RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: April 11, 2017
MAHS Docket No.: 17-002375
Agency No.:
Petitioner:

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 23, 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 , Hearings Facilitator.

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 April 21, 2016, Petitioner submitted an application seeking cash assistance on the basis of a disability. Exhibit A, pp. 1-16.

2. On or about February 1, 2017, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program. Exhibit A, pp. 581-588.

3. On February 7, 2017, the Department sent Petitioner a Notice of Case Action denying the application effective May 16, 2016, based on DDS/MRT's finding of no disability. Exhibit A, pp. 589-590.

4. On February 22, 2017, the Department received Petitioner's timely written request for hearing. Exhibit A, p. 592.

5. Petitioner alleged disabling impairments due to enlarged prostate, obesity, hypertension, overactive bladder, rhabdomyolysis, allergies, sleep apnea, fatigue, and depression.

6. On the date of the hearing, Petitioner was 48 years old with a date of birth of ██████████; he was 5'10" in height and weighed 230 pounds.

7. Petitioner is a high school graduate.

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

9. Petitioner has an employment history of work as a machine operator and a thread roller operator.

10. Petitioner has a pending application 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).

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 impairments due to enlarged prostate, obesity, hypertension, overactive bladder, rhabdomyolysis, allergies, sleep apnea, fatigue, and depression. The medical evidence presented at the hearing was reviewed and is summarized below.

In progress notes dated from [redacted] to [redacted], the doctor diagnosed Petitioner with obstructive sleep apnea (OSA), obesity (body mass index of 30.0-34.9); inadequate sleep hygiene; myalgias; seasonal allergies; OSA with continuous positive airway pressure (CPAP) (excessive daytime sleepiness; and insomnia (sleep maintenance) related to medical conditions (nocturia related to prostate hypertrophy), also uncomfortable sleep environment. Exhibit A, pp. 231-261.

A letter from Petitioner’s doctor dated [redacted], indicated that Petitioner was totally incapacitated from [redacted] to [redacted]. Exhibit A, p. 74.

On [redacted], Petitioner was admitted to the hospital due to his complaint of bladder outlet obstruction. On [redacted], a cystoscopy, transurethral incision of prostate and urethral dilation and calibration was performed and the doctor’s findings

included narrowed urethral meatus necessitating dilation to allow passage of resectoscope; significantly elevated bladder neck with short prostatic urethra; and normal cystoscopy. On [redacted], Petitioner was discharged from the hospital in which he was diagnosed with bladder outlet obstruction. Exhibit A, pp. 162-190.

A [redacted], there was an emergency room treatment note diagnosing Petitioner with acute urinary tract infection and acute chest pain, possible acute coronary syndrome (ACS). Exhibit A, pp. 305-308. An echocardiography report was performed on [redacted] and a chest exam. Exhibit A, pp. 314-317. A cardiac catheterization was also performed on [redacted] due to complaint of chest pain. Exhibit A, pp. 318-341.

In office visit notes dated from [redacted] to [redacted], Petitioner was assessed with elevated creatine phosphokinase (CPK); rule out (r/o) due to rhabdomyolysis vs. autoimmune inflammatory myopathy; myositis, unspecified myositis, unspecified site; review of labs show normal CPK and antinuclear antibodies (ANA); an enlarged prostate without lower urinary tract symptoms; myalgia; bilateral leg and foot pain; environmental allergies; herpes viral infection, unspecified, healthcare maintenance; blood pressure check; depression, controlled; anemia due to other cause, not classified; benign prostatic hyperplasia (BPH); and herpes simplex virus 2 (HSV-2) infection. Exhibit A, pp. 52-68, 84-90, 119-124, and 419-511.

In progress notes dated from [redacted] to [redacted], Petitioner was diagnosed with hpylori infection; gastroesophageal reflux disease (GERD); keloid; non-traumatic rhabdomyolysis, unlikely to represent inflammatory myopathies because the muscle pain; acute kidney injury (AKI); macrocytic anemia; essential hypertension dilated pore of wiener; keloid scare; epidermoid cyst/dilated pore of wiener; nocturia and obstructive lower urinary tract symptoms (LUTS) and split stream status post (s/p); depression, major, recurrent, moderate; and hypertension, genital herpes, sinus problems, prostate problems, a Global Assessment of Functioning (GAF) score of 55. Exhibit A, pp. 351-402.

In an emergency room treatment note dated [redacted], the doctor diagnosed Petitioner with chronic myalgias of the bilateral lower extremities. Exhibit A, pp. 342-350.

In medication review notes / initial evaluations / discharge summary documents dated from [redacted] to [redacted], the doctor diagnosed Petitioner with major depressive disorder, single episode, unspecified; major depressive disorder, recurrent, moderate; and a GAF score of 50. Exhibit A, pp. 197-211 and 215-225.

