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

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: July 19, 2017
MAHS Docket No.: 17-007412
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. After due notice, a telephone hearing was held on [redacted], from Detroit, Michigan. Petitioner was present for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [redacted] Assistance Payments Supervisor; and [redacted], Eligibility Specialist.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for State Disability Assistance (SDA) benefit programs during the period of [redacted]?

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 [redacted], Petitioner submitted an application seeking cash assistance on the basis of a disability. [Exhibit A, pp. 2-21.]

2. On or about [redacted], the Disability Determination Service (DDS)/Medical Review Team (MRT) found the following: (i) Petitioner was not disabled for purposes of the SDA program before the age of [redacted] years old; and (ii) Petitioner was disabled for purposes of the SDA program when he attained the age of [redacted] years old effective [redacted]. [Exhibit A, pp. 75-81.]

3. On [redacted], the Department sent Petitioner a Notice of Case Action denying his application for SDA benefits from [redacted], based on DDS/MRT's finding of no disability. The Notice of Case Action also informed Petitioner that he was approved for SDA benefits effective [redacted] ongoing. [Exhibit D, pp. 1-8.]

4. On [redacted], Petitioner filed a hearing request protesting the Department's finding that he was not disabled during the period of [redacted]. [Exhibit C, pp. 2-3.]

5. Petitioner alleged disabling impairments due to lower spinal pain/spinal stenosis, herniated disk in neck, arthritis, depression, and anxiety.

6. On the date of the hearing, Petitioner was [redacted] years old with a date of birth of [redacted]; he was [redacted] in height and weighed [redacted] pounds.

7. During the period Petitioner was found not disabled, he was [redacted] years old.

8. During the period he was found disabled, he was [redacted] years old (effective [redacted]).

9. Petitioner obtained his general educational development (GED).

10. Petitioner has an employment history of work as a specialty painter and shipping and receiving worker.

11. At the time of application, Petitioner had a pending disability claim with the Social Security Administration (SSA). [Exhibit A, pp. 22-23.]

CONCLUSIONS OF LAW

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

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), 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 impairments due to lower spinal pain/spinal stenosis, herniated disk in neck, arthritis, depression, and anxiety. The medical evidence presented at the hearing was reviewed and is summarized below.

In a magnetic resonance imaging (MRI) of Petitioner's lumbar spine dated [redacted], the doctor diagnosed him with: (i) posterior annular tear suggested at L5-S1 and to a lesser extent L3-4, 2 to 3mm broad-based posterior disc bulge at L5-S1 without spinal stenosis or neural foraminal narrowing; and (ii) degenerative changes of the S1 joints bilaterally. [Exhibit A, pp. 57-58.]

In an MRI of Petitioner's cervical spine dated [redacted], the doctor diagnosed him with: uncovertebral greater than facet changes result in significant degrees of neuroforaminal narrowing, in particular, there is severe left C3-C4 and left C6-C7 neuroforaminal narrowing, moderate to severe right C3-C4 and moderate right C6-C7 neuroforaminal narrowing; and mild central canal stenosis related to a small central disc protrusion at C5-C6. [Exhibit A, pp. 59-60.]

In physician clinic notes/visit summary dated from [redacted], Petitioner was diagnosed by his primary doctor with the following: spondylosis without myelopathy or radiculopathy, lumbar region; paresthesia of skin; other cervical disc

displacement, unspecified cervical region; benign hypertension; depression, major, recurrent, mild; chronic pain; anxiety disorder; pyogenic granuloma; arthritis; blood pressure elevated without history of hypertension (HTN); chronic back pain; chest skin lesion; neck pain; low back pain; fatigue; degenerative joint disease of cervical and lumbar spine; stenosis of cervical spine; degenerative arthritis of lumbar spine; numbness and tingling in hands; and protruded cervical disc. [Exhibit A, pp. 198-249 and 300-308.]

