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GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: March 22, 2018  
MAHS Docket No.: 17-014452  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

**HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, an in-person hearing was held on January 24, 2018 from Taylor, Michigan. Petitioner appeared for the hearing and was represented attorney ██████ ██████. The Department of Health and Human Services (Department) was represented by Assistant Attorney General (AAG) ██████████ and who appeared with ██████████, Medical Contact Specialist.

During the hearing, Petitioner and his attorney waived the time period for the issuance of this decision in order to allow for the submission of additional records. No additional medical records were received by the undersigned ALJ in response to the Interim Order issued. The record closed on February 23, 2018 and the matter is now before the undersigned for a final determination on the evidence presented.

**ISSUE**

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

**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 or around June 13, 2017 Petitioner submitted an application for cash assistance on the basis of a disability.
2. On or around August 15, 2017 the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. The DDS determined that Petitioner was capable of performing other work. (Exhibit A, pp. 3-9)

3. On August 17, 2017 the Department sent Petitioner a Notice of Case Action denying his SDA application based on DDS' finding that he was not disabled. (Exhibit A, pp. 296-299)
4. On November 13, 2017 Petitioner submitted a timely written Request for Hearing disputing the Department's denial of his SDA application. (Exhibit A, pp. 300-301)
5. Petitioner alleged physical disabling impairments due to a broken ankle, hip pain, back pain due to a herniated disc and two bulging discs, a stiff neck, and mental disabling impairments due to depression.
6. As of the hearing date, Petitioner was ■ years old with a ■ date of birth; he was ■ and weighed ■ pounds.
7. Petitioner completed high school and has employment history of work as: a switcher/driver for a logistics company; a laborer/machine operator in factory; and a truck driver.
8. At the time of application, Petitioner was not employed.
9. Petitioner has a pending disability claim with the Social Security Administration (SSA). (Exhibit B)

### **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. At the hearing, Petitioner and his attorney clarified that Petitioner sought SDA only for a limited or closed period from the June 13, 2017 application date to September 20, 2017 when Petitioner was determined able to return to work with restrictions.

A disabled person is eligible for SDA. BEM 261 (April 2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable

to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

### **Step One**

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was working at the time of the hearing and testified that he had returned to his employment on or around December 14, 2017. However, he testified that he was not working from the time of his motorcycle accident in June 2016 to the date he returned to work in December 2017 when his doctor gave him medical clearance to work without restrictions. Petitioner sought SDA benefits for a limited period from the date of his application June 13, 2017 to September 20, 2017, the date in which his doctor found him able to return to work with restrictions. Petitioner alleged he was disabled for the period between June 13, 2017 and September 20, 2017. Because Petitioner was not engaged in SGA during the period for which he sought SDA benefits, 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. Social Security Ruling (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.

The medical evidence presented at the hearing was thoroughly reviewed and is briefly summarized below:

On June 25, 2016 Petitioner was transported to the hospital via ambulance after being involved in a motorcycle accident. Petitioner presented with ankle pain, neck stiffness, lumbar back pain, right hip pain and rib pain. An X-ray of Petitioner's left ankle showed a fracture involving lateral and posterior malleoli with disruption of the ankle mortise. Significant soft tissue swelling was noted. CT scan of the left ankle confirmed a

trimalleolar fracture. Petitioner was discharged on June 26, 2016 and was to follow-up with an orthopedic surgeon for evaluation. (Exhibit A, pp. 35-43)

On July 6, 2016 Petitioner was evaluated by an orthopedic surgeon. It was noted that Petitioner had a posterior malleolar fracture as well as a lateral malleolar fracture and a deep deltoid ligament injury. Petitioner's gait was non-weight bearing on his left lower extremity with crutches. Range of motion, deformity or strength was not assessed due to the instability of the fracture. On July 7, 2016 Petitioner underwent an open reduction and internal fixation of left lateral malleolar fracture to repair his ankle. On July 18, 2016 Petitioner presented for follow-up. X-ray images showed ankle mortise, stable and fracture anatomically reduced. A short-leg cast was applied and he was to follow-up in one month. As of September 7, 2016 visit, Petitioner was full weight bearing on his left lower extremity and the incisions were well healed. It was noted that Petitioner was to continue with physical therapy and transition to a cane. Notes from his November 2, 2016 follow-up visit indicate that he was still doing physical therapy for his left ankle and back issues. It was noted that Petitioner's gait was normal but that he had mild swelling and mild tenderness about the lateral aspect of the left ankle. November 30, 2016 notes show that Petitioner's fracture had healed and the doctor noted that he could return to work full duty without restrictions with respect to the ankle. It was noted that Petitioner has ongoing back issues that are being addressed by someone else. (Exhibit A, pp. 115-126,155-170)

