STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: April 6, 2017
MAHS Docket No.: 17-002113
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 16, 2017, from Detroit, Michigan. 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 17, 2016, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On February 6, 2017, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program. Exhibit A, pp. 6-12.

3. On February 7, 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. 4.

4. On February 15, 2017, the Department received Petitioner's timely written request for hearing. Exhibit A, pp. 2-3.

5. Petitioner alleged disabling impairments due to back problems, rheumatoid arthritis in knees and back, pinched nerve in the middle of the back, hypertension, depression, anxiety, and sleep apnea.

6. On the date of the hearing, Petitioner was 50 years old with a date of birth of [redacted]; he was 6'1" in height and weighed 198 pounds.

7. Petitioner is a high school graduate.

8. At the time of application, Petitioner was not employed.

9. Petitioner does not have any employment history within the last 15-years.

10. Petitioner has a pending appeal for a disability claim with the Social Security Administration.

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).

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 impairments due to back problems, rheumatoid arthritis in knees and back, pinched nerve in the middle of the back, hypertension, depression, anxiety, and sleep apnea. The medical evidence presented at the hearing was reviewed and is summarized below:

Medical notes from [redacted] to [redacted], showing Petitioner was diagnosed with major depressive disorder, recurrent severe without psychotic features; alcohol abuse; essential hypertension, unspecified; other and unspecified disorders of back, pain in thoracic spine; rheumatoid arthritis, and other symptoms. Exhibit A, pp. 338-375.

A Magnetic Resonance Imaging (MRI) of Petitioner's spine dated [redacted], in which he was diagnosed with degenerative changes with spinal stenosis and foraminal encroachment, L3-L4 through L5-S1. Exhibit A, p. 135.

An MRI of Petitioner's spine dated [redacted] in which he was diagnosed with T10-T11 left paracentral disc herniation, minimal spinal stenosis and presence of left foraminal narrowing. Exhibit A, p. 136.

An MRI of Petitioner's spine dated [redacted], in which he was diagnosed with C2-C3 small disc protrusion, no other discrete disc herniation, and no central spinal stenosis at any level. Exhibit A, p. 286.

An MRI of Petitioner's knee dated [redacted], in which the impression showed there is a well-circumscribed and probably benign serpiginous lesion present within the distal diaphysis of the left femur, correlation with repeat magnetic resonance imaging with attention to the femur encompassing the entire lesion would be helpful, gadolinium enhancement would also help for further evaluation; and there is a complex tear of the body and posterior horn of the medial meniscus associated with osteoarthritis of the medial femorotibial joint space. Exhibit A, pp. 379-380.

An MRI of Petitioner's knee dated [redacted], in which he was diagnosed with abnormal medial meniscus with adjacent degenerative changes, some fluid in the knee joint, and there has been worsening. Exhibit A, p. 138.

In progress notes dated from [redacted] to [redacted], Petitioner was assessed with spinal stenosis, lumbar region; lumbar spondylosis; lumbar degenerative disc disease; degeneration of cervical intervertebral disc; cervical spondylosis without myelopathy; lumbar radiculopathy; and knee osteoarthritis. Exhibit A, pp. 159-201 and 281-316. On [redacted] and [redacted], Petitioner did have a knee injection due to his diagnosis of knee osteoarthritis. Exhibit A, pp. 180 and 194. On [redacted] and [redacted] Petitioner had a lumbar epidural steroid injection with fluoroscopy performed due to his diagnosis of lumbar radiculopathy. Exhibit A, pp. 192 and 298. On [redacted] and [redacted], Petitioner had a lumbar medial branch block(s) with fluoroscopy performed due to his diagnosis of facet arthropathy without myelopathy, lumbar and lumbar spondylosis/facet syndrome. Exhibit A, pp. 200-201 and 305-306.

On [redacted], Petitioner had a Dobutamine Stress Echocardiogram test performed, which resulted in the electrocardiogram (ECG) being negative for ischemia and the stress echo showed maximal asymptomatic dobutamine stress test without ECG or echo findings to indicate stress inducted ischemia. Exhibit A, pp. 322-324.

