



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: January 12, 2017
MAHS Docket No.: 16-014604
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 15, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner is not a disabled individual.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing SDA benefit recipient.
2. Petitioner's only basis for SDA eligibility was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual for purposes of SDA eligibility (see Exhibit 1, pp. 12-18).
4. On [REDACTED], MDHHS terminated Petitioner's eligibility for SDA benefits, effective October 2016, and mailed a Notice of Case Action informing Petitioner of the termination.

5. On [REDACTED] Petitioner requested a hearing disputing the termination of SDA benefits (see Exhibit 1, pp. 1-2).
6. As of the date of hearing, Petitioner was a 35-year-old male.
7. Petitioner's highest education year was the 12th grade.
8. Petitioner has a history of semi-skilled and non-transferrable work.
9. Petitioner is capable of a wide-range of sedentary employment.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (July 2015), p. 5. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.*

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (July 2015), p. 1. A person is disabled for SDA purposes if he [or she]:

- Receives other specified disability-related benefits or services..., or
 - Resides in a qualified Special Living Arrangement facility, or
 - Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; [or]
 - Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*, pp. 1-2.

Generally, state agencies such as MDDHS must use the same definition of disability as used under SSI regulations (see 42 CFR 435.540(a)). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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. MDHHS adopted a functionally identical definition of disability (see BEM 260 (July 2015, p. 10)). The definition of SDA disability is identical except that only a 90 day period of disability is required.

Substantial gainful activity means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. BEM 260 (July 2015), p. 10. Significant duties are duties used to do a job or

run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

Once an individual has been found disabled for purposes of disability-related benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994.

MDHHS did not present a Notice of Case Action verifying the reason for SDA termination. It was not disputed MDHHS terminated Petitioner's SDA eligibility based on a determination that Petitioner was no longer disabled. Thus, the only issue to be determined is if MDHHS properly determined Petitioner to no longer be disabled.

In evaluating a claim for ongoing disability benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding if an individual's disability has ended, the department will develop, along with the petitioner's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The below-described evaluation process is applicable for clients that have not worked during a period of disability benefit eligibility. There was no evidence suggesting that Petitioner received any wages since receiving disability benefits.

The first step in the analysis in determining the status of a petitioner's disability 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 and no further analysis is required. This consideration requires a summary and analysis of presented medical documents.

Petitioner testified he fell down his parent's basement stairs on [REDACTED]. Petitioner testified the fall left him unconscious. Petitioner testified he has no memory of the fall, though he recalled being hospitalized for 2 weeks.

A medical examination report (Exhibit 1, pp. 20-25) dated [REDACTED], was presented. The report was noted as completed by a consultative physician. Petitioner reported ongoing problems with chronic bilateral upper extremity pain. Petitioner reported only regaining 30% of his strength. Notable physical examination findings included "very limited" range of neck motion (10 degrees forward bending, "almost fixed" in rotation, and 5 degrees of back bending motion. Upper extremities were noted to

have full range of motion. Upper and lower extremities were noted to be normally developed. The examiner concluded Petitioner was “very limited in returning to carpenter work.” It was noted Petitioner is “functioning quite well.” It was noted that Petitioner was able to perform all 23 listed work-related activities; listed activities included: sitting, standing, lifting, carrying, stooping, bending, and reaching.

Petitioner’s most prominent impairment appears to be neck dysfunction. Neck dysfunction is covered by Listing 1.04 which reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

The consultative examination did not identify a loss of muscle strength or a loss of reflexes. A straight-leg-raising test was noted to be negative. Petitioner’s ambulation was normal. Though some nerve damage was identified, it was noted Petitioner did not “appear to have much” nerve damage. These considerations support rejecting that Petitioner’s condition meets the listing for spinal disorder.

It is found Petitioner failed to establish meeting any SSA listings. Accordingly, the analysis may proceed to the second step.

The second step of the analysis considers whether medical improvement occurred. 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).

MDHHS presented a MRT determination (Exhibit 1, pp. 237-243) dated [REDACTED]. A determination of disability was stated. A brief summary of documents noted Petitioner was not back at 100%. MRT noted the determination was consistent with a Disability Determination Explanation (see Exhibit 1, pp. 244-259) which stated Petitioner's condition was severe, though not expected to last the 12 months required for SSA eligibility. The analysis will proceed to consider medical records considered in the original disability finding.

Hospital documents (Exhibit 1, pp. 159-193) from an admission dated [REDACTED] were presented. It was noted that Petitioner presented with "obvious" facial trauma with decreased strength and sensation in upper extremities. Petitioner reported falling down approximately 12 stairs causing a loss of consciousness for several minutes; it was also noted Petitioner was intoxicated. Radiology was performed and verified multiple facial fractures and non-displaced fractures at C4 and C7. Altered signals to the thoracic spine, C5-C6 disk protrusion, mild canal stenosis at C5-C6, and multilevel foraminal narrowing were also notable cervical spine radiological findings. Petitioner underwent facial surgery and was admitted to ICU for cervical spine treatment.

