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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: July 24, 2018  
MAHS Docket No.: 18-004988  
Agency No.: ██████████  
Petitioner: ██████████

**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 July 16, 2018, from Detroit, Michigan. The Petitioner was represented by himself. A witness ██████████ also appeared and testified. The Department of Health and Human Services (Department) was represented by Timika Harris, Assistance Payments Supervisor, and Amanda Dhooghe, Assistance Payments Worker.

**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 ██████████ 2018, the Petitioner submitted an application seeking cash assistance on the basis of disability (SDA).
2. On April 17, 2018, the Disability Determination Service (DDS) determined that the Petitioner was not disabled for purposes of the SDA program.
3. On April 24, 2018, the Department sent the Petitioner a Notice of Case Action denying the SDA application based upon the DDS's finding of no disability.
4. On ██████████, 2018, the Department received the Petitioner's timely written request for hearing.

5. Petitioner has alleged the following disabling impairments due to epilepsy and seizures: blindness in right eye, and left elbow surgery due to shattered elbow with decreased range of motion.
6. On the date of the hearing, the Petitioner was 54 years of age with a birth date of [REDACTED], 1963, and thus, will be 55 years of age shortly. The Petitioner was 5' 6" and weighed 110 pounds.
7. Petitioner is a high school graduate.
8. At the time of the application, the Petitioner was not employed.
9. Petitioner has an employment history of working as an auto body repairman and specialty painting and pin striping, as well as, managing an auto body bumper re-chrome and van conversion business, which required inventory of parts, including hiring and firing of employees. He also did some work as a caretaker of elderly individuals. The Petitioner also drove a forklift, used machines, tools and equipment, and used technical knowledge.
10. Petitioner has a pending appeal of his disability claim denial by the Social Security Administration.

### **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.

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 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 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 has not engaged in SGA activity during the period for which assistance might be available. Therefore, Petitioner 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.

In the present case, Petitioner alleges disabling impairment due to epilepsy and seizures, blindness in right eye, and left elbow surgery due to shattered elbow with decreased range of motion. The medical evidence presented at the hearing was reviewed and is summarized below.

The Petitioner's neurologist completed an evaluation of the Petitioner on [REDACTED] 2018. The neurologist has treated the Petitioner since [REDACTED] 2016. The diagnosis made by the doctor was right eye blindness and seizures. Prognosis was fair. The symptoms listed were headaches, fatigue, balance difficulties, post ictal confusion, dizziness, generalized weakness. Clinical signs included right eye blindness, left arm decreased range of motion, decreased grip strength left and right, poor balance, wide gait and slightly unsteady. Medications prescribed were Kepra 500 mg. twice daily, with side effects of drowsiness and dizziness throughout the day. Lifting restrictions were imposed for 5 pounds maximum from 1 to 1/3 of an 8-hour day. Standing and walking were also restricted to 4 hours a day without interruption for 1 to 2 hours supported by findings of generalized weakness, dizziness and loss of balance. No restrictions on sitting were imposed. Unscheduled breaks were indicated for every 2 to 4 hours, with rest periods of 15 to 30 minutes with total rest time in an 8-hour day of 2 to 3 hours. Limitations for handling, reaching and fingering were imposed for the left hand/arm 2 to 4 hours for the hand and 4 to 6 hours for the fingers and fine manipulation. The impairments were also likely to cause "good days" and "bad days". As regards the number of days per month likely to be absent from work, the doctor responded that absence depends on frequency of seizures, which the doctor opined can be unpredictable even with adequate treatment indicating more than 4 days of absence per month.

In addition, the treating neurologist imposed further restrictions indicating never stooping or bending or climbing ladders, and rarely to twist and crouch and occasionally look down, sustained flexion of neck, turn head left or right and look up. The Petitioner could frequently hold his head in a static position and climb stairs. In response to the question, "How often is patient's experience of pain or other symptoms severe enough to interfere with the attention and concentration needed to perform even simple work?"; the evaluation noted frequently. Finally, the doctor noted that the Petitioner's symptoms

were reasonably consistent with the symptoms and functional limitations described in the evaluation.

The Petitioner's neurologist also completed a Medical Questionnaire. The diagnosis and severity of Petitioner's medical condition supported by the clinical findings noted refractory seizures, continuing to monitor and adjust AED as necessary. The seizures, headaches, dizziness and loss of balance affects patient's quality of life on a daily basis. The functional limitations listed were based on safety hazards and included no climbing ladders or heights, cannot operate heavy machinery or drive any motorized vehicles due to refractory seizures and right eye blindness. Cannot lift arm above head due to left arm decreased range of motion. Cannot bend or stoop due to dizziness and loss of balance. The exam concluded that the Petitioner was not capable of performing a full-time job that is 8 hours per day, 5 days per week on a sustained basis due to physical limitations and safety concerns. (Exhibit B.)

