



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: July 28, 2017  
MAHS Docket No.: 17-006121  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

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

**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, an in-person hearing was held on June 28, 2017, from Taylor, Michigan. The Petitioner appeared for the hearing with his friend, [REDACTED] and represented himself. The Department of Health and Human Services (Department) was represented by Angela Clark, Medical Contact Specialist.

**ISSUE**

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

**FINDINGS OF FACT**

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

1. Petitioner was approved for SDA benefits based on a Hearing Decision issued on November 26, 2014, by Administrative Law Judge (ALJ) Alice Elkin. ALJ Elkin ordered that the Department review Petitioner's medical condition and ongoing eligibility for SDA benefits in July 2015. (Exhibit A, pp. 10-23)
2. On October 13, 2015, the Medical Review Team (MRT) determined that Petitioner was no longer disabled for SDA purposes. (Exhibit A, pp. 29)
3. On October 15, 2015, the Department sent Petitioner a Notice of Case Action advising him that effective November 1, 2015, his SDA benefits would be terminated on the basis that he was not disabled. (Exhibit A, p. 29)

4. On October 20, 2015, Petitioner requested a hearing disputing the Department's termination of his SDA benefits effective November 1, 2015.
5. In a Hearing Decision issued on February 23, 2016, ALJ Christian Gardocki found that the Department improperly terminated Petitioner's SDA eligibility and further that Petitioner was still a disabled person for SDA purposes. ALJ Gardocki ordered that the Department reinstate Petitioner's SDA benefits and review Petitioner's SDA eligibility in 12 months. (Exhibit A, pp. 29-41)
6. In connection with a December 2016 medical review, the Disability Determination Service (DDS)/Medical Review Team (MRT) reviewed Petitioner's medical evidence. On April 10, 2017, the DDS/MRT determined that Petitioner's condition had significantly improved as it related to his ability to complete work tasks. DDS/MRT concluded that Petitioner was no longer disabled. (Exhibit A, pp. 3-9)
7. On April 19, 2017, the Department sent Petitioner a Notice of Case Action advising him that effective June 1, 2017, his SDA case would be closed on the basis that he is not disabled (Exhibit A, pp. 1180-1183)
8. On May 5, 2017, the Department received Petitioner's timely written request for hearing concerning the closure of his SDA case effective June 1, 2017. (Exhibit A, p. 1184)
9. Petitioner alleged physical disabling impairment due to psoriasis and psoriatic arthritis. Petitioner alleged mental disabling impairment due to bipolar disorder, depression and anxiety.
10. At the time of hearing, Petitioner was [REDACTED] years old with a [REDACTED], 1989, birth date; he is 5'11" in height and weighs about 210 pounds.
11. Petitioner graduated from high school and completed a ten week direct care worker certification course.
12. Petitioner has an employment history of work at a fast food restaurant, a host at a restaurant, and as a direct care worker for two mentally disabled individuals.
13. In February 2017 Petitioner gained part time employment at a [REDACTED] [REDACTED] thrift store. Petitioner works five hour shifts, four days per week and is paid \$8.90 per hour.
14. 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.

A disabled person is eligible for SDA. BEM 261 (July 2014), 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 lasting, or expected to last, 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).

Once an individual has been found disabled, continued entitlement to benefits based on a disability is periodically reviewed in accordance with the medical improvement review standard in order to make a current determination or decision as to whether disability remains. 20 CFR 416.993(a); 20 CFR 416.994(a). If the individual is not engaged in substantial gainful activity (SGA), the trier of fact must apply an eight-step sequential evaluation in evaluating whether an individual's disability continues. 20 CFR 416.994. The review may cease and benefits may be continued at any point if there is sufficient evidence to find that the individual is still unable to engage in SGA. 20 CFR 416.994(b)(5).

Although the evidence established that in February 2017 Petitioner gained part time employment at a [REDACTED] thrift store, there was no evidence presented to establish that Petitioner's earnings resulted in SGA. Therefore, Petitioner's disability must be assessed to determine whether it continues.

