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

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DIRECTOR

[REDACTED]  
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[REDACTED]

Date Mailed: April 12, 2019  
MAHS Docket No.: 18-012414  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton**

**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; and 45 CFR 205.10. After due notice, a telephone hearing was held on February 29, 2019, from Detroit, Michigan. Petitioner testified on his own behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. Medical Examination Report signed on March 15, 2019 was received and marked into evidence as Exhibit 1. The record closed on April 1, 2019, and the matter is now before the undersigned for a final determination based on the evidence presented.

**ISSUE**

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

**FINDINGS OF FACT**

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

1. On April 23, 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On November 13, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 20-26).

3. On November 16, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 15-18).
4. On December 3, 2018, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 2).
5. Petitioner alleged disabling impairment due to hip pain, knee pain, osteoarthritis, shoulder pain, anxiety and depression.
6. On the date of the hearing, Petitioner was [REDACTED] old with a [REDACTED] birth date; he is [REDACTED] in height and weighs about [REDACTED].
7. Petitioner is a high school graduate.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as grounds crew operator and a household mover.
10. Petitioner has a pending disability claim with 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 Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

Petitioner applied for cash assistance alleging a disability. 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 One**

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

In this case, Petitioner was 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 Two**

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and

aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimis* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

The medical evidence presented at the hearing, *and in response to the interim order*, was reviewed and is summarized below.

Petitioner had been receiving case management services from [REDACTED] from April 2017 through June 2018. (Exhibit A, pp. 236-280).

On January 10, 2018, Petitioner was seen at [REDACTED] for a status of post total hip replacement. The findings included bilateral total hip arthroplasty in good position with no evidence of periprosthetic failure. No evidence of subsidence, loosening, or change in component position. No evidence of acute or complicating process. (Exhibit A, p. 95).

Petitioner treated with [REDACTED] from May 15, 2017 through July 5, 2018. Of note were the records following his total hip replacement. On January 30, 2018, Petitioner was seen for an office visit. Petitioner complained of stiffness in his left hip. The objective findings included a mild degree of joint fixation at T2, T7, L1, and L2, a moderate degree of fixation at L4 and the left ilium - sacrum. A posterior joint dysfunction of L1, L2 and L4 was observed. The spinal tissues were evaluated for pain, a mild degree of pain at T2 and the ilium on the left and T7, L1, L2, L4 and sacrum bilaterally, a moderate amount of pain at the ilium on the right was found. Tonicity of the

muscles were tested and moderate tension of the upper thoracic muscles on the left, gluteal muscles on the right, lumbar paraspinal muscles and gluteal muscles bilaterally were found. The assessment indicated that Petitioner's condition was chronic. (Exhibit A, p. 114).

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On February 1, 2018, Petitioner was seen at [REDACTED] Petitioner indicated that there was no change in the degree of lower back pain and that the right hip pain continued to be about the same. The objective findings included that the spiral joints were checked for aberrant motion and a slight amount of joint restriction at T2, T7, L1 and L2, a moderate loss of joint function at L4 in the left ilium - sacrum was noted. The L1, L2 and L4 exhibited a posterior joint dysfunction. On examination of the spine palpation, there was slight tenderness at T2 and the ilium on the left and T7, L1, L2, L4 and sacrum bilaterally, a medium degree of pain at the ilium on the right. There was moderate tension of the upper thoracic muscles on the left, gluteal muscles on the right and lumbar paraspinal muscles and gluteal muscles bilaterally found on palpation. The assessment indicated that persistent symptomology continued to be evident. Petitioner's condition status was listed as chronic. An indication of a moderate degree of movement at L1, L2, L4 and the left ilium – sacrum, an indication of excellent movement at T2 and T7 were observed. (Exhibit A, p. 115).

