



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 4, 2017  
MAHS Docket No.: 16-014950  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** C. Adam Purnell

**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 November 16, 2016, from Lansing, Michigan. Petitioner appeared and testified on his own behalf. Petitioner's friend, [REDACTED] [REDACTED] appeared as a witness for Petitioner. [REDACTED] [REDACTED] Assistance Payments Supervisor, appeared on behalf of the Department of Health and Human Services (Department).

**PROCEDURAL HISTORY**

The Department offered the following exhibits that were marked and admitted into evidence:

**Department's Exhibit No. 1** (pages 1 through 45) is a copy of Petitioner's Social Security Disability documentation, and Medical-Social Eligibility Certification (DHS-49-A).

**Department's Exhibit No. 2** (pages 1 through 279) is a copy of Medical-Social Questionnaire (DHS-49-F), and Petitioner's medical records from [REDACTED], [REDACTED], and [REDACTED].

During the hearing, Petitioner waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. On November 17, 2016, the Administrative Law Judge issued an Interim Order which extended the record an additional 30 days for the submission of the following additional records: [REDACTED] ( [REDACTED] Michigan), [REDACTED] ( [REDACTED] Michigan), [REDACTED] (orthopedic surgeon) and [REDACTED] (neurologist). The deadline to file the additional records was December 17, 2016.

Neither Petitioner nor the Department provided any additional evidence to the Administrative Law Judge as indicated in the Interim Order. Accordingly, the undersigned will issue a decision based on the available evidence contained in the record.

### **ISSUE**

Did the Department properly deny Petitioner's application for State Disability Assistance (SDA) based on the finding that he was not disabled?

### **FINDINGS OF FACT**

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

1. On March 10, 2016, the Department received Petitioner's application for SDA benefits alleging disability.
2. On September 19, 2016, the Medical Review Team (MRT) denied Petitioner's application.
3. On September 21, 2016, the Department caseworker sent Petitioner notice that his application was denied.
4. On October 12, 2016, Petitioner filed a request for a hearing to contest the Department's action.
5. A telephone hearing was held on November 16, 2016. During the hearing, Petitioner indicated that he had additional records and/or additional medical appointments that were relevant. The Administrative Law Judge held the record open to allow for Petitioner's additional records to be submitted. Petitioner consented and agreed to waive the time periods.
6. During the hearing, Petitioner stated that he had the following disabling impairments: bulging disc in neck (C4-C5), bulging disc in lower spine (L3-L4, L5-L6), knee "pops in and out" following meniscus surgery in 2014, arthritis, headaches (migraines), asthma, chronic obstructive pulmonary disease (COPD), nodules on left lobe of lung, high blood pressure (HBP), diabetes, traumatic brain injury, anger issues, anxiety, depression, bipolar disorder, and attention deficit disorder.
7. At the time of the hearing, Petitioner was 53 years-old with a birth date of [REDACTED]. Petitioner testified that he was 5 feet 9 inches tall and weighed approximately 255 lbs. Petitioner is right-hand dominant.

