



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: March 28, 2019
MAHS Docket No.: 19-000057
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. After due notice, a telephone hearing was held on March 6, 2019, from Detroit, Michigan. Petitioner represented himself. The Department of Health and Human Services (Department) was represented by Susan Forman, Family Independence Manager.

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 December 12, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 6-12).
3. On December 21, 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. 3-4).
4. On January 8, 2019, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 2).

5. Petitioner alleged disabling impairment due to bipolar disorder; post-traumatic stress (PTSD) disorder; anti-social disorder; hypertension; neuropathy; and carpal tunnel syndrome.
6. On the date of the hearing, Petitioner was 51 years old with a [REDACTED], 1968 birth date; he is 5'9" in height and weighs about 300 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 as production worker.
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 was reviewed and is summarized below.

On September 14, 2017, Petitioner was seen at [REDACTED] to review electrodiagnostic findings and impressions. The findings and impressions included: abnormal study; electrodiagnostic findings suggestive of left moderate carpal tunnel syndrome without axon loss and right moderate carpal tunnel syndrome without axon loss. There was no clear electrodiagnostic evidence for: left or right cervical radiculopathy; left or right ulnar neuropathy; left or brachial plexopathy; peripheral polyneuropathy; left or right tibial neuropathy; right lumbar radiculopathy; and myopathy. It was noted that Petitioner had not attempted wrist splints or bracing for carpal tunnel treatment. It was further noticed that his lower extremity symptoms were suspicious for lumbar central canal stenosis however no definitive axon could be identified on the test. (Exhibit A, pp. 830-831).

On November 2, 2017, Petitioner was seen for a colonoscopy with biopsy. The impression included: very large polyp suspicious for neoplasm, descending colon, biopsies obtained. The medical note indicated that recommendations were pending pathology report. There were no complications noted. Exhibit A, pp. 832-833).

On December 18, 2017, Petitioner was seen at [REDACTED] for a CT Abdomen Pelvis w/Contrast. Findings were that the lung bases were clear. The liver, spleen, pancreas and adrenal glands were unremarkable. Impressions included: lobular area of asymmetric soft tissue density in the descending colon measuring 4.1 x 2.7 x 3.2 cm which likely relates to the reported polyp seen on the recent colonoscopy. No surrounding reactive changes are present. Redundant sigmoid colon extending into the right abdomen. The gas pattern was nonobstructive. Several non-enlarged,

nonspecific periaortic lymph nodes. No significantly enlarged lymph nodes evident. (Exhibit A, pp. 837-838).

On May 4, 2018, Petitioner was admitted to [REDACTED]. underwent a left hemicolectomy, transverse-sigmoid colocolic anastomosis. Both the preoperative diagnosis and the postoperative diagnosis was large adenomatous polyp distal descending colon. The findings indicated that there was a barely palpable soft mass no more than three cm in diameter in the distal descending colon. The junction of the distal descending colon and sigmoid: was fixed down to the left Brown of the pelvis with naturally occurring attachments. The sigmoid: was quite long, approximately 60 cm. There were no omental or peritoneal implants. Petitioner was discharged on May 11, 2018. (Exhibit A, pp. 238-371).

On July 24, 2018, Petitioner was seen by [REDACTED] for a mental health assessment. Petitioner reported that he was anxious depressed and at times compulsive. Petitioner indicated that he had been released from incarceration three weeks prior to the assessment. Petitioner stated that he had been "in and out" of prison for the last 18 years. Petitioner indicated that it had been difficult to adjust to life outside of prison. Petitioner reported that he would stay up for 2-3 days at the time. Petitioner was found to demonstrate symptoms consistent with bipolar two and obsessive-compulsive disorder. The treatment was set to focus on stabilizing the symptoms associated with these diagnoses. Petitioner's GAF score was 37. (Exhibit A, pp. 288-311).

On August 8, 2018, Petitioner was seen at [REDACTED] for a checkup. Petitioner indicated that he has not experienced seizures in at least one year. Petitioner reported that he was recently hospitalized for partial colectomy due to finding adenomatous polyps on colonoscopy. The postop course was complicated by wound dehiscence for which he followed up with the general surgery several times and had an appointment scheduled for two weeks from this visit. It was noted that Petitioner also had a history of left lower extremity edema and skin lesions that were biopsied without definite diagnosis. Petitioner reported that his depression was well-controlled. Petitioner further reported that he was not diagnosed with hypertension however indicated that his blood pressure on multiple occasions was above 140s systolic. (Exhibit A, pp. 224-238).

