



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: September 5, 2018
MAHS Docket No.: 18-005923
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on August 6, 2018, from Detroit, Michigan. The Petitioner was represented by himself. [REDACTED] also appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Jonathan Bair, Family Independence Specialist.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On December 26, 2017 the Petitioner submitted an application seeking cash assistance on the basis of disability.
2. On May 2, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program.
3. On May 8, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability.
4. On June 24, 2018, the Department received Petitioner's timely written request for hearing.

5. Petitioner alleged disabling impairment due to motor movement impairment and major depression and anxiety.
6. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED], birth date; he is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Petitioner is a high school graduate and completed two years of college.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as an overnight stocker for a large retail outlet, moving products to the correct location and restocked product using machines to assist in moving and lifting the product. The Petitioner was also an inventory manager for same retail outlet and also scanned quantities and used equipment and machines to move and lift product to where it belongs. The Petitioner also worked as a sales associate stocking the sales floor with products and assisting customers, retrieving shopping carts from parking lot and cleaning shelving. Food Service Manager duties included supervising employees, serving as a cashier, moved food supplies to smaller freezers, counted and logged sales receipts and accounted for correct money in drawers, and completed paperwork regarding daily productivity.
10. Petitioner has a pending disability claim with the Social Security Administration (SSA).

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. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness.

BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least 90 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 1

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

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he is not ineligible under Step 1, and the analysis continues to Step 2.

Step 2

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, *and in response to the interim order*, was reviewed and is summarized below.

The Petitioner has received no treatment for any mental impairment from community mental health or other facility treating mental impairment. The Petitioner's primary care physician has prescribed Xanax and Wellbutrin for the Petitioner's depression and anxiety impairments. Petitioner testified that he hears voices and sees shadows. The Petitioner does interact with friends monthly and connects on Facebook. The Petitioner testified to memory problems, and requiring things being repeated to him, suffers from crying spells and anxiety attacks weekly. The Petitioner's mother who he resides with

also testified that his memory about occurrences such as crying in more that Petitioner expressed at the hearing and that when he cooks his arms can flail uncontrollably so she watches him. The same supervision is also necessary when he cleans the bathroom.

The Petitioner's primary care physician confirmed a diagnosis of neuro psychologic condition.

A Mental Status consultative exam was completed on [REDACTED] 2018. At the exam, the Petitioner advised the examiner that his legs were stiff and heavy, that he had involuntary body movements and speech is not smooth. The examiner observed that the Petitioner walked like he is on stilts, using his hips to move his legs forward rather than bending at the knee. Medications reported by patient were Xanax, Wellbutrin, Lisinopril, and Risperdal. Petitioner reported playing video games and computer games, reading, lifting weights and watching television. The Petitioner told the examiner that he exercised, cooked, did laundry, cleans his bathroom, grocery shops with his mother, and can drive although limits himself if his symptoms are bad.

The notes indicate that Petitioner's posture, speed and gait are clearly affected by his motor movement problems. During the interview, the examiner did observe involuntary movement of his head which would roll around in a circle and his arms suddenly crossing himself as if suddenly pulled across his torso. The examiner noted that Petitioner's motor behavior is reduced as far as his strength, endurance and mobility and can manage independently. Motivation level rated as fair and insight adequate. Thought processes were logical and organized, speech clear but at times seemed slow with memory and concentration grossly intact. Depression was described as episodic and can last couple of hours to a week. The Petitioner had some difficulty recalling objects, only 2 of 3, even with category prompting and was successful when he was given multiple choices. Diagnosis was unspecified mood disorder with mixed anxiety and depression, mild, and functional movement disorder and obesity. Prognosis was fair. Psychological functioning seemed okay, but struggles to deal with limitations with primary limitation with respect to employment are the physical issues brought on by the functional motor disorder.

