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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: April 12, 2019
MAHS Docket No.: 18-013410
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 11, 2019, from Detroit, Michigan. Petitioner was present at the hearing and was represented by Min Kim, Esq. The Department of Human Services (Department) was represented by Jennifer Walker, Assistant Attorney General and Kyle Bruckner, Assistant Attorney General. Cheryl Watkins, Assistant Payments Supervisor, and Akisha Drain, Eligibility Specialist, appeared as witnesses on behalf of the Department.

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 records from [REDACTED] were received and marked into evidence as Exhibit 3. The record closed on March 15, 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 [REDACTED], 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On November 16, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 344-348).

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.
4. On December 18, 2018, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 2-3).
5. Petitioner alleged disabling impairment due to back pain, shoulder pain, fibromyalgia and asthma.
6. On the date of the hearing, Petitioner was 45 years old with a [REDACTED], 1973 birth date; he is 5'5" in height and weighs about 167 pounds.
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 in landscaping.
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.

On November 9, 2017, Petitioner was seen as [REDACTED] with a chief complaint of multiple joint pain. Petitioner had x-rays of his wrist and hand completed the finding was that there was no acute fracture or dislocation in either hand or wrist. There were no significant degenerative changes. (Exhibit A, pp. 85-89).

On January 7, 2018, Petitioner was seen at [REDACTED] with a chief complaint of a cough. The impression included no acute cardiopulmonary process. Petitioner's condition was noted to be stable. (Exhibit A, pp. 78-83).

On February 26, 2018, Petitioner was seen at [REDACTED] for conditions surrounding his mental health. Relating to Petitioner's generalized anxiety disorder, the doctor indicated that he was glad that Petitioner was doing well. For the remainder of Petitioner's medical condition, his medications were continued. (Exhibit A, pp. 318-326).

On March 23, 2018, Petitioner was seen at [REDACTED] with chief complaints of mood disorder depression and joint pain. The assessment indicated that Petitioner had generalized anxiety disorder. It was noted that Petitioner's anxiety was very well-managed. The second assessment was other specified depressive episodes. The note indicated that it seemed as if Petitioner's depression was very well-managed. The third assessment

indicated multiple joint pain. The note indicated that the doctor was unsure as to the reason for Petitioner's joint pain. It was noted that because there was no indication of fever, swelling, or noticeable signs of infection, as well as negative blood work and normal prior imaging, the doctor may have to just systematically manage. (Exhibit A, pp. 262-265).

On May 10, 2018, Petitioner was seen at [REDACTED] with a chief complaint of mood disorder. Petitioner reported to having an improved mood. Petitioner further reported improvement in his joint pain symptoms which was attributed to functional cause versus fibromyalgia. (Exhibit A, pp. 308-310).

On June 6, 2018, Petitioner was seen at [REDACTED] for an Intake Functional Status Summary. Petitioner's intake functional measure was 61 out of 100. Petitioner was 45 years old at the time of the appointment. Petitioner reported having been involved in a motor vehicle rollover accident in September 2017 which may have impacted in his back. Petitioner further reported pain at B S1 joints that increased with walking or biking, squatting, bending forward and sleeping at night. Petitioner indicated his pain ranges from 4-9/10. Petitioner's exam revealed decreased lumbar ROM with pain during extension and pelvis adjustment dysfunction with R ilium stuck rotated posterior giving in apparent shorter R limb sacral torsion and hypertonicity of the lumbopelvic stabilizing muscles. The clinical judgment included that it appeared that the combination of pelvis and sacral dysfunction was causing increased stress on his lower back, causing pain and impaired function. The note indicated that Petitioner responded well to physical therapy with a significant decrease in his pain. (Exhibit A, pp. 149-155).

On June 11, 2018, Petitioner appeared for physical therapy with Probability Physical Therapy. Petitioner's pain level was noted to be 2/10. Petitioner reported that his pain levels were reduced significantly but he still had pain after getting off his bike. The pain was located at the central sacrum. (Exhibit A, pp. 165-168).

