



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
DETROIT

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 10, 2017
MAHS Docket No.: 17-009980
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 September 26, 2017, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

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 January 30, 2017, Petitioner applied for SDA benefits.
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On July 11, 2017, the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 9-15).
4. On July 14, 2017, MDHHS denied Petitioner's application for SDA benefits.
5. On July 25, 2017, Petitioner requested a hearing disputing the denial of SDA benefits

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 completed was an associate degree in general studies.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner has various restrictions which allow the performance of sedentary light 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 a 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 1, pp. 4-7) dated July 14, 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 2017 monthly income limit considered SGA for non-blind individuals is \$1,170.00.

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 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th 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 (1st 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 (1st 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.

Various psychological treatment documents (Exhibit A, pp. 183-193, 203-214) from November 2008 through March 2009 were presented. A diagnosis for bipolar disorder was noted. The documents were suggestive of impairments related to mental disorders.

A pelvic MRI (Exhibit A, pp. 57-58, 170) dated [REDACTED], was presented. An impression of radiology compatible with early bilateral sacroiliitis was noted. A possibility of seronegative spondyloarthropathy was also noted.

Rheumatologist office visit notes (Exhibit A, pp. 107-116) dated [REDACTED], were presented. A report of "significant" back pain was noted. Petitioner also reported shoulder pain, morning stiffness, persistent mid-back, bilateral hip, left ankle, and left elbow pain since January 2014. Colitis was reportedly not well-controlled. Normal musculoskeletal findings were noted. Diagnoses included sacroiliitis and ulcerative colitis without complication.

Rheumatologist office visit notes (Exhibit A, pp. 97-107) dated [REDACTED], were presented. A report of "significant" back pain was noted. Petitioner also reported shoulder pain and morning stiffness. Colitis was "well-controlled, though "significant" unspecified problems were separately noted. Normal musculoskeletal findings were noted. Diagnoses included sacroiliitis and ulcerative colitis without complication. It was noted Petitioner has not yet received Humira injections, though he would benefit by them.

Internist office visit notes (Exhibit A, pp. 94-97, 168-169) dated [REDACTED], were presented. Ongoing colitis treatment was noted. Petitioner complained of fatigue and occasional dizziness. Physical exam assessments were normal. Medications were continued.

Sleep specialist office visit notes (Exhibit A, pp. 23-26) dated [REDACTED], were presented. It was noted Petitioner was a new patient and reported complaints of multiple awakenings, taking 30 minutes to sleep, waking with headaches, daytime sleepiness, snoring, and choking while sleeping. Obstructive sleep apnea (OSA) was diagnosed. A sleep study was scheduled.

A sleep study report (Exhibit A, pp. 34-35) dated [REDACTED], was presented. An impression of "moderately elevated" apneas/hyponeas was noted. An impression of OSA was noted. CPAP use was recommended

A sleep study report (Exhibit A, pp. 36-37) dated [REDACTED], was presented. "Significant improvement" with use of CPAP was noted. Petitioner was advised to not drive or handle machinery until daytime sleepiness resolved.

Sleep specialist office visit notes (Exhibit A, pp. 38-39) dated [REDACTED], were presented. Petitioner reported not using CPAP regularly due to problems with his mask.

Rheumatologist office visit notes (Exhibit A, pp. 89-93) dated [REDACTED], were presented. A report of "significant" back pain was noted. Petitioner also reported shoulder pain and morning stiffness. Colitis was "well-controlled", though "significant" unspecified problems were separately noted. Paraspinal tenderness and limited lumbar movement was noted. Diagnoses included ankylosing spondylitis and seronegative spondyloarthropathy. It was noted Petitioner has not yet received Humira injection, though he would benefit by them.

Sleep specialist office visit notes (Exhibit A, pp. 40-41) dated [REDACTED], were presented. Petitioner reported regularly using CPAP. Petitioner reported feeling more awake, no snoring, and feeling refreshed.

Internist office visit notes (Exhibit A, pp. 87-89) dated [REDACTED], were presented. Ongoing colitis treatment was noted. Physical exam assessments were normal. Medications were continued.

A mental status examination report (Exhibit A, pp. 19-21) dated [REDACTED], was presented. The report was noted as completed by a consultative licensed psychologist as part of Petitioner's claim for Social Security Administration (SSA) benefits. Petitioner reported mental health symptoms and/or diagnoses of bipolar disorder and agoraphobia. Constriction of interests and social activity only with parents were reported. Petitioner testified he was previously diagnosed as mentally ill by a probation officer. Petitioner reported no psychiatric history. Petitioner reported independent performance of daily activities. Noted observations of Petitioner made by the

consultative examiner included the following: spontaneous and well organized stream of mental activity, flat and constricted emotional reaction, and alert. A previous psychiatric hospitalization was reported. Petitioner was deemed capable of performing mental arithmetic, but not sequential computations. Impaired formal judgment was noted. A diagnosis of persistent depressive disorder (moderate) with Cluster A personality features (schizoid) was noted. A guarded prognosis was noted.