An eight-step evaluation is applied to determine whether an individual has a continuing disability:

**Step 1.** If the individual has an impairment or combination of impairments which meets or equals the severity of an impairment listed in 20 CFR

Appendix 1 of subpart P of part 404, the disability will be found to continue. 20 CFR 416.994(b)(5)(i).

**Step 2.** If a listing is not met or equaled, it must be determined whether there has been medical improvement as defined in paragraph (b)(1)(i) of 20 CFR 416.994 and shown by a decrease in medical severity. If there has been a decrease in medical severity, Step 3 is considered. If there has been no decrease in medical severity, there has been no medical improvement unless an exception in Step 4 applies. 20 CFR 416.994(b)(5)(ii).

**Step 3.** If there has been medical improvement, it must be determined whether this improvement is related to the individual's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv); *i.e.*, there was an increase in the individual's residual functional capacity (RFC) based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to the individual's ability to do work, the analysis proceeds to Step 4. If medical improvement *is* related to the individual's ability to do work, the analysis proceeds to Step 5. 20 CFR 416.994(b)(5)(iii).

**Step 4.** If it was found at Step 2 that there was no medical improvement or at Step 3 that the medical improvement is not related to the individual's ability to work, the exceptions in 20 CFR 416.994(b)(3) and (b)(4) are considered. If none of them apply, the disability will be found to continue. If an exception from the first group of exceptions to medical improvement applies, the analysis proceeds to Step 5. If an exception from the second group of exceptions to medical improvement applies, the disability is found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(iv).

**Step 5.** If medical improvement is shown to be related to an individual's ability to do work or if one of the first group of exceptions to medical improvement applies, **all** the individual's current impairments in combination are considered to determine whether they are severe in light of 20 CFR 416.921. This determination considers all the individual's current impairments and the impact of the combination of these impairments on the individual's ability to function. If the RFC assessment in Step 3 shows significant limitation of the individual's ability to do basic work activities, the analysis proceeds to Step 6. When the evidence shows that all the individual's current impairments in combination do not significantly limit the individual's physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature and the individual will no longer be considered to be disabled. 20 CFR 416.994(b)(5)(v).

**Step 6.** If the individual's impairment(s) is severe, the individual's current ability to do substantial gainful activity is assessed in accordance with 20 CFR 416.960; i.e., the individual's RFC based on all current impairments is assessed to determine whether the individual can still do work done in the past. If so, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

**Step 7.** If the individual is not able to do work done in the past, the individual's ability to do other work given the RFC assessment made under Step 6 and the individual's age, education, and past work experience is assessed (unless an exception in 20 CFR 416.994(b)(5)(viii) applies). If the individual can, the disability has ended. If the individual cannot, the disability continues. 20 CFR 416.994(b)(5)(vii).

**Step 8.** Step 8 may apply if the evidence in the individual's file is insufficient to make a finding under Step 6 about whether the individual can perform past relevant work. If the individual can adjust to other work based solely on age, education, and RFC, the individual is no longer disabled, and no finding about the individual's capacity to do past relevant work under Step 6 is required. If the individual may be unable to adjust to other work or if 20 CFR 416.962 may apply, the individual's claim is assessed under Step 6 to determine whether the individual can perform past relevant work. 20 CFR 416.994(b)(5)(viii).

### **Step One**

Step 1 in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue with no further analysis required.

In the present case, Petitioner alleges physical disability due to psoriasis and psoriatic arthritis and mental disability due to bipolar disorder, anxiety and depression. The medical evidence presented since the February 23, 2016, Hearing Decision issued by ALJ Gardocki was thoroughly reviewed and is briefly summarized below.

In an [REDACTED], 2016, assessment, rheumatologist [REDACTED] evaluated Petitioner for a follow up after a year and a half. The chief complaint referenced is psoriatic arthritis. [REDACTED] noted that Petitioner had seen [REDACTED] twice, interim, and was at one point told that he did not have psoriasis or psoriatic arthritis. It was further noted that Petitioner started taking Otezla which has helped with his skin and joints and will be refilled. [REDACTED] reviewed Petitioner's past medical history and indicated that Petitioner reported seeing a psychiatrist/counselor at [REDACTED]. [REDACTED] performed a physical examination finding that Petitioner's ambulation was normal and that Petitioner's hands, elbows, shoulders, feet, ankles, knees, hips, L-

spine and C-spine all had full/normal ranges of motion with no swelling or tenderness. (Exhibit A, pp. 711-718).