Records from Petitioner's physical therapy sessions for his ankle were presented for review and show that Petitioner was in treatment from August 2016 to December 2016. Upon his discharge in December 2016 it was noted that Petitioner was ambulating short community distances but limited due to pain in foot and low back. It was noted that Petitioner reported intermittent soreness/tightness on the dorsum of the ankle and further complained of pain in low back and left hip when walking or standing longer than 10 mins. (Exhibit A, pp. 190-240)

Records from Petitioner's pain management treatment with [REDACTED] from October 2016 to December 2017 were presented for review and show that at initial evaluation, Petitioner reported lower back pain, neck pain and ankle pain. The records indicate that Petitioner was being treated for chronic pain due to trauma, cervical disc herniation, lumbar disc herniation, and myofascial pain syndrome (cervical, thoracic, and lumbar). Petitioner underwent four lumbar interlaminar epidural steroid injections at the L4-5 on April 29, 2017, March 4, 2017, February 4, 2017, and January 7, 2017. During his October 21, 2017 visit, Petitioner reported pain radiating down to his right buttocks which makes it now difficult to sit. Physical exam showed tender flexion and side bending at the C4-C6, L4-S1 tender flexion, straight leg positive, and Fortins sign positive. He also had a right sacroiliac joint injection under fluoroscopic guidance on October 21, 2017 as he was diagnosed with sacroilitis. (Exhibit A, pp. 59-85; Exhibit 1)

On January 6, 2017 Petitioner participated in an independent medical evaluation at the request of his insurance company. Petitioner was observed to ambulate with the assistance of a cane. Records show that an X-ray of Petitioner's left ankle was

performed and showed a plate and six screws above the distal fibula. The report indicates that the doctor found: a normal clinical orthopaedic examination of the cervical, thoracic and lumbosacral spine; a healed left ankle with no functional impairment; and that Petitioner had history of depression and anxiety. The examining doctor was of the opinion that Petitioner had no abnormality of any functional impairment and could return to work without restrictions and further treatment. (Exhibit A, pp. 97-104)

It should be noted that the results of the independent medical evaluation are inconsistent with the medical records and assessments made by Petitioner's treating physicians referenced above and below.

Records from Petitioner's treatment at [REDACTED] from June 2016 to January 2018 were presented for review and show that after several evaluations on a consistent basis, the doctor found Petitioner fully disabled from performing any type of work until September 20, 2017. Petitioner's restrictions were subsequently all lifted in December 2017. (Exhibit A, pp. 17, 30; Exhibit 2). EMG/Nerve conduction studies from September 20, 2016 showed no evidence of myopathy, neuropathy, or radiculopathy. Evaluation notes from January 2017, February 2017, and March 2017 indicate that Petitioner had: decreased range of motion, tenderness, and muscle spasm in the cervical, thoracic and lumbar spine. Records indicate that Petitioner's depression had progressed throughout the course of his treatment at [REDACTED] and Petitioner had noted difficulties completing household tasks and a PHQ-9 score of 19. As of July 2017 Petitioner was continuing to attend physical therapy, his disability was continued, as was his housework and transportation assistance. He was being referred to neurology for persistent numbness and tingling. The September 2017 records show that Petitioner was put on a 15 pound lifting restriction, limited bending and twisting which continued through November 2017. Petitioner's January 2018 evaluations showed that Petitioner was cleared to return to work with no limitations. (Exhibit 2)

On August 25, 2016 a CT scan of Petitioner's cervical spine was taken due to his neck pain and showed: an 8mm central disc herniation at the C3-C4 level which encroaches mildly the anterior epidural space; a 1.2 cm broad-based central disc herniation at the C4-C5 level which encroaches mildly the anterior epidural space; a 1.2 cm central disc herniation at the C5-C6 level which encroaches the anterior epidural space and appears to approximate the anterior ventral surface of the cervical cord with mild narrowing of the central canal; facet changes as well which along with disc contribute to bilateral high-grade neural foraminal narrowing at the C5-C6 level; disc space narrowing and forward-projecting vertebral endplate spurring with subjacent vertebral endplate sclerosis also at the C5-C6; a 9mm central disc herniation which encroaches mildly the anterior epidural space at the C6-C7; facet changes at the C6-C7 level which contribute to bilateral high-grade neural foraminal narrowing; disc space narrowing, forward vertebral endplate spurring and subjacent vertebral endplate sclerosis; and straightening of the normal lordotic curve. (Exhibit A, p. 33, Exhibit 2). An August 25, 2016 CT scan of the lumbar spine showed central disc herniation at L4-L5. (Exhibit 2)