On March 19, 2018, Petitioner was seen at [REDACTED] Petitioner complained of left knee pain. Petitioner indicated that he slipped on some ice approximately three or four weeks prior to the visit. Petitioner indicated that the pain in the lumbar region remain the same as well as his right hip pain. On evaluation for functional spinal motion, a mild degree of joint fixation at T2, T7, L1 and L2, a moderate loss of joint function at L4 and the left ilium - sacrum was detected. The L1, L2 and L4 was found to be malpositioned. On examination of the spine by palpation, there was a mild degree of pain at T2 on the left and T7, L1, L2, L4 and sacrum bilaterally, a moderate level of pain and discomfort at the ilium on the left and the ilium on the right. The muscle showed moderate hypertonicity of the upper thoracic muscles on the left, gluteal muscles on the right and lumbar paraspinal muscles and gluteal muscles bilaterally. The assessment indicated that Petitioner's condition was chronic. A moderate amount of movement at L1, L2, L4 and the left ilium - sacrum, a very substantial degree of motion at T2 and T7 was observed. (Exhibit A, pp. 115-116).

On April 9, 2018, Petitioner was seen at [REDACTED] Petitioner complained of left hip pain and left knee pain. Petitioner stated that there had not been any significant improvement. The objective findings included that on palpation examination of the spinal segments, there was a mild degree of restricted joint function at T2, T7, L1 and L2, moderate fixation of the spinal joints at L4 and the left ilium - sacrum was present. L1, L2, and L4 was found to be in a posterior malaligned position. There was evidence elicited on palpation of a minor pain level at T2 on the left, the ilium on the right and T7, L1, L2, L4 and sacrum bilaterally, a medium level of pain at the ilium on the left. Tonicity of the muscles were tested and moderate tension of the upper thoracic muscles on the left, gluteal muscles on the right and lumbar paraspinal muscles and gluteal muscles bilaterally were found. (Exhibit A, pp. 116-117).

On April 20, 2018, Petitioner presented [REDACTED] for imaging of the left knee. Findings included that there was mild medial joint space narrowing with small marginal and subchondral osteophytes. No large suprapatellar effusion. Bones are osteopenic. Small marginal osteophytes at the patellofemoral compartment. The patella is normally located within the trochlear sulcus. (Exhibit A, pp. 96-97).

On May 7, 2018, Petitioner was seen at [REDACTED] Petitioner was seen with complaints of left hip pain and left shoulder pain. Petitioner indicated that there had not been any change in his lower back pain and that his right hip pain was unrelieved. The objective findings included that there was a mild degree of joint fixation at T2, T7, L1 and L2, moderate fixation of the spinal joints at L4 and the left ilium - sacrum noted on examination. L1, L2 and L4 was confirmed to be malpositioned posteriorward. The spine and paraspinal tissues were examined and showed mild pain at T2 on the left, the ilium on the right and T7, L1, L2, L4 and sacrum bilaterally, a moderate level of pain and discomfort at the ilium on the left. On palpation, moderate hypertonicity of the upper thoracic muscles on the left, gluteal muscles on the right and lumbar paraspinal muscles and gluteal muscles bilaterally were evident. The assessment indicated that Petitioner had entered the chronic stage. Specific chiropractic adjustment produced a moderate amount of movement at capital one, L2, capital for the left ilium and sacrum, a very good degree of vertebral movement at T2 and T7. (Exhibit A, p. 117).

On June 4, 2018, Petitioner was seen at [REDACTED] Petitioner was seen with complaints of left hip pain and left shoulder pain. Petitioner reported that the pain in the lumbar region remain the same. The objective findings included that examination for altered spinal motion revealed a slight movement of the joint restriction at T2, T7, L1, and L2, a moderate amount of spinal joint taxation at L4 and the left ilium-sacrum. L1, L2 and capital for work firm to be malpositioned posteriorward. The spinal tissues were evaluated for pain, slight tenderness at T2 and the ilium on the left and T7, L1, L2, capital for and sacrum bilaterally were found. On palpation, moderate hypertonicity of the upper thoracic muscles on the left, gluteal muscles on the right and lumbar paraspinal muscles and gluteal muscles bilaterally were evident. The assessment indicated that Petitioner's condition was chronic. (Exhibit A, pp. 117-118).

On July 5, 2018, Petitioner was seen at [REDACTED] Petitioner reported no change in his lumbar region pain. Petitioner also reported no change in the severity of his right hip pain. The objective examination for altars final motion revealed a mild degree of restricted joint function at T2, T7, capital one and L2, a moderate degree of fixation at L4 and the left ilium sacrum. The L1 L2 and L4 was found to be malpositioned posteriorly. A minor degree of pain at the ilium on the left and T7, L1, L2 and capital for bilaterally was indicated on palpation examination of the spinal tissues. Petitioner's condition was noted to be chronic. (Exhibit A, p. 118).

