



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 13, 2017
MAHS Docket No.: 17-000806
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 March 1, 2017, from Detroit, Michigan. The Petitioner was present for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. On October 20, 2016, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On January 11, 2017, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program. Exhibit A, pp. 5-11.
3. On January 17, 2017, the Department sent Petitioner a Notice of Case Action denying the application effective November 16, 2016, based on DDS/MRT's finding of no disability. Exhibit A, p. 3.

4. On January 23, 2017, the Department received Petitioner's timely written request for hearing. Exhibit A, p. 2.
5. Petitioner alleged disabling impairments due to coronary artery disease, hyperlipidemia, cognitive impairment/learning challenges, vision problems, and arm and back pain.
6. On the date of the hearing, Petitioner was 51 years old with a date of birth of [REDACTED]; he was 5'4" in height and weighed 175 pounds.
7. Petitioner attended school up to the 10th grade and he has a welding and forklift certificate.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as a Hi-Lo / forklift driver.
10. Petitioner has a pending appeal for a disability claim with the Social Security Administration. Exhibit B, pp. 1-3.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has

the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR

416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimis* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. SSR 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In the present case, Petitioner alleges disabling impairment due to coronary artery disease, hyperlipidemia, cognitive impairment/learning challenges, vision problems, and arm and back pain. The medical evidence presented at the hearing was reviewed and is summarized below:

On [REDACTED], Petitioner had a vocational assessment by a Licensed Master Social Work (LMSW), Ph.D., to have a Reynolds Intellectual Assessment Scales (RIAS) performed. Exhibit A, pp. 448-456. Petitioner was diagnosed with reading disorder; mathematics disorder; disorder of written expression; deficits in overall development of intelligence; defer to medial – no complaints; employment instability finances, housing; and have a Global Assessment of Functioning (GAF) score of 60. Exhibit A, pp. 455-456. Petitioner was seeking assistance with employment. It was noted that the results of the RIAS indicate he has mild deficits in the development of general intelligence, this is reflected in his performance on the Wide Range Achievement Test (WRAT) 4, he performed well below average on all subtest, and his under developed readings skills will severely limits his vocational options. Exhibit A, p. 456.

On [REDACTED], Petitioner was admitted to the hospital for chest pain. Exhibit A, p. 185. On [REDACTED] [REDACTED] [REDACTED], Petitioner had a catheterization and transthoracic echocardiogram performed. Exhibit A, pp. 353 and 370-376. On [REDACTED], Petitioner had a triple bypass surgery. Exhibit A, p. 185. On [REDACTED], Petitioner was discharged from the hospital with the following diagnoses: coronary artery disease (CAD), non-ST elevated MI, status post coronary artery bypass graft (CABG); chronic obstructive pulmonary disease (COPD), tobacco use; no sustained ventricular tachycardia (V-tach), the patient on amiodarone intraoperative inpatient but discharged home on no amiodarone; hyperlipidemia; slightly elevated liver function tests (LFTs), decreasing aspartate aminotransferase (AST) prior to discharge, will continue to monitor and check CMP in 1 week; acute blood loss anemia; and acute postop pulmonary insufficiency, the patient off oxygen (O2) prior to discharge, the patient will be discharged home today with home care. Exhibit A, pp. 185-186 and pp. 393-400 (diagnostic radiology reports/ultrasound reports).

In office visit notes dated from [REDACTED] to [REDACTED], Petitioner was diagnosed with non-ST elevation (NSTEMI) myocardial infarction; atherosclerotic heart disease of native coronary artery without angina pectoris; cardiac arrhythmia, unspecified; hyperlipidemia, unspecified; essential (primary) hypertension; ventricular tachycardia; and obesity, unspecified. Exhibit A, pp. 225-230.

A letter from his cardiology doctor dated [REDACTED], in which the doctor stated that Petitioner is under his care for cardiology because he was hospitalized in August 2016 for open heart bypass surgery. Exhibit A, p. 183. The doctor noted that Petitioner is restricted from going back to work given the complexity of his medical conditions. Exhibit A, p. 183.

On [REDACTED], Petitioner had an internal medicine examination. Exhibit A, pp. 208-212. The doctor diagnosed Petitioner with coronary artery disease, chest pain, and learning disability. Exhibit A p. 211. The doctor's physical examination findings were unremarkable yet per history, he did experience moderate to severe chest pain secondary to the post coronary artery bypass graft surgery. Exhibit A, p. 211. The doctor noted he does have difficulty with day-to-day life activities related to learning disability and examination finding is remarkable that he does squat with difficulty. Exhibit A, p. 212. The doctor noted Petitioner's ability to perform work-related activities such as bending, stooping, lifting walking, crawling, squatting, carrying and traveling as well as pushing and pulling heavy objects is moderately impaired due to his surgery involving constant chest pain along with history of learning disability and other comorbid conditions. Exhibit A, pp. 211-212. A neurologic and orthopedic supplemental report was provided showing he is able to do current abilities (such as sit, stand etc...), his reflexes of affected extremity are all normal, and there were no limitations in his range of motions. Exhibit A, pp. 213-216.