On June 21, 2018, Petitioner appeared for physical therapy with [REDACTED]. Petitioner's pain level was noted to be 2/10. Petitioner reported pain in his lower back at the lumbar sacral junction. Petitioner indicated that stretching after biking and walking had improved his pain. Petitioner reported more symptoms in his lower back the two days after his last visit. (Exhibit A, pp. 167-168).

On June 25, 2018, Petitioner appeared for physical therapy with [REDACTED]. Petitioner's pain level was noted to be 2-3/10. Petitioner reported continue lower back and sacral pain that travels into bilateral glutes especially in the morning. Petitioner reported 70% improvement, however he still had lingering tension and restrictions causing limitation with lumbar flex station an extension. (Exhibit A, pp. 169-170).

On July 17, 2018, Petitioner had an MRI of his shoulder. The purpose of the MRI was to evaluate a left shoulder mass. There was no soft tissue injury. There was no full thickness tear of the rotator cuff identified. No reaction or attendance on atrophy of

muscles. The longhand of the bicep tendon was intact and appropriately located within the bicipital groove. (Exhibit A, p. 49).

On July 18, 2018, Petitioner appeared for physical therapy with [REDACTED] for back treatments. Petitioner reported being involved in a rollover motor vehicle accident in September 2017 which may have impacted his back. Petitioner reported increased pain with walking or biking, squatting, bending for and sleeping at night. Petitioner's pain level at the time of this visit was 3/10. (Exhibit A, pp. 53-57).

On August 9, 2018, Petitioner was seen for symptoms relating to his asthma. The report indicates that Petitioner was doing well in terms of his asthma. Petitioner experienced some difficulty with cold air in the wintertime. (Exhibit A, pp. 34-37).

On August 30, 2018, Petitioner had an x-ray of the spine. The findings included that there were five lumbar type vertebral bodies. Alignment of the lumbar spine was normal. The vertebral body heights were preserved. The intervertebral disc spaces were preserved. There were no fractures. The lumbar spine x-ray was normal. (Exhibit A, pp. 44-45).

On September 7, 2018, Petitioner was seen at [REDACTED] for back pain. The report indicated that Petitioner's recent x-ray was negative. Petitioner indicated that had functional limitations of performing ADLs like lifting objects, biking greater than 4 miles, and prolonged walking. It was noted that Petitioner would benefit from skilled physical therapy and had good potential to return to previous level of function. (Exhibit A, pp. 60-65).

Petitioner continued to appear for physical therapy with [REDACTED] from September 11, 2018 through October 16, 2018. Petitioner's pain level was noted to be anywhere between 0-6/10 during these visits. (Exhibit A, pp. 164-213).

On October 8, 2018, Petitioner had imaging completed. The impression indicated that there was a moderate amount of colonic stool with a non-obstructive pattern; both kidneys were obscured by overlying bowel content; and there was no gross evidence ureteral calculus. (Exhibit A, pp. 41-43).

On February 14, 2019, Petitioner had an MRI which yielded the following findings: T12-L1: No focal abnormality; L1-L2: Mild posterior/posterolateral disc bulge/endplate osteophyte; L2-L3: Mild posterior/posterolateral annular bulge/endplate osteophyte; L3-L4: Mild posterior/posterolateral disc bulge/endplate osteophyte; L4-L5: Mild posterior/posterolateral disc bulge/endplate osteophyte; L5-S1: Mild posterior/posterolateral disc bulge/endplate osteophyte; mild lumbar facet hypertrophy; lateral spondylotic changes combine with facet hypertrophy to result in minimal bilateral L1-L2, minimal right L2-L3, mild left L2-L3, mid-moderate right L3-L4; mild bilateral L4-L5, minimal/mild right L5-S1 and mild left L5-S1 neural foraminal stenosis as well as mild discogenic degenerative changes were seen within lumbar vertebral column. (Exhibit 3, pp. 1-3).

