



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: August 18, 2017  
MAHS Docket No.: 17-007368  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on July 24, 2017, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED] of [REDACTED] testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist, and [REDACTED], supervisor.

**ISSUE**

The issue is whether MDHHS properly denied Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner is not a disabled individual.

**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 August 18, 2016, Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On April 25, 2017, the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 432-426).
4. On May 1, 2017, MDHHS denied Petitioner's application for SDA benefits.
5. On June 2, 2017, Petitioner requested a hearing disputing the denial of SDA benefits (See Exhibit 2, pp. 1-2).

6. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
7. As of the date of the administrative hearing, Petitioner was a ■-year-old male.
8. Petitioner's highest education year completed was the 12<sup>th</sup> grade (via general equivalency degree).
9. Petitioner has a history of semi-skilled employment, with no known transferrable job skills.
10. Petitioner has combined restrictions which preclude the performance of all employment.

### **CONCLUSIONS OF LAW**

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute the denial of an SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Notice of Case Action (Exhibit 2, pp. 4-7) dated May 1, 2017, verifying Petitioner's application was denied based on a determination that Petitioner was not disabled.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (April 2017), p. 5. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.*

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (April 2017), p. 1. A person is disabled for SDA purposes if he or she meets any of the following criteria:

- Receives other specified disability-related benefits or services....
  - Resides in a qualified Special Living Arrangement (SLA) facility.
  - Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
  - Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS)...
- Id.*, pp. 1-2.

When the person does not meet one of the [above] criteria, [MDHHS is to] follow the instructions in BAM 815, Medical Determination and Disability Determination Service

(DDS), Steps for Medical Determination Applications. *Id.*, p. 4. The DDS will gather and review the medical evidence and either certify or deny the disability claim based on the medical evidence. *Id.* The review of medical evidence is primarily outlined by federal law.

[State agencies] must use the same definition of disability as used under SSI... 42 C.F.R. § 435.540(a). [Federal] law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 C.F.R. § 416.905(a).

MDHHS adopted a functionally identical definition of disability (see BEM 260 (July 2015), p. 10). The same definition applies to SDA, though SDA eligibility factors only a 90-day period of disability.

In general, you have to prove... that you are blind or disabled. 20 C.F.R. § 416.912(a). You must inform us about or submit all evidence known... that relates to whether or not you are blind or disabled. *Id.* Evidence includes, but is not limited to objective medical evidence (e.g. medical signs and laboratory findings), evidence from other medical sources (e.g. medical history and opinions), and non-medical statements about symptoms (e.g. testimony) (see *Id.*).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled (see 20 C.F.R. § 416.920). If there is no finding of disability or lack of disability at each step, the process moves to the next step (see *Id.*)

The first step in the process considers a person's current work activity (see 20 C.F.R. §416.920 (a)(4)(i)). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2016 monthly income limit considered SGA for non-blind individuals is \$1,130.00.

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id.*, p. 9. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute SGA. *Id.*

Petitioner credibly denied performing current employment; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA. Accordingly, the disability analysis may proceed to the second step.

At the second step, we consider the medical severity of your impairment(s). 20 C.F.R. §416.920 (a)(4)(ii). If you do not have a severe medically determinable physical or

mental impairment that meets the duration requirement in § 416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. *Id.*

Generally, federal courts have imposed a de minimus standard upon petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> Cir. 1988). Similarly, SSR 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1<sup>st</sup> Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1<sup>st</sup> Cir. 1986).

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. 20 C.F.R. § 416.920 (5)(c). We will not consider your age, education, and work experience. *Id.* The second step analysis will begin with a summary of presented medical documentation and Petitioner's testimony.

A left knee MRI report (Exhibit 1, pp. 381-380) dated [REDACTED], was presented. Findings included partial ACL deficiency and a compression deformity.

A lumbar MRI report (Exhibit 1, pp. 380-379) dated [REDACTED], was presented. Findings included a L5-S1 disc bulge causing moderate left-sided foraminal narrowing. Moderate bilateral facet arthropathy at L5-S1 was also noted.