On [REDACTED], Petitioner had a psychological assessment, in which the licensed psychologist diagnosed him with intellectual disability, mild. Exhibit A, pp. 178-181.

The licensed psychologist noted that Petitioner was alert, verbal, and oriented to all three spheres, but his formal judgment was impaired. Exhibit A, p. 181. Petitioner attained a Wechsler Adult Intelligence Scale – IV (WAIS-IV), full IQ scale score of 68, which places him in the mildly impaired range of cognitive functioning. Exhibit A, p. 181. His verbal, visual-motor, and memory skills were equal, but his weaknesses were noted in terms of mental arithmetic. Exhibit A, p. 181.

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint(s) (due to any cause)), 1.04 (disorders of the spine), 2.00 (special senses and speech – adult), 4.04 (ischemic heart disease), and 12.05 (intellectual disorder) were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2)

the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions 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 (i.e., unable to 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). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence

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

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner alleges disabling impairments due to coronary artery disease, hyperlipidemia, cognitive impairment/learning challenges, vision problems, and arm and back pain. Petitioner testified that he can't extend his arms all the way. He testified he cannot walk or stand long periods of time. He testified he can lift a gallon of milk. He testified he can stand for a maximum of 5 minutes, he can lift a maximum of 5 pounds, and he can sit for 20 minutes if he is not tired. He testified that he can walk up to less than half a block/50 feet. He testified that he is able to dress/undress himself, bathe/shower, but can sometimes do chores. He indicated he only has short term memory, his concentration varies, he sometimes can complete tasks, and he can sometimes work with others.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

On [REDACTED], Petitioner was admitted to the hospital for chest pain. Exhibit A, p. 185. On [REDACTED] Petitioner had a triple bypass surgery. Exhibit A, p. 185. On [REDACTED], Petitioner was discharged from the hospital with the following diagnoses: CAD, non-ST elevated MI, status post CABG; COPD, tobacco use; no sustained V-tach, the patient on amiodarone intraoperative inpatient but discharged home on no amiodarone; hyperlipidemia; slightly elevated LFTs, decreasing AST prior to discharge, will continue to monitor and check CMP in 1 week; acute blood loss anemia; and acute postop pulmonary insufficiency, the patient off O2 prior to discharge, the patient will be discharged home today with home care. Exhibit A, pp. 185-186 and pp. 393-400 (diagnostic radiology reports/ultrasound reports). In office visit notes following the heart surgery, Petitioner was diagnosed with NSTEMI myocardial infarction; atherosclerotic heart disease of native coronary artery without angina pectoris; cardiac arrhythmia, unspecified; hyperlipidemia, unspecified; essential (primary) hypertension; ventricular tachycardia; and obesity, unspecified. Exhibit A, pp. 225-230. And on [REDACTED], Petitioner had an internal medicine examination. Exhibit A, pp. 208-212. The doctor diagnosed Petitioner with coronary artery disease, chest pain, and learning disability. Exhibit A p. 211. This evidence was sufficient to

support Petitioner's allegation of coronary artery disease, chest pain, and hyperlipidemia.

On [REDACTED], Petitioner also had a psychological assessment, in which the licensed psychologist diagnosed him with intellectual disability, mild. Exhibit A, pp. 178-181. Moreover, as stated previously, the internal doctor also diagnosed Petitioner with a learning disability. Exhibit A p. 211. Therefore, Petitioner also has a medical diagnosis supporting his symptoms of an intellectual disorder.