A Physical Residual Functional Capacity Assessment (Exhibit A, pp. 27-33, 65) dated [REDACTED], was presented. The assessment was signed by a consultant physician as part of Petitioner's SSA claim of disability. Stated restrictions included occasional lifting of 20 pounds, frequent ability to lift/carry 10 pounds, standing or sitting about 6 hours in an 8-hour workday, and unlimited pushing/pulling. Petitioner was restricted to only occasional kneeling, crawling, crouching, and climbing. Stated considerations included unspecified radiology, normal strength, normal gait and an "MER".

A Psychiatric Review Technique (Exhibit A, pp. 66-80) dated [REDACTED], was presented. The document was signed by a licensed psychologist as part of Petitioner's SSA claim of disability. The assessor noted that Petitioner did not meet Listing 12.04. A mild concentration restriction was noted. Stated considerations included Petitioner's lack of medication, lack of treatment, and mental status examination findings.

Petitioner testified he applied for disability benefits several years ago alleging impairments due to bipolar disorder. Petitioner testified he only applied for disability benefits because a therapist told him to do it. Petitioner testified he does not receive any treatment for bipolar disorder or other psychological disorders. Petitioner testimony denied any ongoing impairments related to psychological problems.

Treatment for sleep apnea was documented. Petitioner testimony did not imply restrictions related to sleep apnea. Presented medical records were not indicative of sleep apnea symptoms as long as Petitioner utilizes a CPAP.

Petitioner testified that he had month-long flare-ups of colitis back in 2010. Petitioner testified he eventually saw a physician and his symptoms dwindled. Petitioner testified his functioning worsened in [REDACTED] when he lost employment and experienced increased stress.

Presented evidence verified treatment for ulcerative colitis. Petitioner testified the disorder causes him to use a restroom every two hours. Petitioner testified he typically has approximately eight bowel movements per day. Petitioner testified colitis also requires him to closely monitor his diet; Petitioner testified he is discouraged from eating spicy, buttery, and/or greasy foods. Petitioner testified his diet has expanded since initial treatment as he can now eat fruits and vegetables. Petitioner testified that ongoing colitis treatment includes seeing a gastrologist every three years.

Petitioner testified that previous delays in pursuing colitis treatment caused him to develop sacroiliitis in 2015. Petitioner testified sacroiliitis affects all of his body joints, but

particularly in his back, hips, and ankles. Petitioner testified that his physicians will not prescribe pain medications. Petitioner testified he was treated by a spine specialist but he stopped attending appointments because there is no available treatment other than Humira.

Petitioner testified he may be able to work if his medical insurance approved a prescription for Humira. Petitioner testified the prescription would greatly reduce joint inflammation. Petitioner testified that his insurance company denied the prescription 3-4 times already. Petitioner testimony speculated the basis for denial is the significant cost of the prescription. Petitioner's statements of insurance denials was consistent with treatment records (see Exhibit 1, p. 89).

Presented medical records generally verified a medical treatment history consistent with exertional restrictions due to colitis and sacroiliitis. 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 a diagnosis of sacroiliitis. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively or perform fine and gross movements with both upper extremities.

A listing for spinal disorders (Listing 1.04) was considered based on Petitioner's back pain. This listing was rejected due to a failure to establish any of the following: a compromised nerve root, Petitioner is unable to ambulate effectively, or that nerve root compression causes sensory or reflex loss.

A listing for sleep apnea (Listing 3.10) was considered. The listing was rejected due to a failure to meet the requirements of Listings 3.09 or 12.02.

Digestive disorder listings (Listings 5.00) were considered based on a diagnosis of colitis. Petitioner presented insufficient evidence that any digestive disorder listing was met.

It is found Petitioner does not meets any SSA listings. Accordingly, the disability 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).

For purposes of this decision, a fully developed RFC assessment will not be undertaken. Instead an RFC assessment will be performed, as necessary, in the final disability analysis steps.

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 testimony referenced employment as a matire'd, busboy, and groundskeeper. Petitioner testimony implied that none of the employment resulted in earnings exceeding SGA.

Petitioner testified he worked seasonally at a factory. Petitioner testified his job was to repetitively place photos in picture frames. Petitioner testified he was not required to lift more than 10 pounds. Petitioner testified that he spent 6 hours of his 7-hour workday standing. During the hearing, Petitioner was asked if he could return to perform this employment; Petitioner indicated that an employer would doubtfully allow him the restroom breaks that he needed. Petitioner testimony also implied he could not perform the standing needed to perform this job. For purposes of this decision, Petitioner's testimony will be accepted.

It is found that Petitioner is unable to perform past employment. Accordingly, the disability analysis may proceed to the final step.

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.