██████████ notes indicate that Petitioner was diagnosed with and being treated for major depressive disorder, recurrent episode moderate and panic disorder. (Exhibit A, pp. 27-29)

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 physical and mental 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 due to any cause), 1.04 (disorders of the spine), 1.06 (fracture of the femur, tibia, pelvis, or one or more of the tarsal bones), 12.04 (depressive, bipolar and related disorders), and 12.06 (anxiety and obsessive-compulsive 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 conditions.

Petitioner testified that on June 25, 2016 he was involved in a motor vehicle accident during which, he suffered injury to his ankle, hip, neck and back. He testified that during the time period in which he is seeking SDA benefits (June 2017 to September 2017), he had substantial limitations. He stated that he could walk only one block and required the assistance of a cane until October 2017. Petitioner testified that he could stand for 10 minutes and sit for 30 minutes before his lower back and neck pain began throbbing. Petitioner reported that he still had ankle pain at the time which required him to elevate his leg. Petitioner reported that he was under a lifting restriction from his treating doctor at Vital, that he could not deep bend and was unable to squat. He stated that he lived with his girlfriend who does the cooking, cleaning, household chores and shopping, as he was unable to do so. Petitioner stated that he was able to bathe and dress himself.

With respect to his nonexertional/mental impairments, Petitioner stated that he has been treating with [REDACTED] since 2016 and prior to returning to work in December 2017 was attending therapy weekly. Petitioner stated he has history of depression and identified symptoms including staying in bed all day, loss of interest, and no social interaction. Petitioner reported that he suffered from anxiety which resulted in heavy breathing, heart palpitations and sweaty palms. He stated that he had difficulty with his memory and could only concentrate/focus on a task for about 10 minutes.

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.

The evidence presented is considered to determine the consistency of Petitioner's statements regarding the intensity, persistence and limiting effects of his symptoms. Contrary to the independent medical examination completed by the insurance company, the medical evidence presented supports Petitioner's testimony regarding the severity of his impairment for the time period in which he sought SDA benefits. Records indicate that in September 2017, when Petitioner was cleared to return to work with limitations, he was placed on a 15 pound lifting restriction and was to limit his bending and twisting, suggesting that prior to this time period, Petitioner was further restricted from lifting. The evidence showed that Petitioner's restrictions were lifted in December 2017 when he returned to work.

Based on a thorough review of Petitioner's medical records and in consideration of the evidence presented from Petitioner's treating physicians, with respect to Petitioner's exertional limitations, it is found, based on a review of the entire record, that Petitioner maintained the physical capacity to perform less than sedentary work for the time period of June 13, 2017 to September 30, 2017.

While Petitioner reported history of depression and identified symptoms associated with the impairment, there was insufficient medical evidence presented for review with respect to his mental impairments and treatment. Although Petitioner was diagnosed with depressive disorder, a review of the medical evidence presented coupled with Petitioner's testimony shows that Petitioner had mild limitations in his mental ability to perform work activities for the time period of June 13, 2017 to September 30, 2017.

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 by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) 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) and (2). 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 employment as a switcher/driver for a logistics company; a laborer/machine operator in a factory; and a truck driver. Upon review, Petitioner's past employment is categorized as requiring a range from light to medium exertion. Based on the RFC analysis above, Petitioner's exertional RFC for the time period for which SDA benefits was sought limited him to less than sedentary work activities. As such, Petitioner is incapable of performing past relevant work. Because Petitioner is unable to perform past relevant work, he 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, 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 ■ years old at the time of application and hearing and thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. He is a high school graduate with semi-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 less than sedentary work activities from June 2017 to September 2017. Because he was capable of less than sedentary work, he was disabled during this period. Therefore, Petitioner is disabled at Step 5.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program from the date of application through September 20, 2017.

### **DECISION AND ORDER**

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Reregister and process Petitioner's June 13, 2017 SDA application to determine if all the other non-medical criteria are satisfied from the date of application through September 20, 2017 and notify Petitioner of its determination; and

2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified from the date of application through September 20, 2017.



ZB/tlf

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**Zainab A. Baydoun**  
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

**Via Email:**

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

**Petitioner**

- **Via First-Class Mail:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Counsel for Petitioner**

- **Via First-Class Mail:**

[REDACTED]  
[REDACTED]  
[REDACTED]