[redacted]

Date Mailed: April 12, 2019
MAHS Docket No.: 19-000514
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, an in-person hearing was held on February 27, 2019, from Detroit, Michigan. Petitioner appeared for the hearing with Authorized Hearing Representative (AHR), [redacted]. The Department of Health and Human Services (Department) was represented by [redacted], Medical Contact Worker.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. Petitioner submitted additional records which were received on March 11, 2019, marked and admitted into evidence as Exhibit 2. The record was subsequently closed on March 29, 2019 and the matter is now before the undersigned for a final determination 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 or around June 8, 2018, Petitioner submitted an application seeking cash assistance benefits on the basis of a disability.

2. On or around November 7, 2018, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. (Exhibit A, pp. 4-10)

3. On or around January 9, 2019, the Department sent Petitioner a Notice of Case Action denying his SDA application based on DDS' finding that he was not disabled.

4. On or around January 22, 2019 Petitioner submitted a timely written Request for Hearing disputing the Department's denial of his SDA application.

5. Petitioner alleged physically disabling impairments due to lupus, leukemia, nephritis, acute kidney failure, brittle bone syndrome, hypertension, protein leak, and dizziness. Petitioner alleged mental disabling impairments due to depression and anxiety.

6. As of the hearing date, Petitioner was [redacted], years old with an April 28, [redacted] date of birth; he was [redacted] and weighed [redacted] pounds.

7. Petitioner's highest level of education is [redacted] grade. He did not obtain a high school diploma or GED. Petitioner has no reported employment history.

8. Petitioner has a pending disability claim with the Social Security Administration (SSA).

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

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

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), 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 thoroughly reviewed and is briefly summarized below:

A May 8, 2012 Individualized Education Program (IEP) Team Report shows that Petitioner was eligible for special education program/services due to a specific learning disability. The report indicates that Petitioner's performance in the areas of math computation and reading comprehension are below expected grade level with his reading assessed at a level 8.4. It was noted that Petitioner received school social work services to assist with peer relationships (e.g. use non-abusive language/actions towards peers) and improve his problem-solving skills (e.g. list/identify/discuss ways to change his own behavior). (Exhibit A, pp. 66-71)

Records from Petitioner's June 14, 2018 visit with [redacted], of the [redacted] show that he has medical history which included diagnoses of leukemia, hypertension, learning disability, systemic lupus erythematosus (SLE), and stage IV lupus nephritis, with surgical history of renal biopsy. The doctor was to continue to monitor Petitioner's lupus nephritis and kidney function and refer him for additional renal biopsy. His hemoglobin levels were also to be monitored due to his anemia as a result of chronic kidney disease. A comprehensive metabolic panel completed in August 2018 showed that among other things that Petitioner's creatinine level was 4.19 mg/dL, that his glomerular filtration rate (GFR), black was 22 mL/min/1.73 m2, and that his GFR non-black was 19 mL/min/1.73 m2. (Exhibit A, pp. 76-78; Exhibit 1)

Petitioner's 2018 treatment records from the [redacted] were presented for review. Progress notes from Petitioner's September 17, 2018 visit show that Petitioner reported sharp chest pain that lasts for 10 to 15 minutes, that it occurs three times daily, and is associated with shortness of breath. It was also reported that as a teen, Petitioner was diagnosed with cardiomyopathy. Records show he was being treated for membranous nephropathy determined by biopsy, SLE for which he is treated with steroids, hypertension, chronic renal failure, chest pain, shortness of breath, fatigue, and lupus. A September 2018 stress test revealed mild concentril LVH, an ejection fraction of 55%. The stress echo test was indeterminate for ischemia due to submaximal heart rate response. It was recommended that he have a pharmacologic stress test and reduced physical activity. In October 2018 he underwent a Pharmacologic Nuclear Spect Stress Test. Results showed stress induced symptoms of fatigue and abnormal findings including evidence of ischemia and cardiomyopathy, mildly decreased LV systolic function and a moderate size defect of mild intensity in the inferior wall that is reversible at rest and suggestive of ischemia. His ejection fraction was 48%. (Exhibit A, pp. 84-113).