Petitioner testified he used to walk 3-6 miles at a time. Petitioner testified it is painful for him to walk longer than a mile, in part, due to obesity (he stated that he is [REDACTED] and weighs [REDACTED] pounds). Petitioner also testified that he has foot pain, in part, from residual effects from a broken foot which occurred years earlier.

Petitioner testified that his standing is limited to 15-20 minutes before his back burns and locks-up. Petitioner testified that sitting is restricted to 30 minutes before his back

gets numb and he has to stand. Petitioner testified that lifting/carrying is limited to less than 20 pounds. Petitioner testified his hands sometimes swell if he hold something too long.

Petitioner testimony indicated he could stand and/or walk for 2 hours of an 8-hour workday. Petitioner testified he is limited to sitting for 3 hours of an 8-hour workday.

Petitioner testified he has no problems with bathing or dressing. Petitioner testified that he can wash dishes and vacuum, but is unable to lift furniture or perform the reaching required to clean windows. Petitioner testified he does not do laundry, but only because he does not know how, and his parents wash his clothes for him. Petitioner testified he shops with his mother, but did not indicate other restrictions. Petitioner testified he does not drive because he has a suspended license.

Petitioner's statements concerning limited standing and sitting were generally consistent with an inability to perform sedentary employment. The analysis will proceed to consider whether Petitioner's statements were supported by presented medical records.

During the hearing, Petitioner was asked how he spends his day. Petitioner responded that he "pretty much" sits and uses iPad all day. The testimony is consistent with an ability to perform the sitting needed for sedentary employment.

During the hearing, Petitioner was asked about doing customer service representative work. The hypothetical question indicated a requirement to sit for most of the day, though the hypothetical offered a sit-stand option and 15-minute break. Petitioner was further advised the hypothetical employment required the bulk of the workday on the telephone. Petitioner responded he could not do job because being on the phone "does not sound appealing" and that he would not do it. Petitioner testified he prefers to work with his hands.

Petitioner's preference to perform non-telephone employment is not a consideration in the disability analysis. The only considerations are whether Petitioner has exertional or non-exertional impairments to performing employment.

Petitioner testimony implied the bathroom breaks needed to perform employment render him unemployable. Petitioner testified each restroom trip takes 15-20 minutes. Based on Petitioner's stated four trips per work shift, an hour would be needed for restroom use. Presented evidence was suggestive that Petitioner might not need as much time as stated.

Presented medical records documented difficulty with colitis, though a specific complaint of excessive bowel movements did not appear to be documented. Petitioner also testified he's never had an accident; an absence of an accident is slightly supportive that he has some control over bowel movements. Most notably, Petitioner testified that he previously controlled bathroom breaks in previous jobs by taking anti-diarrhea pills. It is not difficult to imagine that Petitioner could further control bowel

movements based on his eating times, eating choices, and/or the times he takes medication.

Based on presented evidence, Petitioner may occasionally require an employer's understanding for occasional bathroom usage, however, evidence of usage that renders Petitioner to be unemployable was lacking. Other impairments will be examined.

Various diagnoses (e.g. seronegative spondyloarthritis, ankylosing spondylitis, and sacroiliitis) suggesting joint pain were documented. Overall, evidence was not suggestive of joint pain precluding sedentary employment.

Petitioner testified he does not utilize a walker or cane. Generally, non-use of ambulation assistance is consistent with an ability to perform sedentary employment.

Physical examination assessments regularly noted no abnormal musculoskeletal findings. The occasional times when musculoskeletal findings were abnormal, spinal tenderness was documented. Spinal tenderness is not sufficient to infer an inability to perform sedentary employment.

Given Petitioner's inability to obtain a medication which would reduce joint swelling and the absence of pain medication, it is appreciated that Petitioner experiences a degree of disruptive pain. It is reasonable to infer that Petitioner's pain levels would preclude performance of non-complex employment.

As noted in the second step of the analysis, impairments from OSA and psychological disorders were not sufficiently established. Thus, any related restrictions will not be considered in Petitioner's employability.


Jobs within the Dictionary of Occupational Titles that are appropriate for Petitioner would include telemarketing, light assembly, data entry, receptionist, customer service telephone representative, and others. MDHHS did not present vocational evidence of jobs available to Petitioner, however, such jobs are presumed to be sufficiently available that vocational evidence is not needed. It is found that sufficiently available sedentary employment exists for Petitioner.

Based on Petitioner's exertional work level (sedentary), age (younger individual aged 18-44), education (at least high school), employment history (unskilled), Medical-Vocational Rule 201.27 is found to apply. This rule dictates a finding that Petitioner is not disabled. Accordingly, it is found that MDHHS properly found Petitioner to be not disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's SDA benefit application dated January 30, 2017, based on a determination that Petitioner is not disabled. The actions taken by MDHHS are **AFFIRMED**.

CG/



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]

Petitioner

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]