Behavioral health center documents (Exhibit 1, pp. 187-177 dated [REDACTED], were presented. Petitioner presented for an initial assessment. Petitioner reported, "I need to get my head right. I got a lot of buried stuff I need to deal with." Reported symptoms included anger, lying, an unspecified haunting memory from childhood, recurrent road rage, low self-esteem, and depressed mood. Observations of Petitioner included pessimistic mood, normal speech, unremarkable thought, and good memory. Petitioner was approved for further mental health services.

Mental health center treatment documents (Exhibit 1, pp. 355-348) from an admission dated [REDACTED], were presented. Petitioner presented with suicidal ideation and a self-inflicted wrist wound. Wound treatment was provided at admission. Petitioner underwent individual therapy, group therapy, and activity therapy. Various meds were administered. A discharge diagnosis of depression (single episode) was noted. Petitioner was discharged on [REDACTED] to the care of his fiancée, and was noted

to be free from significant mood symptoms. Follow-up wound treatment on [REDACTED] was provided (see Exhibit 1, pp. 347-346).

Approximately 12 behavioral health encounter notes (Exhibit 1, pp. 158-63) from [REDACTED] were presented. Various counseling and medication review encounters were documented.

A psychiatric evaluation (Exhibit 1, pp. 135-133) dated [REDACTED], was presented. Reported symptoms of anger, suicidal ideation, flashbacks, crying spells, paranoia, erratic appetite, and rapid thoughts were noted. Petitioner's concentration and focus were assessed as poor. Various childhood traumas were reported. A history of 4 suicide attempts were reported. Mental health assessments included, not well groomed, depressed affect, dysphoric mood, "shitty" mood, fair short-term memory, nil-to-fair insight, poor-to-fair judgment, and paranoia. Diagnoses included schizoaffective disorder (bipolar type), mild PTSD, and reading impairment. Petitioner's GAF was 60. Prescribed medications included Paxil, Trazodone, Amitriptyline, and Saphris.

Behavioral health encounter notes (Exhibit 1, pp. 62-54) dated [REDACTED], were presented. Petitioner presented with suicidal ideation. A GAF of 25 was indicated. Various financial, relationship, and health problems were reported. Approximately 11 additional encounters in February 2016 were documented (see Exhibit 1, pp. 53-30).

Orthopedist office visit notes (Exhibit 1, pp. 388-384) dated [REDACTED], were presented. Petitioner reported for initial treatment of left knee pain. Petitioner's knee pain was reportedly worse with weight bearing. Pain level was reported to be 8/10. Petitioner's knee was positive for crepitus. An x-ray noted mild-to-moderate degenerative changes with minimal patellar spurring. An MRI was planned.

A left knee MRI report (Exhibit 1, pp. 383-382) dated [REDACTED], was presented. Findings included a meniscus tear with mild-to-moderate degenerative cartilage changes. Trace joint effusion was noted. A ganglion was suspected.

Psychiatric treatment documents (Exhibit 1, pp. 20-16) dated [REDACTED], were presented. Petitioner reported feeling anxious. Ongoing symptoms included jitteriness, poor sleep, short-temperedness, recurrent road rage, and nightmares. Petitioner complained of housing that was found for him by the treating agency. It was noted Petitioner had no psychosis. Petitioner's GAF was 63. Medications were adjusted.

Orthopedist office visit notes (Exhibit 1, pp. 394-389) dated [REDACTED], were presented. Petitioner reported 8/10 pain in left knee. Standing and walking were reportedly painful. Meds were reportedly of little pain relief. A knee joint injection was performed.

A lumbar MRI report (Exhibit 1, pp. 339-338) dated [REDACTED], was presented. Moderate bilateral foraminal stenosis and nerve root abutment was noted at L5-S1. Mild foraminal narrowing at L3-L4 and L4-L5 was noted.

Various behavioral health treatment documents (Exhibit 1, pp. 301-194) from [REDACTED] were presented. Case management and counseling visits were documented.

Mental health center treatment documents (Exhibit 1, pp. 355-348, 249-242) from an admission dated [REDACTED], were presented. Petitioner presented after cutting his wrist and expressing suicidal ideation. Petitioner reported increased depression over the past several weeks. Reported symptoms included poor appetite, functioning difficulty, and suicidal thoughts. Petitioner reportedly recently broke-up with fiancée. Treatment with medication and psychotherapy was noted. Diagnoses included depression (severe and recurrent with suicidal ideation). Petitioner was discharged on [REDACTED], to a homeless shelter.