Progress Notes from Petitioner's June 2018 to July 2018 visits with primary care physician [redacted] were reviewed. (Exhibit A, pp. 114-145). Petitioner reported chronic fatigue and body aches and notes indicate he was being treated by a nephrologist, had a kidney biopsy done, and medical history of SLE, acute kidney failure, and chronic kidney disease, hypertension, leukemia, and vitamin D deficiency. Petitioner's medication list included daily steroids, among many others. Petitioner was to be referred to an orthopedic doctor to be evaluated for lupus arthritis.

Petitioner was hospitalized at [redacted] in Knoxville, Tennessee from October 29, 2017 to November 8, 2017. (Exhibit A, pp. 146-213). He had significant hypertension when he first presented to the hospital, which required a consult from nephrology to modify his anti-hypertensive medications. Records show that he had systolic blood pressure in the 220s, diastolic in the 120s, and further evaluation revealed he was in acute renal failure, with an unknown baseline creatinine, and urine that was concerning for glomerulonephritis, so he was admitted for further care. It was noted that Petitioner had acute kidney injury secondary to lupus nephritis and had been on several immune suppressing medications. While in the emergency room, he was noted to have a creatinine of 5.4 and his creatinine peak during the course of his hospitalization was 4.2. Upon admission, Petitioner reported that he had been tired and weak with pain all over for the last 10 days. He also reported shoulder pain, left upper quadrant pain, urinary frequency, generalized weakness and shortness of breath. He reported history of lupus nephritis and reported that this has resulted in his kidney shutting down. He further reported history of brittle bone syndrome. He had minimal left flank tenderness to palpation upon physical examination. Primary diagnosis was malignant hypertension, acute renal failure syndrome, chronic kidney disease, hyperkalemia secondary to renal failure, uncontrolled hypertension secondary to underlying kidney disease, and suspected lupus related nephritis. (Exhibit A, pp. 146-213).

Petitioner presented a letter from his PCP [redacted] dated January 16, 2019 which indicates that he has been a patient under the doctor's care since May 25, 2018 and is suffering from major depressive disorder, lupus, chronic kidney disease, and hypertension. The doctor was of the opinion that Petitioner is totally disabled. (Exhibit 1)

Records from Petitioner's June 29, 2018 left kidney biopsy showed membranous nephropathy (consistent with lupus nephritis, Class V), moderately advanced renal disease with advanced global glomerulosclerosis (46 out of 53 glomeruli are globally sclerosed), tubular loss and interstitial fibrosis, mild to moderate chronic interstitial inflammation and blood vessels with mild to moderate thickening. (Exhibit 1)

On or around December 19, 2018, [redacted] completed a Physical Medical Source Statement which indicated that Petitioner's diagnosis is systemic lupus erythematosus (SLE), that his prognosis was guarded, and that his symptoms included depression, anxiety, fatigue, kidney failure, and GERD. With respect to Petitioner's pain, the doctor indicated that Petitioner had pain in his joints, hands, elbows, shoulders, knees, and feet; that the pain was constant and precipitated with activity. When Petitioner's lupus flares, pain is severe. Joint tenderness and swelling were also referenced. It was noted that the impairments were expected to last at least 12 months and that depression and anxiety are psychological conditions affecting his physical condition. The doctor indicated that Petitioner is able to walk less than one block without rest or severe pain, that is able to sit for only 45 minutes before needing to get up, that he is able to stand for only 30 minutes before needing to sit down, and that he is able to sit, stand, or walk for less than two hours out of an eight hour workday. The doctor also indicated that Petitioner would need a job that permits shifting positions at will from sitting, standing, or walking, that Petitioner will need to include periods of walking around during an eight hour working day as often as every 10 minutes, and further that one to three unscheduled breaks per each eight-hour work shift because of pain, paresthesia, numbness and stiffness in the joints. With respect to Petitioner's ability to lift, the doctor noted that Petitioner could occasionally lift less than 10 lbs., never lift 20 lbs., and never lift 50 lbs. According to the doctor, Petitioner could occasionally twist, climb stairs, and climb ladders, but could never bend or stoop. While Petitioner did not have any restrictions with his hands and fingers, it was noted that during an eight-hour workday he was able to use his arms for reaching in front of his body and overhead only 20% of the workday. Petitioner was assessed as likely to be off task 25% or more of a typical work day, meaning that his symptoms were likely to be severe enough to interfere with the attention and concentration needed to perform even simple tasks. Petitioner had additional limitations that were noted to affect his ability to work at a regular job on a sustained basis including issues focusing, anxiety, and depression. The description of his symptoms and limitations have been applicable since 2013. (Exhibit 1)