In a prescription note by Petitioner's doctor dated [redacted], it states that Petitioner is off work till further notice. [Exhibit A, p. 61.] During his physical examination, the doctor noted that he gets up and walks about the room with a normal gait and station and tandems adequately. [Exhibit A, p. 119.] The doctor also noted that he will need to get new MRI's of his cervical and lumbosacral regions to compare to the old ones done in [redacted] [Exhibit A, p. 119.]

In a progress notes dated [redacted], the doctor diagnosed Petitioner with (i) degeneration of intervertebral disc of cervical region; (ii) low back pain, unspecified back pain laterally with sciatica presence unspecified; and (iii) neck pain. [Exhibit A, pp. 117-120.]

In an MRI of Petitioner's cervical spine dated [redacted], the doctor diagnosed him with: no significant interval change; suggestion of posterior annular tear at L5-S1 and anterior annular tear at L3-L4 and L4-L5, 2 to 3mm broad-based posterior central disc bulge at L5-S1 without spinal stenosis or neural foraminal narrowing. [Exhibit A, pp. 63-64.]

In an MRI of Petitioner's lumbar spine dated [redacted], the doctor diagnosed him with severe left neural foraminal narrowing at C3-C4 affecting the left C4 exiting nerve, slightly worsened since the prior study, moderate right neural foraminal narrowing; and posterior annular tear suggest at C5-C6 associated with 2 to 3mm broad-based posterior disc bulge, unchanged. [Exhibit A, pp. 65-66.]

In an x-ray of Petitioner's cervical spine dated [redacted], the doctor diagnosed him with small spur on the anterior inferior comes of C5; and an x-ray of his lumber spine, resulting in findings of minor hypertrophic spurring. [Exhibit A, pp. 134-135.]

In a progress note dated [redacted], the doctor diagnosed Petitioner with mechanical cervical and lumbar pain and degenerative disc disease. [Exhibit A, p. 142.]

On [redacted], Petitioner had a physical therapy evaluation, in which the therapist found that Petitioner had deficits in strength, range in motion (ROM) in cervical spine, and bilateral upper extremity (BUE); and other findings. [Exhibit A, pp. 255-260.] On [redacted], the therapist's medical diagnosis of Petitioner was degenerative joint disease of cervical spine and cervical stenosis of spine. [Exhibit A, pp. 390-395.]

On [redacted], Petitioner had a history and physical assessment by the doctor; and he was complaining of bilateral sacroiliac (SI) joint pain. [Exhibit A, p. 379, and see pp. 383-389 (progress notes).] As a result, the doctor scheduled a bilateral diagnostic sacroiliac facet injection. [Exhibit A, p. 381.] On [redacted], Petitioner had a procedure regarding the diagnostic bilateral sacroiliac injection utilizing fluoroscopy, which resulted in diagnosis by the doctor of sacroiliitis. [Exhibit A, pp. 376-378.]

On [redacted], Petitioner had a history and physical assessment by the doctor; and he was complaining of lower back pain. [Exhibit A, p. 372.] As a result, the doctor scheduled a right therapeutic sacroiliac procedure. [Exhibit A, p. 374.] On [redacted] Petitioner had a procedure of his left sacral cluneal nerve ablation conducted, which resulted in diagnosis by the doctor of sacroiliitis. [Exhibit A, pp. 349-351.]

On [redacted], Petitioner had a psychiatric evaluation, in which the psychologist diagnosed him persistent depressive disorder and cluster B personality traits. [Exhibit A, p. 112.] The psychologist also conducted a mental residual functional capacity assessment of Petitioner. [Exhibit A, pp. 112-113.]

On [redacted], Petitioner had a consultative examination in which the doctor diagnosed him with: (i) cryonic pain of the lumber and cervical spinal region and of the right knee and right ankle with the pain likely secondary to osteoarthritis and degenerative dis disease with a history of laser surgeries to the lumbar spine, the doctor also at the time of evaluation, noted that Petitioner had some mild difficulty trying to complete or perform orthopedic maneuvers; and he did have full motor strength in all four extremities, he was noted to have loss of motion in the lumber spine and both shoulders, but maintained full active range of motion in all other major joints; and (ii) he did have an essentially normal cardiovascular and pulmonary examination at the time of evaluation. [Exhibit A, pp. 122-127.]