8. Petitioner has a high school education or the equivalent.
9. Petitioner is currently unemployed and testified that he did not have any past relevant work that occurred for more than 1 month. Petitioner's records indicated that he previously worked in construction, which is considered medium to heavy work. Petitioner is not engaged in substantial gainful activity (SGA).
10. Petitioner's medical records show that he has the following medical conditions and/or treatment based on medically acceptable clinical and laboratory diagnostic techniques:
  - a. Petitioner's had a history of: hypertension, asthma, pneumonia, COPD, emphysema. Petitioner was involved in a motor vehicle accident in 1983 which resulted in a traumatic brain injury, hearing loss, and short-term memory loss. Petitioner also reported that he had a history of low back pain most of his adult life. The pain has progressively worsened over the years. [Dept. Exh. 2, pp. 57-58, 97-104].
  - b. Petitioner had several visits at the pain clinic for complaints of back pain and leg pain. Petitioner reported that his pain was sharp, burning, and stabbing. The pain is reportedly worse with sitting, standing, bending forward or backward, lifting, turning his head side to side, and when coughing/sneezing. [Dept. Exh. 2, pp. 96-97].
  - c. In July 2015, Petitioner was diagnosed with lumbar facet hypertrophy and neurogenic claudication due to lumbar spinal stenosis. He had depression as well. Petitioner's MRI of the lumbar spine showed disc degeneration with diffuse bulging discs at L3-L4, L4-L5, and L5-S1. "Degenerative changes cause lateral recess stenosis at L4-L5 on the left with a nerve root being caught between the hypertrophic facet and the diffuse bulging disc. No other nerve root compression is identified." [Dept. Exh. 2, pp. 101-102]. [Emphasis added].
  - d. In September 2015, Petitioner was diagnosed with lumbar facet arthropathy and underwent pain injections and nerve blocks. Petitioner's pain management treatment records continued through early 2016. Petitioner's records indicated that his lumbar condition has resulted in weakness in his extremities and difficulty with ambulation. [Dept. Exh. 2, pp. 124-143].
  - e. In December 2015, Petitioner visited the ER complaining of headache and shortness of breath. He was unable to control his blood sugar at the time. The hospital records indicated that Petitioner's diabetes was uncontrolled at the time. Petitioner was placed on a diet plan and was

provided with medication (Metformin) to control his blood sugar. [Dept. Exh. 2, pp. 56-57].

- f. In April 2016, Petitioner was diagnosed with chronic fatigue and spondylosis of the lumbar region without myelopathy or radiculopathy. [Dept. Exh. 2, pp. 78-80].
11. During the relevant time period, Petitioner had been taking the following medications:
    - a. Buspar.
    - b. Cymbalta.
    - c. Seroquel.
    - d. Metformin.
    - e. Ventolin.
    - f. Dulara.
    - g. Lisinopril.
    - h. Nerontin.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA program. 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. [Emphasis added].

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. The individual’s impairment must result from anatomical, physiological, or psychological

abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only the individual's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the individual has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Medical findings must allow a determination of: (1) the nature and limiting effects of the impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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 the individual's symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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.

There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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
- (6) Dealing with changes in a routine work setting.

See 20 CFR 416.921(b).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

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).

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 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.

At step one, the Administrative Law Judge must determine whether the individual is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he or she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he or she is not disabled regardless of how severe his or her physical or mental impairments are and regardless of his or her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At the time of the hearing, Petitioner provided credible testimony that he was unemployed. Petitioner is not engaged in SGA. Therefore, Petitioner is not disqualified from receiving disability at step one and the analysis proceeds to step two.

At step two, the Administrative Law Judge must determine whether the individual has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the 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 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the person does not have a severe medically determinable impairment or combination of impairments, he or she is not disabled.

At this step, the Administrative Law Judge must evaluate the individual's symptoms to see if there is an underlying medically determinable physical or mental impairment that could reasonably be expected to produce pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which they limit his or her ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

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). First, an individual's pertinent symptoms, signs and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are 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 416.920(a)(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 functional limitation. 20 CFR 416.920a(c)(4).

In the present case, Petitioner alleges disability due to bulging disc in the neck (C4-C5), bulging disc in the lower spine (L3-L4, L5-L6), knee "pops in and out" following meniscus surgery in 2014, arthritis, headaches (migraines), asthma, chronic obstructive pulmonary disease (COPD), nodules on left lobe of lung, high blood pressure (HBP), diabetes, traumatic brain injury, anger issues, anxiety, depression, bipolar disorder, and attention deficit disorder. While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence. As summarized in the above Findings of Fact, Petitioner has presented objective medical evidence establishing that he does have some limitations on the ability to perform basic work activities. The medical evidence in this record shows that Petitioner does have an impairment, or combination thereof, that has more than a *de minimis* effect on his basic work activities. In other words, Petitioner's disability claim cannot be dismissed at step two. However, this does not necessarily mean that Petitioner is disabled. The analysis must continue.