Petitioner was treated at [REDACTED] beginning [REDACTED] 2016 and continuing through the review date.

On [REDACTED], 2016, a Psychiatric Evaluation was completed by [REDACTED], P-NP (Psychiatric Nurse Practitioner). During the evaluation, Petitioner reported that he was previously being treated at [REDACTED] until May 2016 and has not had any treatment since then. With respect to mental status, it was noted that Petitioner's general appearance, posture, behavior during interview, motor status, speech, affect, mood, thought process/content, memory, cognition, and perception were unremarkable. Petitioner's insight and judgment were fair and he was oriented as it related to time, place and person. An AXIS I mental diagnosis of cannabis dependence was ruled out, and an active diagnosis of bipolar disorder and inactive diagnosis of major depressive disorder were noted. As of [REDACTED], 2016, Petitioner's global assessment of functioning (GAF) score was 47. Petitioner was to follow up with therapy one to four times monthly and with psychiatry monthly. (Exhibit A, pp. 136-139).

[REDACTED] Progress Notes from Petitioner's [REDACTED], 2016, [REDACTED], 2016, and [REDACTED], 2016, visits with his therapist [REDACTED], Registered Social Services Technician (RSST), indicate that Petitioner's intellectual functioning, judgment and insight were average in range, that his memory was intact and that he had no impairments in abstract thinking. Petitioner was engaged, kept eye contact, and was focused during the sessions. Petitioner reported feeling frustrated about money and expressed interest in applying for [REDACTED]. Care Coordinator Progress Notes indicate that Petitioner completed his application and submitted it to [REDACTED] on [REDACTED], 2016, and subsequently toured the facilities. Additional Progress Notes from [REDACTED], 2016, indicate that Petitioner reported to his therapist that he has plans to begin an exercise routine and was in the process of searching for a facility with a swimming pool. Petitioner further reported that his medications appear to be working "good" for him and reported feeling more positive and not as depressed lately. Petitioner indicated that he has been happier and things are going well for him. (Exhibit A, pp. 86-87,104-105, 106-109, 126-129).

[REDACTED] Evaluation and Management Notes from Petitioner's [REDACTED] 2016, office visit with [REDACTED], P-NP indicate that Petitioner requested to be prescribed Valium for his anxiety as the Seroquel he was currently prescribed works but not good enough. A MAPS was run on Petitioner, revealing that he uses Vicodin daily, thus, the P-NP was uncomfortable in prescribing benzodiazepines with narcotics. Petitioner's attitude/behavior, psychomotor activity, speech, thought content, and attention/concentration were all within normal limits. Petitioner's mood was anxious and depressed and he had no hallucinations. Petitioner's thought process was goal directed and he had adequate impulse control and judgement. [REDACTED] Evaluation and Management Notes from Petitioner's [REDACTED] 2016, office visit with [REDACTED], P-NP indicate that Petitioner presented with a full range affect and was

pleasant and cooperative but complained of increased anxiety. Petitioner's medication was adjusted. (Exhibit A, pp. 110-115, 120-125).

Primary Care Notes from Petitioner's 2016, visit with indicate that Petitioner has been taking Otezla as prescribed by his rheumatologist and the medicine has worked well for his pain. It was found that Petitioner's psoriatic arthritis and psoriasis are both improving with the use of Otezla and that Petitioner had minimal patches of psoriasis on his forearms. (Exhibit A, pp. 94-99).

In a , 2016, Patient Health Questionnaire at , Petitioner reported that over the last two weeks, he has not been bothered at all by any of the problems or questions identified in the depression screening/assessment. Thus, his PHQ-9 Score was 0 and depression assessment/screening negative, an improvement of the prior assessment ( 2016) which was mild and received a score of 6. Also on , 2016, Petitioner reported to his P-NP that he has difficulty passing urine on and off. It was noted that Petitioner has no incontinence, nocturia x 1, no dysuria or blood in his urine. According to a Primary Care Note from , an ultrasound of Petitioner's kidneys and bladder was performed and it showed complete emptying but possible "sediment" and that Petitioner had minimal difficulty emptying his bladder. Petitioner's Otezla prescription was approved. In 2016 Petitioner indicated that he has noticed some muscle weakness in his back and sides. (Exhibit A, p. 64-68, 78-85, 103).