In a radiology report of Petitioner's dated [redacted], the doctor diagnosed him with mild degenerative changes in the right knee; and of the right ankle, a calcaneal osteophyte. [Exhibit A, pp. 128-129.]

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 1.04 (disorders of the spine), 12.04 (affective disorders), and 12.06 (anxiety-related disorders) 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).

Residual functional capacity 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 lower spinal pain/spinal stenosis, herniated disk in neck, arthritis, depression, and anxiety. He argued he suffers from lower spine pain and claimed that his pain in his neck and lower back have been ongoing. He stated he had two surgeries to treat his nerves of his lower spine in [redacted] and [redacted]. He stated he can dress/undress, bathe/shower, use the bathroom, eat by himself, he can go grocery shopping, and prepare meals, but he can only do chores within reason. He stated he can lift a gallon of milk, but that it is difficult to squat and very difficult to kneel. He stated he can stand 20 to 30 minutes; he can sit 45 minutes to 1 hour; he can walk up to a block to a block and a half; and he can lift 30 to 35 pounds. He also stated that he suffers from depression and anxiety. He stated he can remember, concentrate, follow instructions, and work with others, but sometimes struggles with completing tasks. He stated that he takes Zoloft for his depression, and it is helping.

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.

In regards to Petitioner's exertional limitations, he had multiple diagnoses by his doctor's supporting his allegation of lower back and neck pain. On [redacted], the doctor diagnosed Petitioner with degeneration of intervertebral disc of cervical region; low back pain, unspecified back pain laterally with sciatica presence unspecified; and neck pain. [Exhibit A, pp. 117-120.] Also, in two separate medical procedures completed on [redacted], and [redacted], the doctor diagnosed him with

sacroiliitis, which supports his argument of lower back pain. [Exhibit A, pp. 349-351 and 376-378.] Also, in physician clinic notes/visit summary dated from [redacted], Petitioner was diagnosed with arthritis. [Exhibit A, pp. 198-249 and 300-308.] This evidence was sufficient to support Petitioner's allegations of lower back and neck pain, and arthritis.

In regards to Petitioner's nonexertional limitations, there was medical documentation supporting his allegations of depression and anxiety. In physician clinic notes/visit summary dated from [redacted], Petitioner was diagnosed with depression, major, recurrent, mild and anxiety disorder. [Exhibit A, pp. 198-249 and 300-308.] Furthermore, on [redacted], Petitioner had a psychiatric evaluation, in which the psychologist diagnosed him persistent depressive disorder and cluster B personality traits. [Exhibit A, p. 112.] As such, the evidence was sufficient to support Petitioner's allegations of depression and anxiety.

