STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

Date Mailed: May 1, 2019
MOAHR Docket No.: 19-002207
Agency No.:
Petitioner:

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, a telephone hearing was held on April 4, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Eligibility Specialist.

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 October 18, 2018, Petitioner submitted an application for cash assistance on the basis of a disability.

2. On or around March 4, 2019, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. The DDS determined that Petitioner was capable of performing other work.

3. On March 6, 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 March 11, 2019, Petitioner submitted a written Request for Hearing disputing the Department's denial of his SDA application.

5. Petitioner alleged physical disabling impairments due to back, neck, knee, and shoulder pain; tendinitis, arthritis, and gout.

6. Petitioner confirmed that he did not allege mental disabling impairments.

7. As of the hearing date, Petitioner was ██ years old with a May 22, ████ date of birth; he was ██" and weighed ███ pounds.

8. Petitioner completed high school and obtained a two-year college degree. Petitioner has reported employment history of work as: a field operations coordinator and supervisor for a janitorial and property management company, a janitorial custodian, a factory worker, a pizza delivery driver and a restaurant dishwasher. Petitioner has not been employed since June 2016.

9. 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 at 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 thoroughly reviewed and is briefly summarized below:

On February 4, 2019, Petitioner participated in a consultative physical examination, during which, he reported pain in multiple joints including his neck, back, knees and hands for several years. He reported history of arthritis and bone spurs, as well as arthroscopic surgery on both shoulders and both knees. He reported that he was last employed in 2016 as a custodian, however, he fell at work injuring his left shoulder and since that time has developed worsening problems with both shoulders and both knees. He reported that he was unable to perform any tasks that required squatting or kneeling and further that he has difficulty doing overhead work and tasks that require pushing or pulling. Severe pain and swelling in both hands were also reported as well as Petitioner’s difficulty opening jars, doors, buttoning and picking up coins. Upon physical examination, it was noted that Petitioner walked with a wide based gait without the use of an assistive device, that he had mild difficulty getting on and off the exam table, that he was unable to heel or toe walk, unable to squat and he was observed to be obese. His straight leg raising test was negative and there was no paravertebral muscle spasm noted. He did have diminished grip strength in both hands at 4/5 with loss of digital dexterity. He had difficulty opening the door and difficulty picking up paperclips. Tenderness to palpation at the MCP joints in both hands were found. The doctor concluded that Petitioner had a history of degenerative joint disease involving multiple joints including both knees, both shoulders and hands neck and back. (Exhibit A, pp. 23-26)

Records indicate that Petitioner was diagnosed with and receiving treatment for hypertension, diabetes, arthritis, high cholesterol, and further that he has past surgical

history including right and left rotator cuff as well as knee cartilage surgery. During an October 11, 2017 appointment, Petitioner denied symptoms preferable to his elevated blood pressure or cardiovascular disease and further denied any side effects of medications, however, severe degenerative joint disease of the left and right shoulders was noted. His HbA1C level was 7.7. (Exhibit A, pp. 76-79)