Hospital documents (Exhibit 1, pp. 112; 116-152) from an admission dated [REDACTED], were presented. It was noted that Petitioner transferred from another hospital for neck surgery. Petitioner underwent C4-C6 cervical laminectomies. A diagnosis of cervical cord syndrome was noted. A discharge date of [REDACTED], was noted. Discharge instructions included wearing a cervical collar, including when showering.

Physical and occupational therapy documents (Exhibit 1, pp. 193-207) dated [REDACTED], were presented. Petitioner was assessed as in need of minimal assistance with ADLs. Petitioner was noted as unable to work, drive, or to perform his hobbies of golfing and hunting. Grip strength and motor coordination were impaired. A plan of 16 visits (over 8 weeks) was noted. PT goals included improving strength and motor coordination. Various PT office visit (see Exhibits 208-223) were presented.

A neurosurgery office visit note (Exhibit 1, p. 113) dated [REDACTED], was presented. Petitioner reported ongoing decreased range of motion and shoulder discomfort. Tingling in ring finger and pinky was also noted. Upper extremity muscle strength ranged from 4/5 -5/5. A follow-up in 6 weeks was noted.

Physical rehabilitation office visit notes (Exhibit 1, p. 113-114) dated [REDACTED], were presented. Decreased right-sided sensation was noted. Strength was noted to be 5/5 except for triceps (5-/5), interossei (4-/5), and pinch (4-/5). Cervical range of motion was markedly limited.

A neurosurgery office visit note (Exhibit 1, p. 115) dated [REDACTED], was presented. It was noted Petitioner completed physical and occupational therapy.

Improvements in range of motion were noted, though an unspecified ongoing decrease was also noted. Trapezius, deltoid, and triceps were each noted to be 4+/5 strength. Minimal numbness in ring and pinky fingers was noted. Neurontin was decreased. Cervical spine radiology (see Exhibit 1, p. 121) noted re-demonstration of mild retrolisthesis at C3 and C4.

Physical rehabilitation office visit notes (Exhibit 1, pp. 224-236) dated [REDACTED] were presented. It was noted Petitioner met long-term goal (LTG) of decreased bilateral hand sensation to complete tactile and joint activities with no adverse reaction. It was noted Petitioner's left hand grip strength LTG was met. Right hand grip strength from 40 to 78 pounds was noted; the LTG of 80 pound grip strength was not met. Improvement in Upper Extremity Function Scale from 31.25% to 82.5% was noted. It was noted Petitioner could independently complete ADLs. Ongoing mild sensation deficit was noted. Arm range of motion was noted to be "almost full range." It was noted Petitioner was able to perform 25 minutes of balancing activities (without rest), independently ambulate on incline (with head turns), and ascend 2 flights of stairs.

When Petitioner was originally deemed disabled, Petitioner was less than 5 months from a severe neck injury. Petitioner had completed physical and occupational therapy only 2 months earlier. Since completing therapy, there are indications of medical improvement.

Petitioner presented no cervical spine treatment since completing physical therapy. The absence of medical records is indicative of an absence of setbacks in his healing process.

A consultative examiner found no restrictions in Petitioner's arm ranges of motion. The lack of restriction was improvement since Petitioner completed therapy.

A consultative examiner found no restrictions in Petitioner's strength. The lack of restriction was improvement since Petitioner completed therapy.

It is found Petitioner has experienced medical improvement since the finding of disability made by the ALJ. Accordingly, the analysis may proceed to the third step.

The third step of the analysis considers medical improvement and its effect on the ability to perform SGA. Medical improvement is not related to the ability to work if there has been a decrease in the severity of the impairment(s) present at the time of the most recent favorable medical decision, but *no* increase in functional capacity to do basic work activities. 20 CFR 416.994(b)(1)(ii). If there has been any medical improvement, but it is not related to the ability to do work and none of the exceptions applies, benefits will be continued. *Id.* If medical improvement is related to the ability to do work, the process moves to step five.

Petitioner's improved arm function since completing therapy should improve Petitioner's ability to lift/carry and to complete other motions needed for employment. The improvement is found to relate to the ability to so work. Accordingly, the disability analysis may proceed directly to the 5th step.

The fifth step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

Petitioner testified he has "extensive" pain and nerve loss in his hands. Petitioner compared the sensation to hot hands under running cold water. Petitioner testified he anticipates getting a machine to help control his nerve pain. Petitioner testified Lyrica is improving his nerve pain. Petitioner testified his medications include a muscle relaxer, gabapentin and oxycodone.

Petitioner testified he lost a lot of muscle since his injury. Petitioner testified he has continuously performed self-therapy for his neck and back (e.g. stretching and home

exercises). Petitioner testified he was warned that seeing a chiropractor would be dangerous. Petitioner testified he is optimistic about his future, but he needs more time to heal.

Presented documents verified Petitioner has virtually no range of neck motion. Petitioner's testimony concerning nerve pain and fatigue was reasonable given the severity of his original injuries. Degrees of ambulation and lifting/carrying restrictions can also be inferred from the medical history.

It is found Petitioner has impairments to performing basic work activities. Accordingly, the analysis may proceed to the sixth step.

The sixth 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 it is determined that a petitioner can perform past relevant work. *Id.*

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 is 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.