With respect to the intensity, persistence and limiting effects of his symptoms, the medical evidence included MRI's, physician clinic notes/visit summary/progress notes, clinical/laboratory findings, a consultative exam, medical procedures, and other medical evidence showing how Petitioner maintains the physical capacity to perform sedentary work. Beginning in [redacted], Petitioner provided evidence showing how he began to have a history of lower back and neck pain as evidence by his MRI's of his lumbar spine and cervical spine. [Exhibit A, pp. 57-58 and 59-60.] The evidence record also contained physician clinic notes/visit summary dated from [redacted], in which Petitioner's primary doctor had multiple diagnosis supporting his claim of lower back and neck pain, and arthritis. [Exhibit A, pp. 198-249 and 300-308.] During the same time period Petitioner saw his primary doctor, another doctor on [redacted], also diagnosed him with degeneration of intervertebral disc of cervical region; low back pain, unspecified back pain laterally with sciatica presence unspecified; and neck pain. [Exhibit A, pp. 117-120.] During his physical examination, the doctor noted that he gets up and walks about the room with a normal gait and station and tandems adequately. [Exhibit A, p. 119.] The doctor also noted that he will need to get new MRI's of his cervical and lumbosacral regions to compare to the old ones done in [redacted] [Exhibit A, p. 119.] As recommended by the doctor, Petitioner did have MRI's of his cervical spine and lumbar spine on [redacted]. In regards to the MRI of his cervical spine, the doctor diagnosed him with no significant interval change; suggestion of posterior annular tear at L5-S1 and anterior annular tear at L3-L4 and L4-L5, 2 to 3mm broad-based posterior central disc bulge at L5-S1 without spinal stenosis or neural foraminal narrowing. [Exhibit A, pp. 63-64.] In regards to the MRI of his lumbar spine, the doctor diagnosed him with severe left neural foraminal narrowing at C3-C4 affecting the left C4 exiting nerve, slightly worsened since the prior study, moderate right neural foraminal narrowing; and posterior annular tear suggest at C5-C6 associated with 2 to 3mm broad-based posterior disc bulge, unchanged. [Exhibit A, pp. 65-66.] Also in an x-ray of Petitioner's cervical spine dated [redacted], the doctor diagnosed him with small spur on the anterior inferior comes of C5; and an x-ray of his lumber spine, resulting in findings of minor hypertrophic spurring. [Exhibit A, pp. 134-135.] Also, on [redacted], Petitioner had a physical therapy evaluation, in which the therapist found that Petitioner had deficits in strength, ROM in cervical spine, and BUE; and other

findings. [Exhibit A, pp. 255-260.] The therapist's medical diagnosis was degenerative joint disease of cervical spine and cervical stenosis of spine. [Exhibit A, pp. 390-395.]

Additionally, in [redacted] and [redacted], Petitioner had two medical procedures. On [redacted], Petitioner had a procedure regarding the diagnostic bilateral sacroiliac injection utilizing fluoroscopy, which resulted in diagnosis by the doctor of sacroiliitis. [Exhibit A, pp. 376-378.] On [redacted], Petitioner had a procedure of his left sacral cluneal nerve ablation conducted, which resulted in diagnosis by the doctor of sacroiliitis. [Exhibit A, pp. 349-351.] Finally, on [redacted], Petitioner had a consultative examination in which the doctor diagnosed him with chronic pain of the lumber and cervical spinal region and of the right knee and right ankle with the pain likely secondary to osteoarthritis and degenerative dis disease with a history of laser surgeries to the lumbar spine, the doctor, also at the time of evaluation, noted that Petitioner had some mild difficulty trying to complete or perform orthopedic maneuvers and he did have full motor strength in all four extremities, he was noted to have loss of motion in the lumber spine and both shoulders, but maintained full active range of motion in all other major joints; and he did have an essentially normal cardiovascular and pulmonary examination at the time of evaluation. [Exhibit A, pp. 122-127.]

The undersigned reviewed the above medical evidence and with respect to the intensity, persistence and limiting effects of his symptoms, the evidence does show he is limited to perform sedentary work. Despite Petitioner's claim that he can lift 30 to 35 pounds, he has physical limitations in standing, sitting, and walking. The medical evidence supports his testimony that he can stand 20 to 30 minutes, he can sit 45 minutes to 1 hour, and that he can walk up to a block to a block and a half. As stated above, the evidence record showed that he is continually receiving treatment for his lower back and neck pain. [Exhibit A, pp. 198-249 and 300-308.] Furthermore, he had MRI's of his cervical spine and lumbar spine, which supports the conclusion that he is limited to sedentary work. [Exhibit A, pp. 63-64 and 65-66.] Especially, the results of his lumbar spine, where the doctor diagnosed him with *severe* left neural foraminal narrowing at C3-C4 affecting the left C4 exiting nerve and other medical findings. [Exhibit A, pp. 65-66 (emphasis added).] And again, Petitioner had two medical procedures in [redacted] and [redacted], which resulted in diagnosis by the doctor of sacroiliitis and confirms his ongoing treatment for lower back pain. [Exhibit A, pp. 349-351 and 376-378.] And finally, the doctor for Petitioner's consultative examination noted that Petitioner had some mild difficulty trying to complete or perform orthopedic maneuvers and he was noted to have loss of motion in the lumber spine and both shoulders. [Exhibit A, pp. 122-127.]