In a , 2016, Patient Health Questionnaire at , Petitioner again reported that over the last two weeks, he has not been bothered at all by any of the problems or questions identified in the depression screening/assessment. Thus, his PHQ-9 Score was 0 and depression assessment/screening negative. (Exhibit A, p. 72).

Evaluation and Management Notes from Petitioner's 2017, office visit with , P-NP, indicate that Petitioner reported that his mood is improving and his anxiety is decreasing. Petitioner reported being off the opiates for two to three months and denied thoughts of harming himself or others. Also on , 2017, Petitioner met with therapist and reported that he will begin working at within the next month, that he is excited to start working and to make his own money again. Petitioner and his therapist discussed different socialization skills to implement when he begins working and was advised that he was approved for his "emotional support dog." Petitioner further reported that he has been working out more. (Exhibit A, pp. 56-58, 58-63).

At the hearing, Petitioner presented a 2017, letter from , which indicates that as Petitioner's psychiatric treating professional, it is his impression that Petitioner is disabled and unable to be employed for full time work. The letter reflects a diagnosis of bipolar disorder, attention deficit hyperactivity disorder, psoriasis, and pain in unspecified joints. (Exhibit 1).

Petitioner testified that he was injured during his June 4, 2017, work shift at [REDACTED]. Petitioner presented a report from [REDACTED] in [REDACTED], Michigan where he was evaluated for his injury on [REDACTED], 2017. According to the report, it was recommended that Petitioner engage in no lifting and not return to work until further evaluation by an orthopedic physician. On [REDACTED], 2017, Petitioner was evaluated by [REDACTED] with [REDACTED]. It was recommended that Petitioner be evaluated by a physical medicine and rehabilitation doctor and participate in physical therapy. A reference was also made regarding a diagnosis of IT band syndrome. In a letter dated [REDACTED], 2017, [REDACTED] opined that Petitioner can return to work on [REDACTED] 2017, ordered that Petitioner refrain from lifting above 25 pounds, and should sit as needed for pain. (Exhibit 1). It is noted that Petitioner's injury occurred after his SDA case had been closed and subsequent to the DDS/MRT review finding that Petitioner was not disabled.

The listings applicable to Petitioner's impairments were thoroughly reviewed. Upon review, 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. Thus, a disability is not continuing under Step 1 of the analysis, and the analysis proceeds to Step 2.

### **Step Two**

If the impairment(s) does not meet or equal a Listing under Step 1, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1). 20 CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). For purposes of determining whether medical improvement has occurred, the current medical severity of the impairment(s) present at the time of the most recent favorable medical decision that found the individual disabled, or continued to be disabled, is compared to the medical severity of that impairment(s) at the time of the favorable decision. 20 CFR 416.994(b)(1)(vii). If there is medical improvement, the analysis proceeds to Step 3, and if there is no medical improvement, the analysis proceeds to Step 4. 20 CFR 416.994(b)(5)(ii).

The most recent favorable decision finding Petitioner disabled is the Hearing Decision issued on February 23, 2016, by ALJ Gardocki which found Petitioner had no medical improvement from the initial favorable decision issued by ALJ Elkin finding Petitioner disabled. In the Hearing Decision issued on November 26, 2014, ALJ Elkin found that with respect to Petitioner's exertional limitations, Petitioner maintained the physical capacity to perform, at most, sedentary work. Relying on an October 14, 2014, mental residual functional capacity assessment completed by a [REDACTED] doctor finding that Petitioner was moderately limited in understanding and memory; moderately to markedly limited in sustained concentration and persistence; moderately limited in social interaction; and moderately limited in adaption, ALJ Elkin found that Petitioner



had moderate limitations on his mental ability to perform basic work activities. (Exhibit A, pp.10-23, 29-41).