On February 27, 2019, Petitioner underwent shoulder surgery for a rotator cuff tear. The discharge instructions stated no lifting, no pulling, or grasping with the affected extremity. It further indicated that the minimal recovery period for sports or any strenuous activity was six months. (Exhibit 3, pp. 4-14).

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 1.02 (major dysfunction of a joint(s) due to any cause; 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. At the time of the hearing, Petitioner testified that he could dress/undress himself; bathe/shower himself; use the bathroom unassisted; eat by himself; complete chores; prepare meals; drive a car; lift a gallon of milk; squat; bend at the waist; reach and use his hands. Petitioner indicated that he could not stand for more than one hour without experiencing pain. Petitioner further indicated that after approximately 45 minutes of sitting, he experiences pain.

Petitioner's medical records prior to his surgery in February 2019 indicated only mild limitations. Specifically, Petitioner's November 2017 x-ray of his wrist and hand revealed no acute fractures; Petitioner's July 2018 MRI of the shoulder revealed no full thickness tear of the rotator cuff; and Petitioner's August 2018 x-ray of his spine yielded normal results. Further, Petitioner's pain levels prior to his shoulder surgery, while consistent, ranged anywhere from 0-6/10. Petitioner appeared to be responding well to treatment, including physical therapy, and medication. Further, the Department testified that Petitioner has ridden his bike to its local office on several occasions with a backpack on his back. On the day of the hearing, Petitioner testified that he rode his bike five miles to attend the hearing. A review of Petitioner's medical records also references that Petitioner uses his bike as a frequent mode of transportation. However, after Petitioner underwent shoulder surgery for a torn rotator cuff, it left him unable to lift, pull and/or grasp with an estimated recovery time of six months.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p. With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that, prior to his February 2019 surgery, Petitioner maintained the physical capacity to perform light work as defined by 20 CFR 416.967(a). However, following his surgery, Petitioner maintains the physical capacity to perform less than sedentary as defined by 20 CFR 416.967(a).

Petitioner also alleged that he had nonexertional limitations due to depression and anxiety. However, Petitioner's limited mental health medical records indicated that both his depression and anxiety were managed well with medication. Based on the medical record presented, as well as Petitioner's testimony, Petitioner has mild 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 working in landscaping and snow removal. Petitioner's work in landscaping, which required prolonged standing and lifting heavy objects regularly, required medium physical exertion. Based on the RFC analysis above prior to his shoulder surgery, Petitioner's RFC limited him to light work activities. Further, as of his shoulder surgery on February 27, 2019, Petitioner's exertional RFC limits him to less than sedentary work activities. As such, Petitioner is incapable of performing past relevant work. Petitioner also has mild limitations in his mental capacity to perform basic work activities. In light of the entire record, it is found that Petitioner's exertional 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 45 years old at the time of application and also 45 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 working in landscaping and snow removal. Prior to the February 2019 shoulder surgery, Petitioner maintained the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform light work activities. As such, based solely on his exertional RFC, the Medical-Vocational Guidelines result in a finding that Petitioner was not disabled prior to his shoulder surgery.

However, following his shoulder surgery, 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. The Medical-Vocational Guidelines, Appendix 2 do not support a finding that Petitioner is not disabled based on his exertional limitations following his shoulder surgery. The Department has failed to counter with evidence of significant numbers of jobs in the national economy which Petitioner could perform despite his limitations following his shoulder surgery. Therefore, the Department has failed to establish that, based on his RFC and age, education, and work experience, Petitioner can adjust to other work. Therefore, Petitioner is disabled at Step 5 as of the date of his shoulder surgery on February 27, 2019. Because Petitioner's symptoms may be resolved in six months, a review of his disability is appropriate in six months.

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** in part and **AFFIRMED** in part.

Petitioner was not disabled from the date of application through February 26, 2019.

Petitioner is disabled as of the February 27, 2019.

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 as of February 27, 2019, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;
3. Review Petitioner's continued eligibility in October 2019.

JAM/tlf



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-Washtenaw-Hearings
AG-HEFS-MAHS Bruckner/Walker
Policy-FIP-RAP-SDA
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Petitioner – Via USPS



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