Petitioner testified he has a history of employment requiring physical labor. Petitioner testified he most recently worked as a kitchen fabricator; his stated duties included building and delivering cabinets and countertops. Petitioner testified other jobs from the past 15 years included window installer, soda merchandizer, appliance sales and delivery, and laborer for a beer distributor.

Petitioner's stated job history was fairly consistent with the history he reported to SSA (see Exhibit 1, pp. 48-55) and MDHHS (see Exhibit 1, p. 59). One job not discussed during the hearing was as a courier, which Petitioner described as delivering packages.

Petitioner testified that each of his past jobs required heavy lifting and carrying which he is currently unable to perform. Petitioner's testimony was consistent with presented medical documents. Petitioner's courier employment presumably would require extensive driving which he would not be able to perform due to restricted neck motion.

It is found Petitioner is unable to perform past relevant employment amounting to SGA. Accordingly, the analysis may proceed to the final step.

In the seventh step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. 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). To determine the physical demands (i.e. 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 additionally 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 are considered non-exertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (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.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Petitioner's age, education and employment history a determination of disability is dependent on Petitioner's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Physician statements of Petitioner restrictions were not presented. Restrictions can be inferred based on presented documents. The analysis will proceed to examine whether medical evidence was consistent with Petitioner's statement of restrictions.

Petitioner testified he is limited in walking to ¼ mile. Petitioner's testimony estimated his time limit on walking is about 10-20 minutes before he needs to rest and stretch his back. Petitioner estimated his standing is restricted to 30 minutes before it feels like there was an elephant on his shoulders. Petitioner estimated he can sit for 30-60 minutes before needing to stand and stretch. Petitioner testified his hands cramp when he writes. Petitioner testified he often drops things.

Petitioner testified he can shower without difficulty. Petitioner testified he has difficulty with putting shirts over his head. Petitioner testified he is unable to help with shoveling or lifting laundry. Petitioner testified cooking is difficult because it involves bending and reaching. Petitioner testified his mother performs the shopping, though Petitioner thought he could do it, if needed. Petitioner testified he can drive, but has difficulty due to his limited neck motion. Petitioner testified he still has upper body fatigue and often requires 30 minute periods of inactivity. Petitioner's testimony was debatably indicative of an inability to perform sedentary employment.

It is notable that no treatment was presented concerning Petitioner's lumbar spine. A consultative examiner found no restrictions in Petitioner's lumbar. The evidence was indicative that Petitioner is capable of performing the sitting required of sedentary employment.

Petitioner testified he can only carry 5 pounds, but conceded he was told of a 30 pound restriction (presumably by a physician). It is presumed that Petitioner can lift/carry 10 pounds based on Petitioner's testimony, along with lack of documented muscle strength loss since Petitioner completed physical therapy.

Petitioner's hand function presents obstacles for Petitioner. Petitioner's Jamar testing was 37 (right hand) and 42 (left). The scores are known to be less than average for Petitioner's gender and age, though not dramatically so. Given Petitioner's labor-intensive work history, the results are likely much lower than what Petitioner would have been compared to before his injury.

Petitioner's sub-average grip strength could be indicative of hand dysfunction which may be obstacles to Petitioner's typing and/or writing abilities. It is notable that Petitioner's strength is less in his dominant hand (his right), thereby making writing particularly difficult.

Though Petitioner's grip strength was subnormal for his gender and age, it does not appear to be subnormal for a similarly aged female. This consideration is somewhat supportive that Petitioner's reduced hand strength is not a significant barrier to employment.

Writing, finger-to-finger touching, picking up a coin, and making a fist were among the work-related abilities Petitioner could perform (see Exhibit 1, p. 22) without restriction. The abilities are consistent with sufficiently competent hand function.

Many types of sedentary employment require typing ability. Petitioner testified he has not recently attempted to type; no explanation was given as to why. Sub-average hand strength comparable to a female, "not much" nerve damage, virtually no neck motion may be obstacles to hand function, and an ability to perform various work-related abilities are not particularly indicative of an inability to perform typing or writing in a competitive work environment.

Given Petitioner's injuries, Petitioner appears capable of performing most types of sedentary employment. Employment involving extensive driving (e.g. courier, bus driver...) would be precluded due to Petitioner's neck motion. Other types of sedentary employment (e.g. data entry, telephone customer-service associate, telemarketer, secretarial and clerical employment...) are found to be within Petitioner's capabilities. MDHHS did not present evidence of the availability of such jobs, but the restriction on sedentary employment is assumed to be small enough that ample employment opportunities within Petitioner's capabilities are available.

Based on Petitioner's exertional work level (sedentary), age (younger individual aged 18-44), education (high school), employment history (semi-skilled, not transferrable), Medical-Vocational Rule 201.28 is found to apply. This rule dictates a finding that Petitioner is not disabled. Accordingly, MDHHS properly found Petitioner to be not disabled for purposes of SDA benefits. It is further found that MDHHS properly terminated Petitioner's SDA eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's SDA eligibility, effective October 2016. The actions taken by MDHHS are **AFFIRMED**.



CG/hw

Christian Gardocki

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]

Petitioner

[REDACTED]