After an individual has shown the presence of an underlying physical or mental impairment, he must also show that the impairment, or impairments, possess the requisite intensity, persistence, and limiting effects such that it would limit his ability to do basic work activities.

At step three, the Administrative Law Judge must determine whether the individual's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the individual's impairment or combination of impairments meets or medically equals the criteria of a listing and



meets the duration requirement (20 CFR 404.1509 and 416.909), the individual is disabled. If it does not, the analysis proceeds to the next step.

In the instant matter, Petitioner has a myriad of medical diagnosed conditions, including, but not limited to: chronic fatigue, hypertension, asthma, pneumonia, COPD, emphysema, lumbar facet hypertrophy and neurogenic claudication due to lumbar spinal stenosis. However, the objective medical records produced largely concern Petitioner's lumbar spine problems. Based upon the objective medical evidence, the Administrative Law Judge will consider the following listings: 1.04 Disorders of the spine. This listing requires that an individual have a "disorder 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); (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." [Emphasis added].

Here, the objective medical records show that Petitioner, through MRIs, has been diagnosed with lumbar facet hypertrophy and neurogenic claudication due to lumbar spinal stenosis. [Dept. Exh. 2, pp. 101-102]. Most significantly, an MRI showed that Petitioner's spinal stenosis demonstrated a "nerve root being caught between the hypertrophic facet and the diffuse bulging disc." [Dept. Exh. 2, pp. 101-102]. Based upon the above Findings of Fact, Petitioner's objective medical records show that he meets or medically equals the requirements of at least one listing (1.04). Based on the nature and intensity of Petitioner's other diagnosed conditions, there is a strong likelihood that he meets or equals additional listings as well. In any event, the medical evidence presented in this matter is sufficient to meet the intent and severity requirements of listing 1.04, or its equivalent.

In addition, the individual must show that he has an impairment, or a combination of impairments, that have lasted continuously for a period of 12 (twelve) months. 20 CFR 416.913(d). Based on the above Findings of Fact, Petitioner has shown the presence of physical and mental limitations on his ability to perform basic work activities. According to the medical records, Petitioner has had symptoms and/or pain associated with his above-indicated diagnosed conditions since at least July, 2015. [Dept. Exh. 2, pp. 101-102]. The objective record evidence shows that Petitioner has a medically determinable mental impairment based on documented signs, symptoms, and laboratory findings. Thus, this Administrative Law Judge finds that Petitioner has impairments that have

lasted continuously for 12 (twelve) months and; therefore, is not disqualified from receiving SDA benefits due to lack of duration. Accordingly, this Administrative Law Judge finds that Petitioner is disabled at step three because he met or medically equaled the criteria of listing and has met the duration requirement.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the individual's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his or her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the individual's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

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. The terms are defined as follows:

**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).

Following a review of all of Petitioner's alleged impairments, coupled with the objective medical evidence, this Administrative Law Judge finds that he is unable to perform work-related functions on a sustained basis. This Administrative Law Judge further finds that Petitioner's understanding and memory is moderately limited, his sustained

concentration and persistence is moderately limited, his social interaction is moderately limited, and adaptation is markedly limited. Petitioner does not have the ability to do physical and mental work activities on a sustained basis. The evidence demonstrates that Petitioner cannot concentrate such that he can tolerate the mental demands associated with competitive work. Petitioner does not possess the ability to function in a structured setting and lacks the ability to understand, carry out, and remember simple instructions. Accordingly, Petitioner's use of judgment is also impaired. This Administrative Law Judge finds that the records, coupled with Petitioner's credible testimony, shows that he cannot respond appropriately to supervision, co-workers, and usual work situations. In addition, the evidence shows that Petitioner does not have the ability to deal with normal changes in a routine work setting. Therefore, this Administrative Law Judge finds that Petitioner does not have the residual functional capacity to perform even sedentary work on a sustained basis as defined by 20 CFR 416.967(b).