On August 14, 2018, Petitioner was seen [REDACTED] for counseling. Petitioner reported that his depression is maintained unremarkable. His thought process orientation was unremarkable. His behavior and functioning were unremarkable. However, Petitioner reported that he had been off his medication for a wild but rezoned the medications two weeks prior to the visit. Petitioner reported that he passed out a week before the visit. The notes indicate that Petitioner had made good progress with four of his objectives. (Exhibit A, pp. 316-318).

On September 3, 2018, Petitioner was seen at [REDACTED] for a CT Abdomen and Pelvis with IV Contrast. The impression indicated that there were at least three collections which had some air and fluid. The largest collection measures 3.8 x 4.4 x 2.9

cm in diameter and has fluid within it and is most likely a seroma. All of the collections except the uppermost tiny collection appear to be associated with the metallic sutures used to close the interior abdominal wall. There was splenomegaly. The spleen appeared to be slightly larger than on the prior study. (Exhibit A, pp. 276-77).

On September 4, 2018, Petitioner was seen at [REDACTED] for an incision that had reopened. Petitioner reported that approximately one week prior to the visit there was a worsening of his abdominal wall. Petitioner reported that he had been treating it daily however he felt a bulge which has continuously grown and become severely painful. Petitioner was diagnosed with abdominal wall fluid collection; infected fluid collection with fistula; and neuropathy. (Exhibit A, pp. 239-249).

On September 21, 2018, Petitioner was seen at [REDACTED] with a report of improved lower extremity pain; however, Petitioner complained of pain especially whenever he is physically active. The medical note indicates that Petitioner was seen by Dr. [REDACTED] for drainage of collections from the abdominal wall. Petitioner indicated that he now feels much better. Petitioner reported that he is trying to lose weight however he cannot be physically active because of the pain in his legs. Petitioner's diagnosis included neuropathy; bipolar affective disorder, remission status unspecified; prediabetes; lower extremity pain, bilateral; morbid obesity; bipolar affective disorder, currently depressed, mild. (Exhibit A, pp. 251-261).

On October 10, 2018, Petitioner was seen at [REDACTED] for a USV Arterial Physio ABI Lower Extremity. Petitioner complains of constant pain below the knee bilaterally and further complains of oozing blisters and skin discoloration. The procedure included obtaining bilateral lower extremity segmental blood pressures by Doppler at the brachial arteries and at the ankle level including pulse volume waveform. The impression indicated normal bilateral lower extremity arterial evaluation. (Exhibit A, pp. 278-283).

On October 23, 2018, Petitioner was seen at [REDACTED] with a chief complaint of neuropathy. Petitioner indicated that he had been seen by [REDACTED] Clinic several days after his prior visit. He received prescriptions for all the medications that he was previously on, however with different dosages. Petitioner reported that he accidentally continued taking both medications that he was on before as well as the newly prescribed medication. Petitioner indicated that this altered the control of his bipolar disorder. Petitioner reported better controlled neuropathy with significant improvement of pain in both lower extremities, however he ran out Gabapentin and now reports that the pain has returned. (Ex A, pp. 262-275).

On November 29, 2018, Dr. [REDACTED] authored a psychiatric/psychological report to the Michigan Disability Determination Service. Petitioner reported that he had been incarcerated 17 to 18 years and that he had been paroled on July 3, 2018. His parole is scheduled to end in August 2019. Petitioner reported having panic attacks in which he would have trouble breathing, have sweats, and his heart and mind race. Petitioner further reported being sexually molested by his uncle from age 7 to 15. Petitioner

indicated that he graduated from high school and was in special education. Petitioner smokes one half pack of cigarettes per day. Petitioner indicated that a typical day included waking up at 6:30 a.m.; caring for his dogs; drinking coffee; making a plan for the day; sometimes going to the library; having dinner; watching TV; going to bed at 3:00 a.m. Petitioner stated that he could complete chores including mowing the grass; shoveling snow; doing laundry; keeping his room clean. Petitioner's diagnosis included: bipolar disorder depressed; panic disorder without Agoura phobia; antisocial personality disorder; obesity. Petitioner's prognosis was listed as guarded but with a good support system. (Exhibit A, pp. 216-221).