The Medical Source Statement expressed the following limitations. Understanding, remembering and using information and learning new skills, were rated mild. Concentration, Persistence and Pace were rated as marked predominantly due to physical limitations he has that would affect his persistence and pace; concentration skills are adequate. Social skills were rated as mild to moderate, capable of appropriate social interactions with the examiner and can deal with general public. Regarding adaptability and self-management, limitations were moderate again due to his physical limitations finding Petitioner can travel to new places and use public transportation and still drives and can manage his activities of daily living.

On [REDACTED] 2017, Petitioner had a CT of abdomen and pelvis due to one month of diffuse abdominal pain, blood in stool resulting in an impression of no definite evidence of acute abnormality which must be correlated clinically with concern for GI bleed.

Petitioner was seen by his primary care physician (PCP) on [REDACTED] 2017, for blood in stool and dental pain due to dental abscess. That day, the Petitioner presented as nervous and anxious. During the exam, no neurological deficits were present and had no psychiatric symptoms, normal mood and affect. No involuntary movement mentioned.

The Petitioner was seen by his PCP on [REDACTED] 2017, due to frequent unintentional movements in his back and shoulder, neck and jaw noting past neurology diagnosis of functional psychogenic movement disorder, with speech problem, stuttering reported. The notes indicate very mild fine motor tremor mostly in right hand. Symptoms evaluated as worsening with focal tics, with report of occasionally hears muffled voices. Risperdal was prescribed. Patient was to return if symptoms worsen or fail to improve.

The Petitioner was seen on [REDACTED] 2017, by his PCP for recheck of Risperdal with noted substantial improvement of involuntary movements.

Petitioner was seen by his PCP on [REDACTED] 2017, at which time he was seen for his blood in stool and epigastric pain with improvement noted. The exam notes indicate that patient continues to exhibit involuntary movements, body rocking, shoulder writhing and vocal tics, affect is blunt and has resting tremors of his hands observed by the examiner. Doctor expressed doubt that patient could work and suggested he apply for disability. Neurologist's notes from one year ago reviewed note that condition is not organic. Noted symptoms tics worsening, arm jerking, shoulder writhing, grunting and vocalization, often says "ouch" and has stuttering speech nervous and anxious.

Petitioner was seen by his PCP on [REDACTED] 2018, at which time noted improvement in uncontrolled movements. Doctor noticed tics and stuttering during the visit with seeming improvement. Doctor expresses in notes that movement disorder may be representative of early Tourette's.

The Department caseworker noted that Petitioner had observable minor tics and rocking movements and stuttering during the interview several times. The undersigned also noted slow speech during the hearing.

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step 3

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 11.06 Parkinsonian syndrome, (neurological disorders), 12.04 Depressive, bipolar and related disorder; 12.06 Anxiety and obsessive-compulsive disorders and 12.08 Personality and impulse control 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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five-point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four-point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner testified that he could stand 10 to 15 minutes and sit up to 48 minutes and could carry up to 20 pounds and could walk 20 feet, can drive unless symptoms are present. It appears that Petitioner can perform most activities of daily living including cleaning, laundry, and goes grocery shopping with his mother, but is sometimes observed by his mother when cooking due to uncontrolled movement of his arms and plays video and computer games. At the consultative mental status exam, the examiner noted that posture, speed and gait are clearly affected by his motor movement problems, and Petitioner had a lot of difficulty walking. In addition, the examiner found the Petitioner had marked limitations for Persistence and Pace. (Exhibit A, p. 70.) The Petitioner's primary care doctor who has treated Petitioner for several years also notes observing tics and involuntary movements as well as slow speech and stuttering. The Petitioner has been diagnosed with a psychogenic movement disorder (functional movement disorder).

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.

With respect to Petitioner's exertional limitations, with respect to walking it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a).