On [redacted], Petitioner was discharged from the [redacted] with a diagnosis of major depressive disorder, recurrent, moderate; polysubstance dependence; and a GAF score of 50. Exhibit A, pp. 212-214.

A left quadricep muscle biopsy of Petitioner dated [redacted], diagnosed him with myopathy. Exhibit A, pp. 49-51.

A Neurology/Trauma Clinic service dated [redacted], in which Petitioner was discharged with a diagnosis of myopathy. Exhibit A, pp. 45-47.

On [redacted], Petitioner had an internal medicine examination, in which the doctor diagnosed him with hypertension, obesity, overactive bladder, rhabdomyolysis, and OSA. Exhibit A, pp. 91-94. The doctor noted that Petitioner's physical examination is remarkable for hypertensive disease with blood pressure of 160/98; the patient is on bleed pressure medication under doctor's care; examination is remarkable for obesity; his 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 mildly impaired due to obesity, due to hypertensive disease, history of rhabdomyolysis along with other comorbid medical conditions. Exhibit A, pp. 94-95.

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), 3.09 (chronic pulmonary hypertension due to any cause), 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 enlarged prostate, obesity, hypertension, overactive bladder, rhabdomyolysis, allergies, sleep apnea, fatigue, and depression. He testified he can somewhat lift a gallon of milk. He can stand for 15 to 20 minutes and sitting is not a problem for him. He can walk up to a block, but in moderation, and he can lift up to 3 pounds maximum. He is able to dress/undress himself, prepare basic meals, do chores, but in moderation, but is unable to squat, bend at the waist or kneel. He testified he is unable to work because when his rhabdomyolysis kicks in, he is fatigued and his body wears down. He indicated that he suffers from depression. He can't concentrate, complete tasks, or work with others, but he is somewhat able to follow instructions.

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 alleged, Petitioner was diagnosed with bladder outlet obstruction on [redacted]. Exhibit A, pp. 162-190. In office visit notes dated from [redacted] to [redacted], Petitioner was diagnosed with an enlarged prostate without lower urinary tract symptoms. Exhibit A, pp. 52-68, 84-90, 119-124, and 419-511. In progress notes dated from [redacted] to [redacted], the doctor diagnosed Petitioner with OSA, obesity, and seasonal allergies. Exhibit A, pp. 231-261. Finally, Petitioner had an internal medicine examination on [redacted], in which the doctor diagnosed him with hypertension, obesity, overactive bladder, rhabdomyolysis, and OSA. Exhibit A, pp. 91-94. This evidence was sufficient to

support Petitioner's allegation of enlarged prostate, obesity, hypertension, overactive bladder, rhabdomyolysis, allergies, and sleep apnea.

In regards to Petitioner's nonexertional limitations alleged, Petitioner was discharged from the Community Mental Health with a diagnosis of major depressive disorder, recurrent, moderate; polysubstance dependence; and a GAF score of 50. Exhibit A, pp. 212-214. Furthermore, in medication review notes / initial evaluations / and a discharge summary documents dated from to , the doctor diagnosed Petitioner with major depressive disorder, single episode, unspecified; major depressive disorder, recurrent, moderate; and a GAF score of 50. Exhibit A, pp. 197-211 and 215-225. Therefore, Petitioner also has a medical diagnosis supporting his symptoms of depression.

With respect to the intensity, persistence and limiting effects of his symptoms, Petitioner had an internal medicine examination on , in which the doctor diagnosed him with hypertension, obesity, overactive bladder, rhabdomyolysis, and OSA. Exhibit A, pp. 91-94. The doctor noted that his 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 mildly impaired due to obesity, due to hypertensive disease, history of rhabdomyolysis along with other comorbid medical conditions. Exhibit A, pp. 94-95. Furthermore, Petitioner had several progress notes from different doctors supporting his medical allegations. In progress notes dated from to , the doctor diagnosed him with non-traumatic rhabdomyolysis, and was unlikely to represent inflammatory myopathies because the muscle pain; AKI; macrocytic anemia, essential hypertension; and other symptoms. Exhibit A, pp. 362 and 364-365. In progress notes dated from to , the doctor diagnosed Petitioner with OSA, obesity; inadequate sleep hygiene; myalgias; seasonal allergies; OSA with CPAP (excessive daytime sleepiness; and insomnia (sleep maintenance) related to medical conditions (nocturia related to prostate hypertrophy), also uncomfortable sleep environment. Exhibit A, pp. 231-261. And finally, in office visit notes dated from to , Petitioner was assessed with elevated CPK; r/o due to rhabdomyolysis vs. autoimmune inflammatory myopathy; myositis, unspecified myositis, unspecified site; and other symptoms. Exhibit A, pp. 52-68, 84-90, 119-124, and 419-511. As stated previously, Petitioner's main complaint of his inability to work was his rhabdomyolysis that makes him fatigued and his body wears down. The undersigned Administrative Law Judge (ALJ) finds that the medical evidence supports Petitioner's testimony about the effects of his rhabdomyolysis on his body based on the finding of multiple doctors confirming this diagnosis.