On February 9, 2019, Petitioner's treating cardiologist [redacted] completed a Cardiac Medical Source Statement, indicating that Petitioner's diagnosis was Stage Five chronic kidney disease, hypertension, and history of cardiovascular disease. Petitioner's symptoms included exertional dyspnea, chronic fatigue, and exercise intolerance. It was noted that stress was a contributing factor in his symptoms and that he was capable of

only low stress work. The doctor indicated that Petitioner's physical symptoms and limitations caused emotional difficulties such as chronic anxiety and depression because his illness is terminal. It was further noted that his impairments have lasted or are expected to last at least 12 months. As a result of his impairment, he was assessed as able to walk only one to two blocks without rest or severe pain, that he was able sit for about four hours and stand less than two hours in an eight-hour workday. With respect to his ability to lift, he could frequently lift less than 10 pounds, occasionally lift 10 pounds rarely lift 20 pounds, and never lift 50 pounds. He was able to frequently twist and bend but occasionally able to crouch, climb stairs, and climb ladders. Regarding environmental restrictions, he was to avoid all exposure to extreme cold, extreme heat, high humidity, and cigarette smoke, he was to avoid even moderate exposure to fumes, odors and gases, and was to avoid concentrated exposure to wetness. Petitioner was assessed as likely to be off task 15% of a typical work day, meaning that his symptoms were likely to be severe enough to interfere with the attention and concentration needed to perform even simple tasks. (Exhibit 1)

Petitioner presented an after-visit summary documenting his hospitalization from January 2, 2019 to January 7, 2019 for the treatment of emergency hypertension and colitis. (Exhibit 1)

Updated records from Petitioner's visits with [redacted] of the [redacted] were reviewed and show that he continued to receive treatment for lupus nephritis Stage V, that his kidney function needed continuous monitoring, as he is unable to use ace inhibitor because of hyperkalemia. A follow-up with rheumatology was recommended. He further continued to be treated for an enlarged heart, poorly controlled hypertension, anemia of chronic kidney disease requiring hemoglobin level monitoring, as well as secondary hyperparathyroidism requiring motioning of PTH levels, and hyperkalemia. During a December 4, 2018 visit, Petitioner reported feeling tired, sick and pale and that he is barely able to get out of bed. His glomerular filtration rate (GFR) was low, at 23 mL/min/1.73, equivalent to chronic kidney disease. His blood urea nitrogen level was high at 32 mg/dL. In January 2019, his albumin level was 3.2g/dL, his protein level was 5.4g, and his blood urea nitrogen level was increased to 36 mg/dL. Petitioner underwent a CT Guided Biopsy of his left kidney. (Exhibit 2)

Petitioner presented updated records from his visits with [redacted], showing that as of January 2019, he was being treated for SLE, end stage renal disease, renal hypertension, and nephrotic syndrome. During the visits, Petitioner expressed symptoms of depression, including feeling down and hopeless, and having little interest or pleasure in doing things. It was noted that the severity of his lupus is level six, that his associated symptoms include arthralgias, fatigue, nephritis, and photosensitivity. (Exhibit 2)

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 due to any cause), 4.04 (ischemic heart disease), 6.05 (chronic kidney disease with impairment of kidney function), 6.06 (nephrotic syndrome), 6.07 (complications of chronic kidney disease), 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders), and 14.02 (systemic lupus erythematosus) were considered. A thorough review of 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). 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.