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has moderate limitations on his nonexertional limitations due to his functional movement disorder except for marked limitations due to persistence and pace and moderate anxiety and depression which is episodic, with no treatment other than medications to address symptoms and thus is able to perform basic work activities. Based upon the consultative exam the Petitioner has mild to moderate social functioning, concentration, and activities of daily living.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step 4

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 work as an overnight stocker for a large retail outlet, moving products to the correct location and restocking product using machines to assist in moving and lifting the product. The Petitioner was also an inventory manager for same retail outlet and also scanned quantities and used equipment and machines to move and lift product to where it belongs. The Petitioner also worked as a sales associate stocking the sales floor with products and assisting customers, retrieving shopping carts from parking lot and cleaning shelving. Food Service Manager duties included supervising employees, serving as a cashier, moved food supplies to smaller freezers, counted and logged sales receipts and accounted for correct money in drawers, and completed paperwork regarding daily productivity. The Petitioner walked, stood, climbed and reached 8 hours a day as well as nonexertional movement involving stooping, kneeling crouching

handling grasping object and writing and typing. He also used equipment to move stock and lifted and carried products weighing between 5 and 25 pounds, and the heaviest weight was 100 pounds. (Exhibit A, pp. 46-51.) As such, the work previously performed by Petitioner would be considered light to medium work.

Based on the RFC analysis above, Petitioner's exertional RFC limits him to no more than sedentary work activities. As such, Petitioner is incapable of performing past relevant work. Petitioner also has nonexertional limitations due to his functional movement disorder affecting pace and persistence and his capacity to perform his former work activities. In light of the entire record, it is found that petitioner's nonexertional RFC prohibits him from performing past relevant work.

Because Petitioner is unable to perform past relevant work, Petitioner cannot be found disabled, or not disabled, at Step 4, and the assessment continues to Step 5.

Step 5

If an individual is incapable of performing past relevant work, Step 5 requires an assessment of the individual's RFC and age, education, and work experience to determine whether an adjustment to other work can be made. 20 CFR 416.920(a)(4)(v); 20 CFR 416.920(c). If the individual can adjust to other work, then there is no disability; if the individual cannot adjust to other work, then there is a disability. 20 CFR 416.920(a)(4)(v).

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(c)(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

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 ■ years old at the time of hearing, and thus, considered to be a younger individual (age 18-44) for

purposes of Appendix 2. He is a high school graduate with some college classes without obtaining a degree. Petitioner has history of work experience as a stocker and handler of retail goods and a food service manager. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities. Even though Petitioner testified walking only 20 feet, there was no evidence of this limitation other than the consultative exam observation that Petitioner had difficulty with movement and walking. The Medical Social questionnaire notes that Petitioner walked 50 feet to the interview area and stood and sat with no apparent difficulty. (Exhibit A, p. 31.) None of the medical records provided by Petitioner's Primary Care Physician notes walking problems and mostly address tics, involuntary movement of arms and tremors in right hand which have been reduced with medication. In addition, the Petitioner testified that is capable of playing video games and computer games regularly.

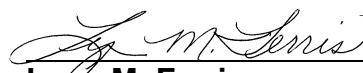
However, Petitioner also has nonexertional impairments due to his functional movement disorder. The undersigned considered his PCP's opinion that he cannot work but this alone does not result in the conclusion that the Petitioner cannot perform any work as such a determination is reserved to the SSA commissioner. As a result, it is determined that Petitioner has a nonexertional RFC imposing moderate limitations in his activities of daily living; mild to moderate limitations in his social functioning; and has adequate concentration skills with moderate limitations, persistence or pace limitations. These limitations do not significantly erode the occupation base of sedentary work. It is found that those limitations would not preclude him from engaging in simple, unskilled work activities on a sustained basis. Therefore, Petitioner is able to adjust to other work and is **not** 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.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.

LMF/



Lynn M. Ferris

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) 763-0155; 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

Melissa Brandt
MDHHS-Ionia-Hearings

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Authorized Hearing Rep

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

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L Karadsheh
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MAHS