On June 14, 2018, Petitioner presented at [REDACTED] for imaging of the right ankle. The findings included evidence of complete loss of the interior tibiotalar joint

space with large anterior talar spur and medial and lateral ankle mortise spur formation. The impression was severe tibiotalar arthritis. (Exhibit A, p. 98).

On October 23, 2018, Petitioner was seen by [REDACTED] for a consultative psychiatric/psychological evaluation. Petitioner reported issues with depression and anxiety. Petitioner stated that he felt tired and indicated that he does not have a lot of energy or motivation. Petitioner indicated that he struggles with concentration and forgetfulness and is irritated a lot. Petitioner's prognosis was noted as poor for the near future but further indicated that his primary limitations were physical. His psychological issues were mild and did not overwhelm him nor were they found to preclude him from employment. Petitioner's ability to understand remember and use information were assessed to be mild to moderately limited. It was noted that Petitioner could acquire job skills and knowledge and apply that in a work setting. With respect to concentration, persistence, and pace, his limitations were marked. It was noted that his concentration was fair, but his physical limitations would compromise his persistence and pace to a severe degree. With respect to his interactions, his limitations were noted to be mild. With respect to adaptability and self-management, his limitations were noted to be mild to moderate. (Exhibit A, pp. 78-83).

On October 25, 2018, Petitioner was seen at [REDACTED] for a physical consultative evaluation. Petitioner presented with the following complaints: total hip replacements, depression, anxiety, hypertension, and osteoarthritis. Petitioner underwent a right hip replacement in August 2017 and a left hip replacement, in November 2017. The report indicated that Petitioner had recovered at the time of this examination was not using a walker or cane. Petitioner's grip and pinch strength was intact. Petitioner was unable to walk safely on his right heel and toes due to pain in his right ankle due to recent surgery. Petitioner exhibited mild difficulty balancing on right, and moderate difficulty performing the tandem walk due to pain in his right ankle related to his recent ankle surgery. (Exhibit A, pp. 72-75).

On March 15, 2019, Petitioner's family doctor completed a Medical Examination Report wherein she indicated that Petitioner has gait weakness even after his bilateral hip replacement. Petitioner's gait is also unstable due to his ankle surgery. Petitioner's family doctor indicated that Petitioner's depression and anxiety has resulted in agoraphobia. The report indicated that Petitioner does not learn new things well and has cognitive limitations. Petitioner's restrictions included no lifting as it was indicated that he is unable to lift less than 10 pounds. The report further indicated that Petitioner is unable to reach, push, or pull. Petitioner's family doctor indicated that Petitioner is restricted to no lifting and restricted his sitting and standing to less than two hours. (Exhibit 1, p. 1-3).

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 Three**

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 12.04 (depressive, bipolar and related disorders) and 12.06 (anxiety and obsessive-compulsive disorders) were considered. The medical evidence presented does not show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

### **Residual Functional Capacity**

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). *This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities.* 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

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

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and



occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). *For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).* Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3). For the first three functional areas, a five-point scale is applied (none, mild, moderate, marked, and extreme). 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner testified that he could dress/undress himself; bathe/shower himself; use the bathroom unassisted; eat by himself; complete chores; prepare meals and use his hand. However, Petitioner indicated that he was unable to squat due to hip pain and was unable to sit more than 30-40 minutes without experiencing pain. Petitioner indicated that he was a fall risk due to issues with his ankle. Petitioner indicated that she needed to use a rail to climb stairs. Further, Petitioner testified that he had memory and concentration issues due to his mental illness. Petitioner indicated that he was unable to complete tasks or following

instructions due to an inability to focus. Petitioner stated that he does not work well with others because he becomes involved in physical altercations when around others.

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.

Petitioner had a total hip replacement in 2018. Although it appears the surgery went well, Petitioner continued to express significant pain in his hips, back and knees without improvement even with chiropractic intervention. This is consistent with Petitioner's testimony that he cannot stand for more than 5-10 minutes without experiencing pain or sit for longer than 30-40 minutes without experiencing pain.