As referenced above, the medical evidence presented with the current review showed that upon physical examination in ██████ 2016, Petitioner's hands, elbows, shoulders, feet, ankles, knees, hips, L-spine and C-spine all had full/normal ranges of motion with no swelling or tenderness and the doctor noted that Petitioner's ambulation was normal. (Exhibit A, pp. 711-718). There was no additional medical documentation presented for the applicable time period with respect to Petitioner's physical limitations.

Petitioner presented the ██████, 2017, letter from his treating psychiatric professional which indicated that Petitioner was disabled and unable to perform full time employment. However, the letter was not supported by and consistent with the relevant medical evidence in the record 20 CFR 416.920c. The psychiatric records since ██████ 2016 indicate unremarkable behaviors. Petitioner's memory, judgment and insight is normal. A review of the documentation from Team Mental Health does not show any significant limitations in Petitioner's understanding and memory, sustained concentration and persistence, social interaction or adaption.

With respect to both Petitioner's physical and mental limitations, the evidence presented in connection with the current review does show a medical improvement in Petitioner's condition from that presented in the Hearing Decision issued by ALJ Gardocki dated February 23, 2016, which is the most recent favorable decision finding Petitioner disabled. Because there is medical improvement, the analysis proceeds to Step 3.

### **Step Three**

If there has been medical improvement, it must be determined whether there is an increase in the individual's residual functional capacity (RFC) based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to the individual's ability to do work, the analysis proceeds to Step 4. If medical improvement *is* related to the individual's ability to do work, the analysis proceeds to Step 5. 20 CFR 416.994(b)(5)(iii).

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).

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition.

Petitioner testified that since [REDACTED] 2017 he has been employed part time at a [REDACTED] thrift store where he works five hour shifts, four days per week. Petitioner testified that he stands for 2 ½ hours at a time during his work shift and has the option to sit down if needed, as his employer is accommodating. Petitioner testified that his job duties consist of ringing people up at the register for purchases, cleaning up the store, putting items back where they belong and assisting a wheelchair bound employee with bagging her items. Petitioner indicated that he misses work due to his anxiety and depression and suffered an injury on the job in June 2017 while working the "truck" shift which included lifting about 20 boxes weighing up to 30 pounds each and carrying them a distance of about 15 feet. Petitioner presented a letter dated [REDACTED] 2017, from an orthopedic physician indicating that he can return to work three days later on [REDACTED], 2017, and recommending that he lift no more than 25 pounds.

Petitioner testified that he can currently stand for up to 2 hours before he needs a break and can sit for up to 1 ½ hours due to his hip spurs. Petitioner testified that he can currently lift up to 25 pounds but was previously on a 10 pound lifting restriction. Petitioner testified that he cannot go up and down stairs and uses a cane or walker for assistance. Petitioner stated that since November/December 2016 he has been exercising/working out about three days per week in ½ hour to 45 minute increments at the [REDACTED]. Petitioner testified that he cannot use the treadmill because it causes him pain but that he is able to use the elliptical for about 15 minutes. Petitioner stated that his weekly exercise regimen includes the elliptical, the hot tub, swimming in the lazy river, using water weights and doing ab crunches. Petitioner reported that he is able to use/lift 10 to 15 pound weights with his arms. Petitioner testified that his roommates do most of the cooking and cleaning in the home and that he sometimes needs assistance with shaving, buttons and zippers on his clothing. He reported that he has gone to the urgent care three times since [REDACTED] 2016 for pain and anxiety and was given Ativan and lidocaine cream. Petitioner testified that his prescribed medications have helped his conditions. Petitioner provided detailed testimony regarding his prior work history and stated that he may be able to do his past jobs, in particular being a host at a restaurant but not on a full time basis.

In this case, Petitioner was previously found to have an exertional RFC of being physically able to perform sedentary work due, in large part, to his documented lifting restrictions. However, based on a review of the entire record including the physical evaluation completed by Petitioner's rheumatologist noting that Petitioner had full/normal ranges of motion and Petitioner's testimony at the hearing, particularly concerning his workout regimen, it is found that there has been an improvement in Petitioner's RFC and Petitioner currently maintains the ability to perform light work. 20 CFR 416.967(b).