With respect to the intensity, persistence and limiting effects of her symptoms, the medical evidence included Petitioner's hospitalization record in which he had a triple bypass surgery completed. Exhibit A, p. 185. Petitioner was discharged from the hospital with the diagnoses of CAD and other symptoms. Exhibit A, pp. 185-186 and pp. 393-400. Petitioner then had subsequent office visits from September 27, 2016 to November 8, 2016, supporting his diagnosis of coronary artery disease and other symptoms. Exhibit A, pp. 225-230. In fact, a letter from his cardiology doctor treating him after his open heart bypass surgery stated he is restricted from going back to work given the complexity of his medical conditions. Exhibit A, p. 183. Petitioner also had an internal medicine examination in which the doctor diagnosed Petitioner with coronary artery disease, chest pain, and learning disability. Exhibit A p. 211. It should be noted that a neurologic and orthopedic supplemental report was provided showing he is able to do current abilities (such as sit, stand etc....), his reflexes of affected extremity are all normal, and there were no limitations in his range of motions. Exhibit A, pp. 213-216. However, the internal medicine doctor noted Petitioner does have difficulty with day-to-day life activities related to learning disability and examination finding is remarkable that he does squat with difficulty. Exhibit A, p. 212. The doctor noted Petitioner's ability to perform work-related activities such as bending, stooping, lifting walking, crawling, squatting, carrying and traveling as well as pushing and pulling heavy objects is moderately impaired due to his surgery involving constant chest pain along with history of learning disability and other comorbid conditions. Exhibit A, pp. 211-212. This independent analysis by the doctor as well as the medical evidence presented, supports Petitioner's testimony that he can stand for 5 minutes maximum, he can lift a maximum of 5 pounds, he can sit for 20 minutes, if he is not tired, and he can walk up to less than half a block/50 feet.

Accordingly, the undersigned Administrative Law Judge (ALJ) finds that based on a review of the entire record, including Petitioner's testimony, the evidence was sufficient to establish that Petitioner maintains the physical capacity to sedentary work as defined by 20 CFR 416.967(a).

With respect to Petitioner's nonexertional limitations, he indicated he can only remember short term, his concentration varies, he sometimes can complete task, and he can sometimes work with others. Petitioner did have a psychological assessment, in which the licensed psychologist diagnosed him with intellectual disability, mild. Exhibit A, pp. 178-181. The licensed psychologist noted that Petitioner was alert, verbal, and

oriented to all three spheres, but his formal judgment was impaired. Exhibit A, p. 181. Petitioner attained a WAIS-IV, full IQ scale score of 68, which places him in the mildly impaired range of cognitive functioning. Exhibit A, p. 181. His verbal, visual-motor, and memory skills were equal, but his weaknesses were noted in terms of mental arithmetic. Exhibit A, p. 181.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has difficulty in maintaining attention or concentration and difficulty in understanding or remembering detailed instructions. Petitioner also has non-exertional limitations due to his mildly impaired range of cognitive functioning. Exhibit A, p. 181.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a Hi-Lo / forklift driver. Petitioner had different employers, but maintained the same job title. Petitioner's work required sitting approximately 6 to 8 hours a day on the forklift, and standing 1 to 1-1/2 hours a day. As to lifting, Petitioner lifted only a maximum of 5 to 8 pounds. Petitioner spent a majority of his time operating the lifting device (forklift) and moving levers with his hands/arms and pressing pedals with his feet to operate the forklift in order to load and unload pallets and/or transport the materials around the warehouse. Exhibit A, pp. 106-113. Based on Petitioner's work history as a Hi-Lo / forklift driver, the undersigned ALJ finds that his work history result in light physical exertion.

Based on the RFC analysis above, Petitioner is limited to no more than sedentary work to perform basic work activities. In light of the entire record and Petitioner's RFC, it is found that Petitioner is unable to perform past relevant work. Accordingly, Petitioner cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

If an individual is incapable of performing past relevant work, Step 5 requires an assessment of the individual's RFC and age, education, and work experience to determine whether an adjustment to other work can be made. 20 CFR 416.920(a)(4)(v); 20 CFR 416.920(c). If the individual can adjust to other work, then there is no disability; if the individual cannot adjust to other work, then there is a disability. 20 CFR 416.920(a)(4)(v).

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(c)(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 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).

In this case, Petitioner was 51 years old at the time of hearing, and, thus, considered to be a closely approaching advanced age (age 50-54) for purposes of Appendix 2. Petitioner attended school up to the 10th grade and a history of semi-skilled work experience as a Hi-Lo / forklift driver. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities. Furthermore, an analysis has to be determined if whether or not Petitioner's skilled or semi-skilled work activities done in past work can be used to meet the requirements of skilled or semi-skilled work in other jobs or kinds of work. As stated in Step 4, Petitioner spent a majority of his time operating the forklift and moving the levers with his hands/arms and using his feet to press the pedals. Exhibit A, pp. 106-113. The undersigned ALJ concludes that these skills Petitioner obtained as a Hi-Lo / forklift driver are not transferrable to meet the requirements of skilled or semi-skilled work in other jobs or kinds of work. As such, based on Petitioner's age, education, work experience, and exertional RFC, the Medical-Vocational Guidelines, 201.10 (not transferable), results in a disability finding based on his exertional limitations.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program.

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

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

1. Reregister and process Petitioner's October 20, 2016, SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified; and
3. Review Petitioner's continued eligibility in September 2017.

EF/tm


Eric J. Feldman

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

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

[REDACTED]

[REDACTED]
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