Emergency room documents (Exhibit 1, pp. 330-321) dated [REDACTED], were presented. It was noted that Petitioner presented with complaints of neck pain following a fall. A workup, including brain and femur radiology, were noted to be unremarkable. Flexeril was prescribed at discharge.

Orthopedist office visit notes (Exhibit 1, pp. 399-395) dated [REDACTED], were presented. Petitioner presented for follow-up of left knee. Norco reportedly was unhelpful. It was noted Petitioner was argumentative and that a knee exam was not performed. Petitioner was noted as angry about being told that surgery was not an option, in part, because Petitioner had a back surgery scheduled in 2 weeks. It was noted Petitioner threatened his physician and was barred from further treatment.

Various behavioral health encounters (Exhibit 1, pp. 241-207) from [REDACTED] were presented. Ongoing depression treatment was documented.

Behavioral health center therapy documents (Exhibit 1, pp. 206-194) dated [REDACTED], was presented. It was noted Petitioner reported that he stopped taking prescribed medication. Petitioner's prognosis without medication was poor. Petitioner was deemed to lack understanding of a need to be responsible for himself. Observations of Petitioner included poor personal hygiene, pessimistic mood, normal speech, poor eye contact, fair insight, and good memory.

Emergency room documents (Exhibit 1, pp. 318-315) dated [REDACTED], were presented. Petitioner presented with left leg skin injury caused by scratching. Petitioner reported pain with weight bearing. A diagnosis of cellulitis was noted.

An echocardiogram report (Exhibit 1, pp. 312-311) dated [REDACTED], was presented. An ejection fraction of 43% was noted (40% by teicholz method). Moderately decreased left ventricular function was noted.

Petitioner testified his back problems began in a motorcycle accident in [REDACTED]. Petitioner testified his pain has worsened over the years. Petitioner testified his treatment history included physical therapy which worsened his pain. Petitioner testified he saw a

chiropractor who was unsuccessful in cracking his back. Petitioner testified that over the past 4-5 months he smokes marijuana in lieu of pain medication. Petitioner testified that a neurosurgeon advised him that surgery would not necessarily resolve pain.

Petitioner testified he has left knee dysfunction. Petitioner testified that his left knee sometimes locks-up. Petitioner testified he underwent surgery 6 months earlier, though no surgery documents were presented.

Petitioner testified he has multiple psychological symptoms. Petitioner testified he experiences audio hallucinations throughout the day. Petitioner testified the medications he takes turns the voices into a muffling sound. Petitioner testified he is very irritable and mistrustful of others; Petitioner testified he is often tempted to slap people. Petitioner testified he has a history of 3-4 suicide attempts. Petitioner testified he saw a psychiatrist shortly after his last suicide attempt in December 2015. Petitioner testified he sees a case manager and counselor. Petitioner's nurse testified that Petitioner reported "severe and persistent" nightmares which caused an increase in prescribed medication dosages. Petitioner testimony estimated that he can focus on tasks for only 10-15 minutes due to his various psychological disorders.

Presented medical records generally verified a medical treatment history consistent with exertional restrictions due to back and knee dysfunction. Concentration and social interaction impairments were also consistent with Petitioner's presented treatment history. Petitioner's treatment history was established to have lasted at least 90 days and at least since Petitioner's date of SDA application. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

At the third step, we also consider the medical severity of your impairment(s). 20 C.F.R. § 416.920 (4)(iii). If you have an impairment(s) that meets or equal one of our listings in appendix 1 to subpart P of part 404 of this chapter and meets the duration requirement, we will find that you are disabled. *Id.* If you have an impairment(s) which meets the duration requirement and is listed in appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. *Id.* 20 C.F.R. § 416.920 (d).

A listing for joint dysfunction (Listing 1.02) was considered based on Petitioner's treatment for his left knee. This listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively or that nerve root compression causes sensory or reflex loss.