A letter from Petitioner's psychiatrist received on [redacted], in which the doctor stated that Petitioner has a diagnosis of major depressive disorder with psychosis, he is unable to work at this time due to his current symptoms, and will need to be re-evaluated in six months. Exhibit A, p. 133.

On [redacted], Petitioner had a psychological assessment, in which the psychologist diagnosed him with bipolar disorder; nicotine use disorder; and a history of alcohol, cannabis, and cocaine use disorder. Exhibit A, pp. 273-275. The licensed psychologist noted that Petitioner was observed during the evaluation to be hypertalkative with pressured speech and tendency to deviate from topic with racing thoughts; he also had periods of anxiety and went to complain about physical problems; he had some slight difficulty with immediate and recent memory; and he is being followed up by a psychiatrist and therapist; however, signs and symptoms have not been controlled enough to establish ability to work at the present time. Exhibit A, p. 275.

On [redacted], a staff psychiatrist conducted a medication review of Petitioner and indicated his appearance was appropriate; mood was stable, speech is fluent, spontaneous; his insight is poor; and his judgement is poor. Exhibit A, p. 269. There were also notes dating back to [redacted], showing various diagnosis and a Global Assessment of Functioning (GAF) score of 65. Exhibit A, pp. 265-266.

On [redacted], Petitioner also had an Adult Annual Well Exam performed by the doctor. Exhibit A, pp. 206-208.

On [redacted], Petitioner had a consultative examination. Exhibit A, pp. 147-150. The doctor's impression of Petitioner was complaints of left greater than right low back pain and bilateral knee pain; his pain is likely secondary to musculoskeletal etiology; his pain can decrease and function can increase with physical conditioning; and medical comorbidities include hypertension, hypercholesterolemia, and depression. Exhibit A, p. 149. The doctor noted the following: Petitioner presented ambulating with a standard cane, he can ambulate without it; medical evidence does not support the need to use a cane; he is limited in bending, stooping, and squatting are limited secondary to subjective complaints of low back pain; his low back pain and knee pain is likely secondary to musculoskeletal etiology; and pain can decrease and function can increase with physical conditioning. Exhibit A, p. 149. A neurologic and orthopedic supplemental report was provided showing he is unable to bend stoop and squat and arise from squatting due to lower back pain, but able to do all other current abilities (such as sit, stand). Exhibit A, pp. 150-154.

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), 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).

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 back problems, rheumatoid arthritis in knees and back, pinched nerve in the middle of the back, hypertension, depression, anxiety, and sleep apnea. Petitioner testified that he has back problems and the left side of his back has encroachment of a mass that is surrounding the disc. He testified that his lumbar disc is worn down that swells the muscles and presses against his kidney. He testified that he has hypertension and arthritis in knees. He testified that he has a tear in his left knee and a pinched nerve in the middle of his back. He testified that he is unable to sit or stand too long. He testified he can lift a gallon of milk. He testified he can stand for a maximum of 15 minutes, he can sit for 15 to 20 minutes, and he can walk up a half a block. He indicated he is limited in the type of clothing he is able to dress himself, he can bathe/shower, but has to sit sometimes, he can eat by himself, but he cannot do chores or go grocery shopping. He indicated that he also suffers from depression, anxiety, and sleep apnea due to his back pain. He indicated that he does not remember well, his concentration varies, and he is unable complete tasks.

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 this case, Petitioner did provide several old MRIs dating back to February 2013 and November 2014, but nothing too recent. Petitioner, though, provided progress notes dated from [redacted] to [redacted], in which he was assessed with spinal stenosis, lumbar region; lumbar spondylosis; lumbar degenerative disc disease; degeneration of cervical intervertebral disc; cervical spondylosis without myelopathy; lumbar radiculopathy; and knee osteoarthritis. Exhibit A, pp. 159-201 and 281-316. On [redacted], Petitioner had a consultative examination. Exhibit A, pp. 147-150. The doctor's impression of Petitioner was complains of left greater than right low back pain and bilateral knee pain; his pain is likely secondary to musculoskeletal etiology; his pain can decrease and function can increase with physical conditioning; and medical comorbidities include hypertension, hypercholesterolemia, and depression. Exhibit A, p. 149. This evidence was sufficient to support Petitioner's allegation of back and knee pain.