Petitioner also alleged nonexertional limitations due to his mental conditions, specifically depression and anxiety. Petitioner testified that his mental conditions affect his mood and emotions; that he sometimes explodes due to his frustrations which can appear to look like he is angry; that he has anxiety attacks which result in breathing changes, sweating, shakes, nausea and sweating. Petitioner noted that he has anxiety around large groups of people and low self-esteem/confidence. Petitioner stated that his psoriasis gives him depression and that he has hurt himself in the past by self-mutilation and punching himself but conceded that the last time this occurred was 2013.

In this case, Petitioner's record shows that he was receiving regular, ongoing treatment through [REDACTED] from [REDACTED] 2016 to [REDACTED] 2017. As referenced above, the documentation from [REDACTED] shows, at most, mild limitations in Petitioner's understanding and memory, sustained concentration and persistence, social interaction or adaption, unlike the [REDACTED], 2014, mental residual functional capacity assessment which found: moderate limitations in understanding and memory; moderate to marked limitations in sustained concentration and persistence; moderate limitations in social interaction; and moderate limitations in adaption relied upon in the prior favorable disability determinations made by ALJs Elkin and Gardocki.

A review of the medical documentation indicates that with treatment, Petitioner's mood was improving, his anxiety decreasing, and depression screenings were negative. For many of his appointments, Petitioner's intellectual functioning, judgment and insight were average in range, his memory was intact and he had no impairments in abstract thinking. It was noted that Petitioner was engaged, kept eye contact, and was focused during the session. Additionally, Petitioner's attitude/behavior, psychomotor activity, speech, thought content, and attention/concentration were all within normal limits. Petitioner's thought process was goal directed and he had adequate impulse control and judgement.

Petitioner was previously found to have moderate limitations on his mental ability to perform basic work activities. However, based on a review of the entire record including the records presented from [REDACTED] and Petitioner's testimony at the hearing, it is found that there has been an improvement in Petitioner's non-exertional RFC and Petitioner currently has mild limitations on his mental ability to perform basic work activities.

Because Petitioner's medical improvement is related to his ability to do work, the analysis proceeds to Step 5.

#### **Step 5**

Where medical improvement is shown to be related to an individual's ability to do work, **all** the individual's current impairments in combination are considered to determine whether they are severe in light of 20 CFR 416.921. An individual's impairments are not severe only if, when considered in combination, they 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 evidence presented was sufficient to establish that Petitioner's impairments have more than a minimal effect on his ability to perform basic work activities. Therefore, the impairments are severe, and the analysis proceeds to Step 6.

#### **Step 6**

Under Step 6, the individual's RFC based on all current impairments is assessed to determine whether the individual can still do work done in the past. If so, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

At the time of the hearing, Petitioner was [REDACTED] years old, had a high school education and completed a ten week direct care worker certification course at a community college. Petitioner reported past employment as a fast food worker which involved customer service, working the register, making food and performing stock/inventory duties. Petitioner testified that he was also employed as a host at a restaurant where he was responsible for seating guests and sometimes cleaning restrooms. Petitioner further testified that he was previously employed for 18 months as a direct care worker for two autistic men during which time he assisted with taking them to the store and library, among other duties. Based on his description of the jobs, Petitioner's past employment

involved standing substantially and lifting up to 15 pounds on a regular basis thus, requiring light physical exertion.

As discussed above, Petitioner currently has an exertional RFC which enables him to perform light work. Petitioner also has mild limitations on his mental ability to perform basic work activities. Based on his current exertional RFC, Petitioner is able to perform past employment. Additionally, Petitioner's current nonexertional RFC would not preclude him from engaging in past employment. Accordingly, Petitioner **is not** disabled at Step 6, and the analysis ends.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Petitioner **does not have** a continuing disability for purposes of the SDA benefit program. Therefore, Petitioner's SDA eligibility **has terminated** and the Department **acted** in accordance with Department policy when it closed his SDA case.

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

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:**

MDHHS-Wayne-18-Hearings  
BSC4 Hearing Decisions  
B. Cabanaw  
D. Shaw  
MAHS

**Petitioner – Via First-Class Mail:**