Record from Petitioner's ophthalmologist for an office visit on [REDACTED], 2018, was also reviewed and indicated that the Petitioner had a branch retinal vein occlusion with macular edema. The notes indicate vision in right eye is decreased 80%. The notes indicate the eye is worsening. In a follow-up visit on [REDACTED], 2018, the vision was worsening and severity of condition moderate.

The Petitioner had an MRI of the brain on [REDACTED] 2015, which at that time found no acute intracranial process, no diffusion restriction to suggest acute infarction. Remote infarction left frontal region.

On [REDACTED], 2017 a follow-up status post operation, on left elbow left olecranon open reduction and internal fixation performed on [REDACTED] 2016. The Petitioner had the elbow repaired in [REDACTED] 2016. The notes indicate that patient lacks full terminal extension of 150 degrees. The doctor did not specify restrictions. Earlier exams from [REDACTED] 2017 indicate elbow joint prolonged healing due to nonunion of the fracture and a 5-pound weight restriction.

The Petitioner was seen in the emergency room after seizure on [REDACTED] 2017, and was noted as losing consciousness and being unresponsive; he was admitted for one day and discharged home. A similar emergency room visit occurred on [REDACTED], 2016; a CT of the brain was done with the impression chronic area of encephalomalacia. The notes indicate an injury to the head and an admission. The records also indicate another visit on [REDACTED] 2015.

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 1.02 (major dysfunction of a joint), 2.02 (loss of visual acuity) and 11.02 Epilepsy were considered; but the required number of seizures in the prescribed periods were not fully described or counted or documented. 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. Residual Functional Capacity (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). 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 this category

when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 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 this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner testified that he can cook a meal, does grocery shopping with assistance of being driven and carrying, testified credibly that he could stand several hours, found it hard to squat, described his legs as wobbly and his left arm range of motion is limited as he cannot straighten it. The Petitioner stated that he could carry 15 pounds; however, most of his activity currently is sedentary, watching TV. The Petitioner's brother-in-law who he lives with indicated that he has had seizures 2 or 3 at a time but has improved, and meds have been adjusted. He also observed that the Petitioner's mental sharpness has declined. During Petitioner's testimony, the undersigned noted that Petitioner's responses were slow and at times a bit confused. The Petitioner stated he could walk a mile.

A most recent review and evaluation by Petitioner's neurologist support this testimony and support a more restrictive ability than expressed by the Petitioner. Lifting restrictions were imposed for 5 pounds maximum from 1 to 1/3 of an 8-hour day. Standing and walking were also restricted to 4 hours a day without interruption for 1 to 2 hours supported by findings of generalized weakness, dizziness and loss of balance. No restrictions on sitting were imposed. Unscheduled breaks were indicated for every 2 to 4 hours, with rest periods of 15 to 30 minutes with total rest time in an 8-hour day of 2 to 3 hours. Limitations for handling, reaching and fingering were imposed for the left

hand/arm 2 to 4 hours for the hands and 4 to 6 hours for the fingers and fine manipulation. The impairments were also likely to cause “good days” and “bad days”. As regards the number of days per month likely to be absent from work, the doctor responded that absence depends on frequency of seizures, which can be unpredictable even with adequate treatment indicating more than 4 days of absence per month.

In addition, the treating neurologist imposed further restrictions indicating never stooping or bending or climbing ladders, and rarely to twist and crouch and occasionally look down, sustained flexion of neck, turn head left or right and look up.

With respect to Petitioner’s exertional limitations, 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). 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 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). 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 auto body specialty painting and pin striping, as well as managing an auto body bumper, re-chrome and van conversion business, which required inventorying of parts and included hiring and firing of employees. The Petitioner also drove a forklift, used machines, tools and equipment, and used technical knowledge. In his position he walked 8 hours, stood 2 hours, sat an hour, climbed up to two hours, reached 4 to 5 hours and lifted up to 50 pounds frequently. Petitioner’s job also required that he stoop, kneel, crouch, handle, grab and grasp big objects and handle small objects. (Exhibit A, p. 43.)

This past work involves standing most of the day and lifting between 25 and 50 pounds. Accordingly, the work history is properly classified as involving medium work. Based on the RFC analysis above, Petitioner is limited to no more than sedentary work activities. Because each of his prior employment positions required more than sedentary exertion in performing the tasks of that employment, Petitioner is unable to perform past relevant work. Accordingly, Petitioner cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.



**Step 5**

In Step 5, an assessment of Petitioner's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

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(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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, if the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). 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 54 years old at the time of application and will be 55 years old on ██████ 2018, and thus, will be considered to be of advanced age (age 55 and over) for purposes of Appendix 2. See POMS DI 25015.006 Borderline Age. Petitioner is a high school graduate and has a history of semi-skilled work, which is nontransferable, and with work experience with no direct entry into other work. As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities and in this case, the Medical-Vocational Guidelines, 201.06, result in a disability finding based on Petitioner's exertional limitations.

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 **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 [REDACTED], 2018, SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination.
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified.

LMF/



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**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**

Renee Swiercz  
MDHHS-Oakland-4-Hearings

**Petitioner**

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