At step four, the Administrative Law Judge must determine whether the individual has the residual functional capacity to perform the requirements of his or her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the individual actually performed it or as it is generally performed in the national economy) within the last 15 (fifteen) years or 15 (fifteen) years prior to the date that disability must be established. In addition, the work must have lasted long enough for the individual to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the individual has the residual functional capacity to do his or her past relevant work, he or she is not disabled. If the individual is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

In the present case, Petitioner's past work was in the area of construction. Working in construction could fairly be considered medium to heavy work. Based on the above Findings of Fact and above analysis, this Administrative Law Judge finds that Petitioner does not have the residual functional capacity to perform the requirements of his past relevant work. Accordingly, Petitioner can also be found disabled at step four.

At the fifth and final step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the individual is able to do **any** other work considering his or her residual functional capacity, age, education, and work experience. 20 CFR 416.920(4)(v). At this point in the analysis, the burden shifts from the individual applicant to the Department to present proof that the individual 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). If the individual is able to do other work, he or she is not disabled. If the individual is not able to do other work and meets the duration requirements, he or she is disabled.

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). Based upon the above Findings of Fact and analysis, this Administrative Law Judge finds that Department has failed to meet its burden of proof to show that Petitioner is capable of performing specific jobs considering his residual functional capacity, age, education and work experience. The Department has not established that Petitioner possesses the residual capacity for substantial gainful employment as defined by 20 CFR 416.960(2). Accordingly, Petitioner is disabled at step five.

This Administrative Law Judge finds that Petitioner has satisfied the burden of proof to show by competent, material, and substantial evidence that he has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Petitioner's exertional and non-exertional impairments render him unable to engage in a full range of work activities on a regular and continuing basis. Petitioner's testimony regarding his limitations and inability to sit, stand, walk, lift, and carry is credible and supported by the objective medical evidence. Petitioner's assertion that his impairments are severe enough to reach the criteria and definition of disability are credible. This Administrative Law Judge finds that the objective medical evidence on the record shows that Petitioner has no residual functional capacity. Petitioner has established by objective medical evidence that he cannot perform sedentary work even with his impairments.

Therefore, Petitioner meets the definition of disabled for purposes of the MA program.

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

With regard to Petitioner's request for disability under the SDA program, it should be noted that the Department's BEMs contain policy statements and instructions for caseworkers regarding eligibility for SDA. In order to receive SDA, "a person must be disabled, caring for a disabled person or age 65 or older." BEM, 261 (7-1-2015), p. 1.

A person is disabled for SDA purposes if he or she: (1) receives other specified disability-related benefits or services<sup>1</sup>; or (2) resides in a qualified Special Living Arrangement facility; or (3) is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or (4) is diagnosed as

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<sup>1</sup>Retirement, Survivors and Disability Insurance (RSDI) due to disability/blindness, Supplemental Security Income (SSI) due to disability/blindness, Medicaid as blind/disabled based on a disability examiner or MRT determination or hearing decision, or Michigan Rehabilitation Services.

having Acquired Immunodeficiency Syndrome (AIDS). BEM 261, pp. 1-2. [Emphasis added].

Based on the above Findings of Fact and the above analysis, this Administrative Law Judge finds that Petitioner is disabled for purposes of the SDA program. The Department has not established by the necessary competent, material, and substantial evidence on the record that it acted in compliance with Department policy when it determined that Petitioner was not eligible to receive SDA benefits.

### **DECISION AND ORDER**

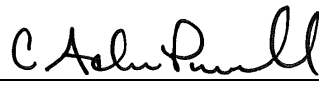
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has not appropriately established on the record that it acted in compliance with Department policy when it denied Petitioner's application for SDA.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Petitioner's application for SDA, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The Department shall initiate a review Petitioner's medical condition for improvement in **January 2018**, unless his pending Social Security Administration disability application is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding his continued treatment, progress and prognosis at review. Following the medical review, the Department shall inform Petitioner of the determination in writing.
4. The Department shall supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.

**IT IS SO ORDERED.**

CAP/mc

  
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**C. Adam Purnell**  
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]

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]