In sum, the medical evidence, including the MRI's and medical procedures, shows how Petitioner is having ongoing treatment for his lower back and neck pain and that he has physical limitations in standing, sitting, and walking. Accordingly, the undersigned 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, Petitioner's primary doctor diagnosed him with depression, major, recurrent, mild and anxiety disorder. [Exhibit A,

pp. 198-249 and 300-308.] Furthermore, on [redacted], Petitioner had a psychiatric evaluation, in which the psychologist diagnosed him persistent depressive disorder and cluster B personality traits. [Exhibit A, p. 112.] The psychologist also conducted a mental residual functional capacity assessment of Petitioner. [Exhibit A, pp. 112-113.] The psychologist notes that Petitioner's ability to remember locations and work like procedures seemed to be mildly limited. [Exhibit A, p. 112.] As to sustained concentration and persistence, the psychologist noted Petitioner's ability to carry out very short and simple instructions and detailed instructions would seem to be moderately limited. [Exhibit A, p. 112.] The psychologist noted that there would seem to be moderate to severe limitations in his ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances. [Exhibit A, p. 112.] However, the psychologist noted his ability to work in coordination or proximity to others would not seem to be affected by his issues. [Exhibit A, p. 113.] In regards to social interaction, the psychologist noted that Petitioner's ability to interact with other in an appropriate manner would not seem to be limited. [Exhibit A, p. 113.] And in regards to adaptations, the psychologist noted that his ability to appropriately change in the work place, be aware of normal hazards, and take appropriate precautions would seem to be moderately to severely limited due to his physical issues. [Exhibit A, p. 113.] But the psychologist noted, Petitioner would seem to have the ability to set realist goals or make plans independently of others. Finally, Petitioner testified that he can remember, concentrate, follow instructions, and work with others, but sometimes struggles with completing tasks. He stated that he takes Zoloft for his depression, and it is helping. Overall, the medical evidence supports Petitioner's testimony that he suffers from depression and anxiety, but does not show any significant limitations or restrictions that would affect his ability to meet the demands of jobs.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has mild to moderate limitations to his activities of daily living; mild limitations to his social functioning; and moderate to marked limitations to his concentration, persistence or pace. There is no evidence of episodes of decompensation.

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 specialty painter and a shipping and receiving worker. In regards to occupation as a specialty painter, he stood/walked 8 hours a day and would lift 20 pounds maximum. In regards to his occupation as a shipping and receiving worker, he stood/walked 8 hours

a day would lift 50 to 100-110 pounds. Based on Petitioner's work history, the undersigned ALJ finds that his work history results in medium 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 [redacted] years old at the time of hearing, but he was [redacted] years old at the time of application (date of birth: [redacted]), which is the period the undersigned is reviewing for his disability determination. As the time of his application, Petitioner was considered to be a closely approaching advanced age (age [redacted]) for purposes of Appendix 2. Petitioner obtained his GED and a history of unskilled and/or semi-skilled and/or skilled work experience as a specialty painter and shipping and receiving worker. 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. As such, based on Petitioner's age, education, work experience, and exertional RFC, the Medical-Vocational Guidelines, 201.12 (unskilled – no direct entry) and/or 201.14 (semi-skilled/skilled, not transferable, and no direct entry), results in a disability finding based on his exertional limitations. [See Exhibit A, p. 192.]

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 for the period of [redacted].

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 [redacted], SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination; and

2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified for the period of [redacted].

EJF/jaf

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]

Petitioner [redacted]