A listing for spinal disorders (Listing 1.04) was considered based on lumbar dysfunction. This listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively or that nerve root compression causes sensory or reflex loss. Cardiac-related listings (Listing 4.00) were considered based on Petitioner's cardiac testing. Petitioner failed to meet any cardiac listings.

Listings for affective disorders (Listing 12.04), anxiety disorders (Listing 12.06), and stressor disorders (Listing 12.15) were considered based on Petitioner's treatment history. The listings were rejected due to a failure to establish an extreme restriction or multiple marked restrictions to understanding or applying information, interacting with others, concentration or persistence, and/or adaptation. It was also not established that Petitioner had minimal capacity to adapt to changes in environment or to demands that are not already part of daily life.

It is found Petitioner does not meet any SSA listings. Accordingly, the analysis may proceed.

If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record... 20 C.F.R. § 416.920 (e). We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work... and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can adjust to other work... *Id.*

Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. 20 C.F.R. § 416.945 (a)(1). Your residual functional capacity is the most you can still do despite your limitations. *Id.* We will assess your residual functional capacity based on all the relevant evidence in your case record. *Id.* We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not "severe,"... when we assess your residual functional capacity. 20 C.F.R. § 416.945 (a)(2). We will assess your residual functional capacity based on all of the relevant medical and other evidence. 20 C.F.R. § 416.945(a)(3). We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. 20 C.F.R. § 416.945(a)(5).

At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. 20 C.F.R. § 416.920(a)(4)(iv). If you can still do your past relevant work, we will find that you are not disabled. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 C.F.R. § 416.960(b)(1). We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy. 20 C.F.R. § 416.960(b)(3).

Petitioner presented a list of his work history (Exhibit 1, p. 423). The history only went back to 2007. Petitioner testified that he was unable to remember his work history from before 2007 due to an assault that occurred in 2008.



Petitioner's reported work history included job titles of carnival ride operator, truck driver, brake press operator, and welder. Petitioner testified he was fired from brake press operator employment for negligence. Petitioner testified he is unable to professionally drive because prescribed medications would disqualify him from such employment. Petitioner testified he is unable to perform the bending required of welding employment. Petitioner testimony implied he could not handle the social interactions required of his carnival ride operation employment. Petitioner testified that back pain would prevent all former employment.

Petitioner's testimony that he is unable to perform past employment was consistent with presented treatment records. It is found that Petitioner is unable to perform past employment.

If we find that your residual functional capacity does not enable you to do any of your past relevant work or if we use the procedures in § 416.920(h), we will use the same residual functional capacity assessment when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and the vocational factors of age, education, and work experience, as appropriate in your case. (See § 416.920(h) for an exception to this rule.) Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. 20 C.F.R. § 416.920(a)(4)(v). If you can make an adjustment to other work, we will find that you are not disabled. *Id.* If you cannot make an adjustment to other work, we will find that you are disabled. *Id.*

Your impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit your ability to meet certain demands of jobs. 20 C.F.R. § 416.969a(a). These limitations may be exertional, nonexertional, or a combination of both. *Id.*

When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), we consider that you have only exertional limitations. 20 C.F.R. § 416.969a(b). When your impairment(s) and related symptoms only impose exertional limitations and your specific vocational profile is listed in a rule contained in appendix 2, we will directly apply that rule to decide whether you are disabled. *Id.*

When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the demands of jobs other than the strength demands, we consider that you have only nonexertional limitations or restrictions. 20 C.F.R. § 416.969a(c)(1). Some examples of nonexertional limitations or restrictions include the following... nervousness, anxiousness, depression, attention or

concentration deficits, difficulty remembering instructions, vision loss, hearing loss, difficulty with environment (e.g. fumes), hand manipulation, bending, crouching, kneeling, or other body maneuvers (see *Id.*).

If your impairment(s) and related symptoms, such as pain, only affect your ability to perform the nonexertional aspects of work-related activities, the rules in appendix 2 do not direct factual conclusions of disabled or not disabled. 20 C.F.R. § 416.969a(c)(2)

Limitations are classified as exertional if they affect your ability to meet the strength demands of jobs. *Id.* To determine the physical exertion requirements of work in the national economy, we classify jobs as *sedentary, light, medium, heavy, and very heavy.* 20 C.F.R. § 416.967.