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

Petitioner, who was [redacted] years old at the time of hearing, testified that he has pain daily due to his lupus nephritis, that he suffers from fatigue, shortness of breath and dizziness that sometimes result in falls. He stated that in 2010 at age [redacted], he was diagnosed with lupus and leukemia, undergoing two years of chemotherapy and other treatments. He reported that he was diagnosed with brittle bones and that he has an enlarged heart but is unable to take medications for the condition due to the kidney disease. Petitioner testified that he has severe hypertension that causes headaches and dizziness and the medications he takes have side effects including fatigue, dizziness, flushing, mood swings, and irritability that make it difficult for him to function daily. He reported taking steroid medications for several years for his kidney impairments and stated that he has been told he will need dialysis treatment soon. He further reported having four kidney biopsies in the last eight years and that he was admitted to the hospital for one week in January 2019 for hypertensive emergency. He also testified that in 2018 he was hospitalized for two days due to elevated blood pressure and rapid heart rate. Petitioner stated that he was in special education classes beginning in first grade and continuing through until 10th grade. He did not complete high school and did not obtain a GED. Petitioner reported that he was previously approved for SSI when he was [redacted] years old based on his disabilities, but his case was closed in 2016 when he moved out of state and paperwork was not completed. Petitioner's statements about his conditions and impairments were supported by the medical evidence presented for review.

Petitioner testified that he can walk for no more than ½ block and stand for no more than five minutes due to shortness of breath and pain. He reported that he does not use an assistive device to assist with walking and that he can only sit for 20 minutes due to body pain. Petitioner stated that he is able to frequently lift a gallon of milk and has been put on a lifting restriction of less than 10 pounds due to his chronic kidney disease. He is able to bend/squat but not for long periods of time. Petitioner reported that he lives alone in an upper flat and some family members live in the lower flat of the home. He stated that he is able to bathe and dress himself and take care of his own personal hygiene. He reported that he cooks basic meals such as hotdogs and is able to complete light household chores but takes breaks often. He stated that his family brings him most of his meals. Petitioner's authorized hearing representative stated that he only comes out of his room for meals and that he stays in his room all day in the dark. She further stated that is not social, that he does not shower or dress unless he has a doctor's appointments.

With respect to his mental/nonexertional impairments, Petitioner testified that he is being treated with medications for depression and anxiety by his PCP and received treatment from social workers while he was in school but has not participated in mental health treatment from a therapist or psychiatrist as an adult. He reported symptoms of depression including lack of motivation, poor social interaction, and the lack of desire to leave his house. He testified that he suffers from panic/anxiety attacks on a daily basis which include symptoms of his heart racing and shortness of breath. Petitioner reported that his concentration is poor, with his ability to focus limited to 5 to 10 minutes. He also testified that his memory is also poor and that he suffers from mood swings and anger outbursts as a result of his medications.

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.

The evidence presented is considered to determine the consistency of Petitioner's statements regarding the intensity, persistence and limiting effects of his symptoms. The medical evidence presented supports Petitioner's testimony regarding the severity of his impairments. Based on a thorough review of Petitioner's medical records and in consideration of the evidence presented from Petitioner's treating physicians, some of which are referenced above, 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.

While Petitioner reported history of depression and anxiety and identified symptoms associated with the impairments, based on his testimony, Petitioner has not been treated by a mental health professional. Although Petitioner was diagnosed with depression and anxiety and has symptoms of such, a review of the medical evidence presented coupled with Petitioner's testimony shows that Petitioner has mild limitations in his mental ability to perform 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 has no work history and thus, cannot be found disabled, or not disabled, at Step 4. Therefore, the assessment continues to Step 5.

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, 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 [redacted] years old at the time of application and at the time of hearing, and thus, considered to be a younger individual (age 18-44) for purposes of Appendix 2. He completed [redacted] grade, had a learning disability and was in special education classes, did not obtain a high school diploma or GED and thus, has a limited or less literate education. As discussed above, Petitioner maintains the physical capacity to perform less than sedentary work. 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 less than sedentary RFC and age, education, and work experience, Petitioner can adjust to other work. Therefore, Petitioner is disabled at Step 5.

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

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Reregister and process Petitioner's June 8, 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; and

3. Review Petitioner's continued eligibility in October 2019.

ZB/tlf

Zainab A. Baydoun
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

DHHS

[redacted]

Authorized Hearing Rep. – Via USPS

[redacted]

Petitioner – Via USPS

[redacted]