Petitioner's October 26, 2017 rheumatology office visit progress notes show that he was evaluated for arthralgia/arthritis myalgia-bilateral hand pain. During the appointment, Petitioner reported chronic history of bilateral knee pain, back pain and bilateral shoulder pain. He reported that recently for the last six months, he started having numbness in both hands and locking in his thumb and second finger. Petitioner indicated that he has had arthroscopic surgery and both knees as well as both shoulders, as well as a history of gout, and chronic pain in the feet and ankles. It was noted that he has morbid obesity post lap band surgery and diabetes. Upon examination it was noted that he was experiencing shortness of breath, myalgias, neck pain, back pain, joint pain and had reported falls. He further indicated he suffered from dizziness, tingling, tremors and sensory changes. It was noted that he exhibited no edema or tenderness. Flexor tendinitis of the right first and second finger as well as minimal osteoarthritis in the hands were noted. Nodules were present on the right Akron and bursa as well as in the right Achilles tendon. There was diminished range of motion in both shoulders, with abduction in the shoulders limited to 90°. Diminished range of movement in the cervical spine and crepitation on the range of movement in the knees were present. As was tenderness in the bilateral ankles and midfoot that was accompanied by diminished range of movement in the ankle and foot. There was no percussion tenderness over the spine but there was marked diminished range of movement in the lower spine with flexion limited to 20° and limited lateral flexion and extension. Petitioner was diagnosed with inflammatory arthritis, idiopathic chronic gout with tophus, rotator cuff tear arthropathy of both shoulders, primary osteoarthritis of both knees, and chronic bilateral low back pain without sciatica. Additional doctor notes include an assessment that Petitioner has chronic back, knee, and shoulder pain with a history of gout involving the feet and ankles, as well as flexor tenosynovitis in the right first and second fingers and right hand with possible peripheral neuropathy in the hands and chronic eczema. Since he has chronic arthritis, this is probably secondary to osteoarthritis, however, the doctor wanted to rule out inflammatory joint disease and thus ordered lab and imaging tests. It was also noted that Petitioner may need to be evaluated for gouty arthritis and long-term treatment of gout. If acute swelling of the joints is found, he will need arthrocentesis and synovial fluid examination. (Exhibit A, pp. 32-38)

Imaging studies of Petitioner's joints were taken on October 27, 2017. Results of the bilateral knee study show moderate medial femorotibial and patellofemoral compartment osteoarthritis at the left knee with mild lateral femorotibial compartment osteoarthritis. Similarly, there was moderate medial femorotibial compartment osteoarthritis and mild lateral femorotibial compartment osteoporosis of the right knee. The study results of Petitioner's right foot showed moderate first MTP joint osteoarthritis and mild diffuse midfoot osteoarthritis. Marginal erosions along the medial aspects of

the first metatarsal head and first proximal phalangeal base were compatible with his reported history of gout. Similar findings were made with respect to Petitioner's left foot. Imaging results of Petitioner's lumbosacral spine showed mild T12 – L1 and T3-T4 degenerative spine and disc disease. Mild narrowing of the T12-L1, and L3 – L4 intervertebral disc space with endplate hypertrophic osteophytosis were found. Petitioner's sacroiliac joints were on remarkable and results did not show significant osteoarthritis or findings of inflammatory arthropathy. Mild right ankle joint osteoarthritis was found, however there was no acute osseous abnormality or radiographic evidence for inflammatory arthropathy. No acute abnormalities were found with respect to Petitioner's left ankle. (Exhibit A, pp. 80-99)

With respect to Petitioner's bilateral hands, the imaging study results showed a chronic appearing erosion with sclerosis at the margins along the radial aspect of the first metacarpal head. Additional subcortical lucencies involving the right second metacarpal head as well as the second and third proximal phalanges of the right hand. A nonspecific 1 cm focal lucency within the third metacarpal neck of the right hand is asymmetric and may represent a benign chondroid lesion or not aggressive and nonspecific fibro-osseous lesion. Multifocal osteoarthritis with the possibility of superimposed inflammatory arthropathy was also found. Mild osteoarthritis was noted at the right first carpometacarpal joint and osteoarthritis at the left fifth proximal interphalangeal joints was also found. (Exhibit A, pp. 80-99)

Petitioner's records from his visits with his orthopedic surgeon Dr. ████ were reviewed and show that he underwent a left shoulder arthroscopy and arthroscopic subscapularis repair, as well as a supraspinatus rotator cuff revision repair on July 18, 2017. Petitioner was to undergo rotator cuff repair rehabilitation and was placed on restrictions following his surgery. Petitioner's doctor indicated that he was able to return to work with restrictions of only using his right arm as of October 18, 2017. Prior to his surgery, Petitioner's MRI showed full thickness tear anterior one third supraspinatus with retraction, biceps tendinitis. He was also diagnosed with a sprain of other specified parts of the left shoulder which required surgery. Petitioner was also assessed as having carpal tunnel syndrome of the left upper limb which appears to have developed from overuse and compensating as he was diagnosed with recurrent rotator cuff tear in addition to a new subscapularis tear. Petitioner reported considerable pain including shooting pain that goes down to his first and second digits. During his October 2017 and November 2017 visits, Petitioner reported that his left shoulder was doing well, however he has continued pain on the right side and complained of clicking and stiffness for the last 2 to 3 months from compensating his inability to use his left arm and shoulder. Petitioner was diagnosed with a right shoulder rotator cuff tear and a complete rotator cuff tear or rupture of the right shoulder. MRI evaluation was requested. Records show that Petitioner participated in physical therapy treatment in 2016 and 2017 before and after his shoulder surgery. (Exhibit A, pp. 100-180)