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. 20 C.F.R. § 416.967 (a) Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. *Id.*

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. 20 C.F.R. § 416.967(b). Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. *Id.* If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

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 C.F.R. § 416.967(c). If someone can do medium work, we determine that he or she can also do sedentary and light work. *Id.*

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 C.F.R. § 416.967(d). If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. *Id.*

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 C.F.R. § 416.967(e). If someone can do very heavy work, we determine that he or she can also do heavy, medium, light, and sedentary work. *Id.*

Given Petitioner's age, education and employment history a determination of disability is dependent on Petitioner's ability to perform sedentary employment. For sedentary

employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Physician statements of Petitioner restrictions were not presented. Restrictions can be inferred based on presented documents.

Petitioner testified he is limited to walking of less than a block. Petitioner testified his standing is limited to 10-minute periods; Petitioner testimony estimated he could only walk or stand for less than an hour over an 8-hour workday. Petitioner testified he could sit for an hour, with multiple adjustments; Petitioner could not state how many hours over an 8-hour workday he could sit. Petitioner could not state what his lifting/carrying abilities were.

Petitioner testified he limits showers to 5 minutes and that he relies on the shower bar to hold himself up. Petitioner testified he is unable to tie his shoes due to difficulty bending. Petitioner testified he is unable to mow a lawn or bend over to remove clothes from a dryer; Petitioner testified that that vacuuming is painful. Petitioner testified he relies on a scooter when shopping.

Petitioner's testimony was indicative of exertional restrictions that would likely preclude the performance of any employment. Presented evidence was partially consistent with Petitioner's statements.

Presented lumbar radiology verified *moderate* foraminal stenosis at L5-S1 with nerve root abutment. *Mild* foraminal stenosis was also verified. The radiology is indicative of pain that could be reduced with treatment, though a degree of pain might persist despite treatments. Flare-ups may occur, though not likely to the point that sustaining employment is impractical. Treatment history generally indicated little success despite attempts at physical therapy, pain medication, and injections.

Presented left knee radiology also verified degrees of dysfunction. *Mild-to-moderate* degenerative cartilage changes, *trace* effusion, and a meniscus tear were verified. Surgical treatment was not verified. Presented radiology was indicative of exertional restrictions, but not likely restrictions that would preclude sedentary employment.

Petitioner testified that he began using a cane after he stopped working in December 2015. Petitioner testified he utilizes it when he has "bad" back pain, though he tries not to rely on it because of how it looks (Petitioner did not use a cane on the day of hearing). Presented evidence documented neither Petitioner's use of nor need for a cane.

Loss of motor strength was not apparent. An abnormal gait was not apparent. The absence of such assessments is indicative that Petitioner is capable of performing all exertional requirements of sedentary employment.

It is found that Petitioner is capable of performing all exertional requirements of sedentary employment. The analysis will proceed to consider Petitioner's non-exertional requirements.

Presented documentation verified multiple incidents of concern. A suicide attempt was documented in early January 2016. One month later, Petitioner's GAF was assessed at only 25 which is indicative of a loss of reality, including hallucinations and highly dysfunctional behaviors. The low GAF was consistent with Petitioner's subsequent behavior, including threatening his physician and further suicide ideation.

Petitioner's psychological impairments were not found to be so marked that he met listing requirements, though perhaps they should have been. Medication compliance would be a must. Petitioner is deemed limited to very simple and repetitive employment requiring very little social interaction.

MDHHS did not present vocational evidence of employment within Petitioner's capabilities. Petitioner's non-exertional restrictions are deemed to be so restrictive that it must be assumed that Petitioner's potential employment opportunities are functionally non-existent in lieu of vocational evidence stating otherwise.

It is found that Petitioner is disabled based on combined exertional and non-exertional restrictions. Accordingly, it is found that MDHHS improperly denied Petitioner's SDA application.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly denied Petitioner's application for SDA benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's SDA benefit application dated August 18, 2016;
- (2) evaluate Petitioner's eligibility subject to the finding that Petitioner is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Petitioner is found eligible for future benefits.

The actions taken by MDHHS are **REVERSED**.

CG/hw



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**Christian Gardocki**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

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

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

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

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

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

**DHHS**

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

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]