Additionally, Petitioner's consultative physical examination indicated that his prognosis was poor for the near future noting that his primary limitations were physical. Petitioner is unable to walk safely on his right heel and toes due to pain in his right ankle due to recent surgery. During the October 23, 2018 consultative examination, Petitioner exhibited mild difficulty balancing on right, and moderate difficulty performing the tandem walk due to pain in his right ankle related to his recent ankle surgery. At the hearing, Petitioner testified that he often falls due to issues with his right ankle. Petitioner's family doctor indicated that Petitioner is restricted to no lifting and restricted his sitting and standing to less than two hours.

Further, regarding his concentration, persistence, and pace, his limitations were noted to be marked. It was noted that although his concentration was fair, his physical limitations would compromise his persistence and pace to a severe degree. Petitioner testified that he has an inability to focus due to his depression and anxiety. Petitioner further stated that his mental health issues causes limitations with his ability to remember and concentrate which are both consistent with his October 23, 2018 consultative examination. Petitioner's family doctor indicated that Petitioner's depression and anxiety has resulted in agoraphobia. The report indicated that Petitioner does not learn new things well and has cognitive limitations.

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 less than sedentary work as defined by 20 CFR 416.967(b). Also, based on the medical record presented, as well as Petitioner's testimony, Petitioner has moderate to marked limitations on his mental ability to perform basic work activities. Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

#### **Step Four**

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that

has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a grounds crew operator and household mover. Both positions required prolonged standing, bending, reaching, pulling, and pushing. Petitioner's work as a household mover required lifting items greater than 50 pounds. Petitioner's work in both positions required heavy physical exertion.

Based on the RFC analysis above, Petitioner's exertional RFC limits him to no more than less than sedentary work activities. As such, Petitioner is incapable of performing past relevant work. Petitioner also has moderate to marked limitations in his mental capacity to perform basic work activities. In light of the entire record, it is found that Petitioner's nonexertional RFC prohibits him from performing past relevant work. Although Petitioner is unable to perform past relevant work, Petitioner cannot be found disabled, or not disabled, at Step 4, and as the assessment is required to continue to Step 5 to determine whether Petitioner can adjust to other work.

### **Step 5**

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

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

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

However, 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 48 years old at the time of application and 49 years old at the time of hearing, and, thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. He is a high school graduate with a history of work experience as a grounds crew operator and a household mover. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform less than sedentary work activities.

In this case, the Medical-Vocational Guidelines, Appendix 2 do not support a finding that Petitioner is not disabled based on his exertional limitations. The Department has failed to counter with evidence of significant numbers of jobs in the national economy which Petitioner could perform despite his limitations. Therefore, the Department has failed to establish that, based on his RFC and age, education, and work experience, Petitioner can adjust to other work.

Further, Petitioner also has impairments due to his mental condition. As a result, he has a nonexertional RFC imposing moderate to marked limitations in the ability to understand, remember, or apply information; moderate to marked limitations in the ability to interact with others; the ability to concentrate, persist or maintain pace; and moderate to marked limitations in the ability to adapt and manage himself. The Department has failed to present evidence of a significant number of jobs in the national and local economy that Petitioner has the vocational qualifications to perform in light of his nonexertional RFC, age, education, and work experience. Therefore, the evidence is insufficient to establish that Petitioner is able to adjust to other work. Accordingly, Petitioner is found disabled at Step 5 for purposes of the SDA benefit program.

### **DECISION AND ORDER**

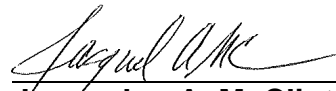
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner **disabled** for purposes of the SDA benefit program.

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 April 23, 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;
3. Review Petitioner's continued eligibility in October 2019.

JAM/tlf



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**Jacquelyn A. McClinton**  
Administrative Law Judge  
for Robert Gordon, 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

**Via Email:**

MDHHS-Ionia-Hearings  
BSC3 Hearing Decisions  
Policy-FIP-RAP-SDA  
MAHS

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

[REDACTED]  
[REDACTED]  
[REDACTED]