Furthermore, Petitioner the medical evidence confirmed his medical diagnoses of enlarged prostate, obesity, hypertension, overactive bladder, rhabdomyolysis, allergies, and sleep apnea. These additional medical diagnoses supports his limitations that he can only stand for 15 to 20 minutes, he has no problem with sitting, and he can walk up to a block, but in moderation. However, the undersigned ALJ could not find sufficient

medical documentation showing that he is limited to lifting a maximum of 3 pounds maximum.

Accordingly, the undersigned 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, the medical evidence established that he has moderate limitations or restrictions that affect his ability to meet the demands of jobs. In a progress note dated [redacted], Petitioner's Clinical Social Worker diagnosed him with depression, major, recurrent, moderate and he had a GAF score of 55. Exhibit A, pp. 380-383. It was noted that Petitioner had economic problems, housing problems, occupational problems, other psychosocial or environmental problems and problems with primary support groups. Exhibit A, p. 383. However, the psychiatric exam of Petitioner found his attitude and behavior to be alert, cooperative; his mood was sad; his thought content was normal; his attention and concentration was normal; his recent and remove memory was normal; and his judgment was fully engaged with care. Exhibit A, p. 382. Also, on [redacted], Petitioner was discharged from the Community Mental Health with a diagnosis by the doctor of major depressive disorder, recurrent, moderate; polysubstance dependence; and a GAF score of 50. Exhibit A, pp. 212-214. This was a similar diagnosis by the Clinical Social Worker. In the discharge summary, it was noted that he again had economic problems, housing problems, problem with primary support group, and other psychosocial or environmental problems. Exhibit A, p. 212. And finally, Petitioner presented medication review notes / initial evaluations / discharge summary documents dated from [redacted] to [redacted], in which the doctor diagnosed Petitioner with major depressive disorder, single episode, unspecified; major depressive disorder, recurrent, moderate; and a GAF score of 50. Exhibit A, pp. 197-211 and 215-225. In a mental status exam of Petitioner on [redacted], his attitude/behavior was cooperative and within normal limits; his thought process, thought content, psychomotor activity, attention/concentration were all within normal limits; and his judgement and impulse control were all adequate. Exhibit A, pp. 197-199. The medical evidence did not show any episodes of decompensation. It was noted, though, in his initial evaluation by the doctor that he has other psychosocial or environmental problems and behavioral / personality issues. Exhibit A, p. 210. Overall, the medical evidence supports Petitioner's testimony that he suffers from depression and that the medical evidence has a consistent diagnosis of Petitioner having major depressive disorder, recurrent, moderate and a GAF score of 50 to 55.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has moderate limitations to his activities of daily living; moderate limitations to his social functioning; and moderate limitations to his concentration, persistence or pace. Accordingly, the undersigned ALJ finds moderate limitations in Petitioner's mental capacity.

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 machine operator and a thread roller operator. Petitioner's work as a machine operator and thread roller operator required standing substantially all day. In regards to the machine operator position, he lifted approximately 5 to 10 pound regularly and as a thread roller operator, he lifted approximately 25 to 30 pounds regularly. Based on Petitioner's work history as a machine operator and thread roller operator, 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 activities and has moderate limitations in his mental capacity to perform basic work activities. In light of the entire record and Petitioner's RFC, including his mental limitations, 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). However, if the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was 48 years old at the time of hearing, and, thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. Petitioner is a high school graduate and a history of semi-skilled and skilled work experience. 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. Based on Petitioner's age, education, work experience, and exertional RFC, the Medical-Vocational Guidelines, 201.21 (not transferable) and/or 201.22 (transferrable), result in a finding that Petitioner is not disabled based on his exertional limitations.

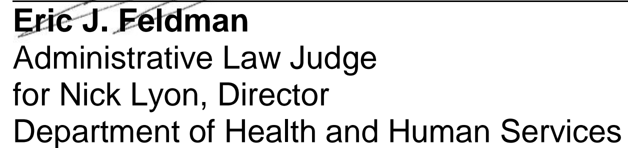
While the Medical-Vocational Guidelines do not result in a disability finding based on Petitioner's exertional limitations, Petitioner's medical record also shows nonexertional limitations resulting in moderate limitations to his activities of daily living; moderate limitations to his social functioning; and moderate limitations to his concentration, persistence or pace. It is found that these nonexertional limitations would not preclude Petitioner from being able to adjust to other work. Therefore, Petitioner is able to adjust to other work and is not disabled at Step 5.

Accordingly, after review of the entire record, including Petitioner's testimony, and in consideration of Petitioner's age, education, work experience, physical as well as mental RFC, Petitioner is found not disabled at Step 5 for purposes of the SDA benefit program.

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 not disabled for purposes of the SDA benefit program.

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



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

cc: