's ability to do work, **all** the individual's current impairments in combination are considered to determine whether they are severe in light of 20 CFR 416.921. When the evidence shows that all the individual's current impairments in combination do not significantly limit the individual's physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature and the individual will no longer be considered to be disabled. 20 CFR 416.994(b)(5)(v). An individual's impairments, when considered in combination, are not medically severe if they 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. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In addition to limitations due to his mental condition, Petitioner also alleged limitations due to back problems, COPD, and arthritis in the left hand. The DHS-49 Petitioner's doctor completed [REDACTED], showed that Petitioner was diagnosed with bipolar disorder, HTN, COPD, and back pain. In examining Petitioner, the doctor indicated that Petitioner had bilateral rhonchi, expiratory wheezing, tachycardia, tenderness to palpitation of the lumbar spine and right paravertebral muscle, and flexion of 80 degrees. The report indicates that Petitioner can occasionally lift up to 10 pounds but does not identify any restrictions with respect to greater amounts. It also indicates that

Petitioner is limited to repetitive use of his right hands/arms and feet/legs. Although the doctor identified standing/walking limitations, because the check boxes are not lined up, it is not clear what limitations are identified. The independent medical examiner who examined Petitioner on [REDACTED], found that his bilateral hip forward flexion was 0 to 50 degrees (normal is 0 to 100 degrees) and his straight leg raise was 0 to 50 degrees while lying and 0 to 90 degrees while sitting; no other joint or spine limitations were identified. The evidence presented is sufficient to establish that Petitioner has some limitations to his ambulation, breathing, and use of his extremities for repetitive motions.

Because this evidence is insufficient to establish that Petitioner's limitations have no more than a minimal effect on his physical or mental ability to perform basic work activities, Petitioner cannot be found not disabled at Step 5, and the assessment of continuing disability must continue to Step 6.

Step Six

At Step 6, the individual's RFC based on all current impairments is assessed to determine whether the individual can still do work done in the past. If so, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

Petitioner has alleged both exertional and nonexertional limitations due to his impairments. As discussed above, based on the medical evidence presented, as well as Petitioner's testimony, Petitioner has a nonexertional RFC due to his mental condition that result in mild limitations on his ability to perform basic work activities.

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).

With respect to his exertional limitations, Petitioner alleged that he could short lengths using a cane and with shortness of breath, sit up to 30 minutes with discomfort, and stand short periods. He could lift up to 15 pounds with his left hand and 25 pounds with his right. He could bathe and dress himself, prepare simple meals, and clean up his

room. He relied on his brother to shop for him and on others to provide transportation. The Department worker noted that Petitioner used a cane and walked slowly and with some difficulty.

The independent medical examiner's physical exam finding a positive straight leg while supine and limited bilateral hip flexion, as well as his doctor's finding of bilateral rhonchi, expiratory wheezing, tachycardia, tenderness to palpitation of the lumbar spine, and flexion of 80 degrees supported some limitations in Petitioner's ability to walk and stand. The independent medical examiner also found that, consistent with Petitioner's testimony, Petitioner had some limitations in left hand strength. Based on the evidence presented, it is found that Petitioner maintains the exertional RFC to perform sedentary work.

Petitioner's past relevant employment as a pest control exterminator, which required standing substantially all the work day and lifting up to 70 pounds, required heavy exertion. Because Petitioner's exertional RFC limits him to sedentary work, he is incapable of performing past relevant work. Because Petitioner cannot be found not disabled at Step 6, the assessment must continue to Step 7.

Step Seven

If the individual is not able to do work done in the past, the individual's ability to do other work given the RFC assessment made under Step 6 and the individual's age, education, and past work experience is assessed (unless an exception in 20 CFR 416.994(b)(5)(viii) applies). If the individual can, the disability has ended. If the individual cannot, the disability continues. 20 CFR 416.994(b)(5)(vii).

In this case, Petitioner was ■ years old at the time of hearing and a high school graduate. His past relevant work involved unskilled labor and no transferrable skills. Under the Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, Petitioner's age places him in the "closely approaching advanced age" category. Based on his age, education, lack of transferrable skills and exertional RFC limiting him to sedentary work, the Medical-Vocational guidelines, 201.12, result in a finding that Petitioner is disabled based on his exertional RFC. Therefore, Petitioner **is** disabled at Step 7.

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 continuing eligibility for benefits under the SDA program.

DECISION AND ORDER

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

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

1. Reinstate Petitioner's SDA case effective August 1, 2015;
2. Issue supplements to Petitioner for any lost SDA benefits that he was entitled to receive from August 1, 2015 ongoing if otherwise eligible and qualified in accordance with Department policy;
3. Notify Petitioner of its decision in writing; and
4. Review Petitioner's continued SDA eligibility in February 2017 in accordance with Department policy.

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]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via Email:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]