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 12.15 (trauma and stressor related 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 indicated at the hearing that he had exertional limitations due to carpal tunnel condition. Petitioner further testified that he had a pending appointment for pre-operative surgery related to his carpal tunnel condition. However, the only medical evidence presented concerning allegations of or treatment for a carpal tunnel injury were dated September 2017 and revealed that Petitioner had not attempted wrist splints or bracing for carpal tunnel treatment. Additionally, it was noted that his lower extremity symptoms could not be identified on the test given in September 2017. In the absence of any medical evidence concerning his carpal tunnel condition, it is found that Petitioner does not have any exertional limitations.

For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. Id. The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. Id.

Petitioner's July 24, 2018 mental health assessment resulted in a Global Assessment of Function (GAF) score of 37. Someone with a GAF score of 37 falls within the Major Impairment in Several Areas of Functioning category which is explained as follows:

40 Major Impairment in Several Areas of Functioning Group D Criteria:

- Serious impairment with work, school or housework if a housewife or househusband (e.g., unable to keep job or stay in school, or failing school, or unable to care for family and house)
- Frequent problems with the law (e.g., frequent shoplifting, arrests) or occasional combative behavior
- Serious impairment in relationships with friends (e.g., very few or now friends, or no current friends)

- Serious impairment in judgment (including inability to make decisions, confusion, disorientation)
- Serious impairment in thinking (including constant preoccupation w/thoughts, distorted body image, paranoia)
- Serious impairment in mood (including constant depressed mood plus helplessness and hopelessness, or agitation, or manic mood)
- Serious impairment due to anxiety (panic attacks, overwhelming anxiety)
- Other symptoms: some hallucinations, delusions, or severe obsessional rituals - Passive suicidal ideation

38-40 4 of the criteria in Group D

34-37 5 of the criteria in Group D

31-33 6 of the criteria in Group D

Petitioner received a GAF score of 37 approximately one month prior to his application. Petitioner's testimony is consistent with meeting 5 of the criteria in Group D listed above. Petitioner has only had limited employment in the past 15 years and none since his release from incarceration. At the hearing, Petitioner testified that he does not do well when he is with groups of people. Petitioner indicated that he feels as if people are out to get him. Petitioner has had verified contact with the criminal justice system. Petitioner did not identify any friends and indicated that he lives in between family members' homes. Petitioner stated that his ability to remember is affected by the medication he has been prescribed. Further, Petitioner testified that he was unable to concentrate or complete tasks due to racing thoughts. Petitioner also indicated that he has frequent panic attacks.

There was no medical evidence presented that his GAF score has improved. Petitioner participated in special education classes while in school. Petitioner has significant mental health diagnosis which included PTSD stemming from a molestation which occurred when he was a child. Petitioner suffered from complications with his colonoscopy and has been treated on several occasions with symptoms associated with his complications. As a result of the complications, Petitioner testified that he is in constant pain which inhibit his ability to stand or sit for long periods of time.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has a nonexertional RFC imposing marked to extreme limitations in the ability to understand, remember, or apply information; marked to extreme limitations in the ability to interact with others; the ability to concentrate, persist or maintain pace; and marked to extreme 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.

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 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 has had limited employment in the last 15 years as a production worker. Based on the RFC analysis above, Petitioner has no limitations to his exertional RFC. Because Petitioner has no exertional limitations, he is not precluded from performing past relevant work due to the exertional requirement of his prior employment. However, his nonexertional RFC results marked to extreme limitations in the ability to understand, remember, or apply information; marked to extreme limitations in the ability to interact with others; the ability to concentrate, persist or maintain pace; and marked to extreme limitations in the ability to adapt and manage himself. Petitioner's nonexertional RFC would prevent him from being able to perform past relevant work. Therefore, 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). 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).

In this case, Petitioner has only nonexertional limitations due to his mental condition. Therefore, the Medical-Vocational Guidelines are not relevant in determining whether she can adjust to other work. As discussed above, Petitioner's nonexertional RFC results in marked to extreme limitations in the ability to understand, remember, or apply information; marked to extreme limitations in the ability to interact with others; the ability to concentrate, persist or maintain pace; and marked to extreme 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

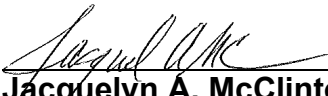
DISABLED: The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner **disabled** for purposes of the SDA benefit program.

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 [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;
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-Barry-Hearings
BSC3 Hearing Decisions
Policy-FIP-RAP-SDA
MAHS

Petitioner – Via First-Class Mail:

