



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: March 8, 2017  
MAHS Docket No.: 17-000145  
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 January 31, 2017, from Lansing, Michigan. Petitioner appeared and testified on his own behalf. [REDACTED] [REDACTED] (Hearing Facilitator/Eligibility Specialist) appeared on behalf of the Department of Health and Human Services (Department). Neither party called any additional witnesses.

### **PROCEDURAL HISTORY**

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

Department's Exhibit No. 1 (pages 1 through 202) is a copy of Medical-Social Eligibility Certification (DHS-49-A), Medical-Social Questionnaire (DHS-49-F), Disability Determination Service records, and Petitioner's medical records.

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 February 1, 2017, the Administrative Law Judge issued an Interim Order which extended the record an additional 30 days for the submission of the following additional records: medical records from [REDACTED] of [REDACTED] from June 2016 through January 2017. The deadline to file the additional records was March 1, 2016.

On March 6, 2017, the Department submitted the following additional 12 pages as Petitioner's proposed exhibit: [REDACTED] records from [REDACTED] Physician's Assistant (PA) from admission date of [REDACTED]; including an MRI of lumbar spine.

Petitioner signed the authorization to release medical information on January 31, 2017. It was unclear why the Department representative did not contact the Michigan Administrative Hearing System and explain that the additional medical records would be late (due date March 1, 2017). In any event, this Administrative Law Judge finds that the Petitioner is not the cause for the fact that the additional medical records were sent past the due date. Therefore, the Administrative Law Judge has marked and admitted the above-identified additional exhibit into evidence as: **Petitioner's Exhibit A** (pages 1 through 12).

There were no additional exhibits offered or admitted into evidence.

### **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 September 20, 2016, the Department received Petitioner's application for SDA benefits alleging disability.
2. On November 18, 2016, the Medical Review Team (MRT) denied Petitioner's application.
3. On November 18, 2016, the Department caseworker sent Petitioner notice that his application was denied.<sup>1</sup>
4. On January 6, 2017, Petitioner filed a request for a hearing to contest the Department's action.
5. A telephone hearing was held on January 31, 2017. 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.

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<sup>1</sup> Petitioner did not request a hearing concerning Food Assistance Program (FAP) benefits. Although the Department's hearing summary indicates that FAP is an issue in this matter, the Department has been instructed to forward any FAP-related requests for hearing to the Michigan Administrative Hearing System separately. FAP cases cannot be combined with SDA disability matters as the two have different time limit requirements. Accordingly, the Administrative Law Judge will not address this matter as a FAP hearing decision.

6. During the hearing, Petitioner stated that he had the following disabling impairments: shift in vertebrae, disc problems (disc space narrowing) with nerve pinching, pain in both legs, and arthritis.
7. Petitioner alleged that he cannot work due to the following: inability to do the following: bend at the waist, kneel, sit for more than 15 minutes or squat (knees lock up).
8. At the time of the hearing, Petitioner testified that he was 51 years-old with a birth date of [REDACTED]. Petitioner said that he was 5 feet 4 inches tall and weighed approximately 158 pounds. Petitioner stated that he is right-hand dominant.
9. Petitioner testified that he has a grade school education (9<sup>th</sup> grade). Petitioner is literate and has basic math skills.
10. Petitioner testified that he is currently unemployed and that his past relevant work was as a forklift operator in April 2016. Petitioner stated that working as a forklift operator required him to load pallets on trucks for distribution. In this capacity, Petitioner said that he spent more than 50% of the work day sitting and operating the machine.
11. Petitioner has a semi-skilled work history that is transferrable to other jobs.
12. 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 has been diagnosed with chronic low back pain, dermatitis, headache, degenerative disc disease of the lumbar spine, chronic obstructive pulmonary disease (COPD), and osteoarthritis. [Dept. Exh. 1, pp. 94, 99-100].
  - b. On [REDACTED], Petitioner had an MRI of his lumbar spine which indicated, ". . . multilevel degenerative changes present. Terminal cord and conus unremarkable. . ." [Petitioner's Exhibit A, pp. 5-7].
  - c. On [REDACTED], Petitioner had an appointment where he indicated that he was working in a warehouse when he noticed back pain that was progressing. His pain was aggravated by bending and twisting. He does not have bladder incontinence, chest pain, leg pain, numbness or paresthesias. [Dept. Exh. 1, pp. 100-101].

13. During the relevant time period, Petitioner had been taking the following medications:
  - a. Norco.
  - b. Inhaler.
  - c. Claritin.
  - d. Mobic.
  - e. Viagra.
  - f. Flexeril.
  - g. Norflex.
  - h. Nicoderm CQ.
14. The objective medical records did not contain a written opinion from a licensed health professional that Petitioner is permanently disabled.
15. Petitioner drove himself to the hearing.

### **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 is currently unemployed and last worked in April 2016. Therefore, Petitioner is not engaged in SGA and is not disqualified from receiving disability at step one. 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 also 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.