On [redacted], Petitioner had a psychological assessment, in which the psychologist diagnosed him with bipolar disorder; nicotine use disorder; and a history of alcohol, cannabis, and cocaine use disorder. Exhibit A, pp. 273-275. Prior to this date, Petitioner did provide a letter from his psychiatrist dated [redacted], in which the doctor stated that Petitioner has a diagnosis of major depressive disorder with psychosis, he is unable to work at this time due to his current symptoms, and will need to be re-evaluated in six months. Exhibit A, p. 133. He also presented notes from [redacted] to [redacted], showing Petitioner was diagnosed with major depressive disorder, recurrent severe without psychotic features and alcohol abuse. Exhibit A, pp. 338-375. Therefore, Petitioner also has a medical diagnosis supporting his allegation of depression, bipolar disorder, nicotine use disorder, and a history of alcohol, cannabis, and cocaine use disorder.

With respect to the intensity, persistence and limiting effects of her symptoms, the medical evidence included Petitioner's progress notes showing a history of back and knee pain. As stated above, Petitioner did provide several old MRIs dating back to February 2013 and November 2014, but nothing too recent. Furthermore, on [redacted], Petitioner had a consultative examination. Exhibit A, pp. 147-150. The doctor's impression of Petitioner was complains of left greater than right low back pain and bilateral knee pain; his pain is likely secondary to musculoskeletal etiology; his pain can decrease and function can increase with physical conditioning; and medical comorbidities include hypertension, hypercholesterolemia, and depression. Exhibit A, p. 149. Overall, the doctor noted that Petitioner's pain can decrease and function can increase with physical conditioning. Exhibit A, p. 149. However, the medical evidence

included Petitioner's progress notes from [redacted] to [redacted], which showed that he was receiving ongoing treatment by his doctor(s) for his back and knee pain. Exhibit A, pp. 159-201 and 281-316. On multiple visits with his doctor(s), Petitioner was assessed with spinal stenosis, lumbar region; lumbar spondylosis; lumbar degenerative disc disease; degeneration of cervical intervertebral disc; cervical spondylosis without myelopathy; lumbar radiculopathy; and knee osteoarthritis. Exhibit A, pp. 159-201 and 281-316. In fact, during these office visits, the doctor performed physical examinations of Petitioner, which found the presence of paraspinal muscle tenderness in the lumbosacral spine and his straight leg tested positive bilaterally. Exhibit A, pp. 184, 190, and 198. In fact, the progress notes also show that Petitioner's knee and pack pain continue since the results of his MRIs. The ongoing treatment Petitioner received by his doctor(s) assessing him with knee and back pain supports his testimony that he can stand for 15 minutes maximum, he can sit for 15 to 20 minutes, and he can walk up to a half a block.

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, Petitioner had a psychological assessment on March 21, 2016, in which the psychologist diagnosed him with bipolar disorder; nicotine use disorder; and a history of alcohol, cannabis, and cocaine use disorder. Exhibit A, pp. 273-275. The licensed psychologist noted that Petitioner was observed during the evaluation to be hypertalkative with pressured speech and tendency to deviate from topic with racing thoughts; he also had periods of anxiety and went to complain about physical problems; he had some slight difficulty with immediate and recent memory; and he is being followed up by a psychiatrist and therapist; however, signs and symptoms have not been controlled enough to establish ability to work at the present time. Exhibit A, p. 275. Prior to this date, Petitioner also provided a letter and notes showing he has been diagnosed with major depressive disorder, recurrent severe without psychotic features and alcohol abuse. Exhibit A, pp. 133 and 338-375.

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.

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).

In the present case, the evidence established that Petitioner did not perform work within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. See Exhibit A, pp. 119-125 and 20 CFR 416.960(b)(1). Because Petitioner has not performed work within the past 15 years, 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 50 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 is a high school graduate with no training for direct entry into skilled work and

he has no previous work. 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 (not within the last 15 years), and exertional RFC, the Medical-Vocational Guidelines, 201.12, 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 17, 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]

cc: [redacted]