In the present case, Petitioner alleges disability due to chronic low back pain, dermatitis, headache, degenerative disc disease of the lumbar spine, chronic obstructive pulmonary disease (COPD), and osteoarthritis. [Dept. Exh. 1, pp. 94, 99-100]. 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. Here, Petitioner has presented sufficient evidence to survive dismissal of his disability claim based on the absence of medical merit. See *Higgs, supra*. The

objective medical records did not contain a written opinion from a licensed health professional (i.e., M.D., D.O., Ph. D.,) that Petitioner is permanently disabled from work. In other words, the medical evidence in this record shows that Petitioner may have an impairment, or combination thereof, that has more than a *de minimis* effect on his basic work activities. However, this does not mean that Petitioner is necessarily disabled at this point in the analysis.

In addition, the individual must show that he has an impairment, or a combination of impairments, that have lasted continuously for a period of 90 days. BEM, 261 (7-1-2015), p. 1. Based on the above Findings of Fact, Petitioner has shown the presence of some physical limitations on his ability to perform basic work activities. According to the medical records, Petitioner has had symptoms and/or pain associated with chronic low back pain, dermatitis, headache, degenerative disc disease of the lumbar spine, COPD, and osteoarthritis since at least April 2016. [Dept. Exh. 1, pp. 99-100]. This 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 some impairments that have lasted continuously for 90 days and; therefore, is not disqualified from receiving SDA benefits due to lack of duration. This does not mean Petitioner is disabled as the analysis must proceed to step three.

As indicated above, 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. In order to assist with this determination, the analysis shall proceed to the next step.

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 been diagnosed with chronic low back pain, dermatitis, headache, degenerative disc disease of the lumbar spine, COPD, and osteoarthritis. [Dept. Exh. 1, pp. 99-100]. Based upon the objective medical evidence, the Administrative Law Judge will consider the following listings: **1.04 Disorders of the spine** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture). This listing indicates that an individual must have one of the above disorders of the spine that results 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.” [Emphasis added].

Here, the objective medical records show that on July 18, 2016, Petitioner had an MRI of his lumbar spine which indicated, “. . . multilevel degenerative changes present. Terminal cord and conus unremarkable. . .” [Pet. Exh. A, pp. 5-7]. There is no evidence on this record that Petitioner had any nerve root compression, which is required by 1.04. Based upon the above Findings of Fact, Petitioner’s objective medical records shows that he does not meet or medically equal the requirements of 1.04. Therefore, the medical evidence presented in this matter is not sufficient to meet the intent and severity requirements of any listing, or its equivalent.

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).

Here, Petitioner alleges that he is disabled due to the following disabling impairments: shift in vertebrae, disc problems (disc space narrowing) with nerve pinching, pain in both legs, and arthritis. He also alleges that he cannot work because due to the following: inability to do the following: bend at the waist, kneel, sit for more than 15 minutes or squat (knees lock up). Following a review of all of Petitioner's alleged impairments, coupled with the objective medical evidence, this Administrative Law Judge finds that he can lift/carry at least 10 lbs., can stand, walk or sit for less than 2 hours, with no limitations. Therefore, this Administrative Law Judge finds that Petitioner has the residual functional capacity to perform sedentary work on a sustained basis as defined by 20 CFR 416.967(b) without any limitations.

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.

During the hearing, Petitioner testified that he worked for approximately 20 years as a forklift operator. Working as a forklift operator, as described by Petitioner at the hearing, most closely meets the requirement for medium work. Petitioner's statements were credible at the hearing. Based on the above analysis, this Administrative Law

Judge finds that Petitioner is unable to perform his past relevant work on a sustained basis. Accordingly, Petitioner does not have the residual functional capacity to perform the requirements of his past relevant work. The analysis proceeds to the final step.

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 for the Department 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). The medical vocational guidelines can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Based upon the above-referenced medical-vocational guidelines, Petitioner (age 51) is considered a person closely approaching advanced age, with a limited education or less (7<sup>th</sup> grade through 11<sup>th</sup> grade or less), a semi-skilled work history that is transferrable to other jobs and is capable of sedentary work, is not considered disabled pursuant to medical-vocational rule 201.11.

This Administrative Law Judge finds that Petitioner has not 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). The evidence shows that Petitioner's symptoms can be managed to the point where substantial gainful activity can be achieved. The evidence shows that Petitioner is capable of performing other work (sedentary work). Although Petitioner has cited medical problems, there is insufficient objective medical evidence to substantiate Petitioner's assertion that his alleged impairments are severe enough to reach the criteria and definition of disability. Accordingly, this Administrative Law Judge concludes that Petitioner does not meet the definition of disabled based upon the requirements 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, p. 1.

A person is disabled for SDA purposes if he or she: (1) receives other specified disability-related benefits or services<sup>2</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 having Acquired Immunodeficiency Syndrome (AIDS). BEM 261, pp. 1-2. [Emphasis added].

As indicated in the above analysis, Petitioner does not meet the definition of disabled under the MA program and the evidence of record does not show that Petitioner is unable to work for a period exceeding 90 (ninety) days. In addition, this record does not show that Petitioner has met any of the requirements under BEM 261. Accordingly, this Administrative Law Judge finds that Petitioner is not disabled for purposes of the SDA program.

The Department has 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 appropriately established on the record that it acted in compliance with Department policy when it denied Petitioner's application for SDA benefits.

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<sup>2</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.

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

**IT IS SO ORDERED.**



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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**



**Petitioner**