Petitioner presented results of a February 6, 2019, MRI of his lumbar spine which showed multilevel degenerative disc disease of the lumbar spine most prominent at the L3 – L4 level resulting in moderate central canal stenosis and associated moderate

neural foraminal stenosis bilaterally, right greater than left. Moderate bilateral neural foraminal stenosis was also noted at the L4 – L5 level. Findings also included moderate diffuse loss of disc height with degenerative endplate spurring and mild bilateral facet arthrosis, as well as small broad-based disc bulge without significant central canal or neural foraminal stenosis at the T12 – L1 level. At the L1 – L2 level, diffuse disc desiccation with anterior endplate spurring and mild bilateral facet arthropathy was found. Severe loss of disc height with mixed diffuse modic endplate changes and anterior plate spurring with bilateral facet arthrosis and broad-based disc bulging resulting in moderate central canal stenosis was found at the L3 – L4 level. (Exhibit 1)

Petitioner also presented results of a February 6, 2019, MRI of his thoracic spine which showed mild degenerative changes of the thoracic spine including, small disc bulge at the T5 – T6 level resulting in effacement of the ventral thecal sac and small left disc protrusion at the T8 – T9 level resulting in effacement of the left ventral aspect of the thoracic spinal cord. However, no significant central canal or neural foraminal stenosis was identified within the thoracic spine. (Exhibit 1)

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), and 1.04 (disorders of the spine), 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).

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

Petitioner testified that he suffered work-related and other injuries to his shoulders and knees which required multiple surgeries to both shoulders and both knees. He testified that he has pain in his back, knees, shoulders and hands. He reported numbness and tingling in his back and legs which were attributed to bone spurs, osteoporosis, and arthritis, and he further reported history of gout and carpal tunnel syndrome. He testified that he can walk for only 10 to 15 minutes before needing to take a break and rest. He reported that he uses a cane or a walking stick daily for the past one and ½ years to assist with ambulation. He testified that he can sit for only 15 to 20 minutes due to pain in his lower back and can stand for only 10 to 15 minutes at a time. He further reported that he cannot bend or squat and cannot kneel as he will be unable to get back up. Petitioner testified that he can lift a gallon of milk but cannot carry it as he walks.

With respect to his nonexertional impairments, Petitioner testified that he is unable to grip or grasp items with his hands due to his carpal tunnel syndrome and arthritis. He reported that his right hand locks up and he cannot even hold a pen, further reporting that he is right-handed. He further stated that his left hand also locks up however it is not as bad as his right. Petitioner stated that he cannot use his arms or hands to reach, and further that he is unable to lift his arms above his shoulders, reporting that he even has a difficult time brushing his teeth and lifting his arm up to that level.

Petitioner testified that he lives alone and that although he can bathe himself and care for his own personal hygiene, this is done with great pain and takes more time. He stated that he is able to dress himself but needs assistance with socks and shoes, buttons and zippers, especially when he has a flareup in his carpal tunnel syndrome and the arthritis in his hands. Petitioner testified that he does very little cooking and cleaning in the home because he cannot stand for too long and does only small chores and cooks light meals. He reported that he receives assistance with cooking cleaning and other household chores from friends. He drives only short distances and is required to pull over every 15 minutes to get out of the car and stretch his legs. Although he sometimes goes grocery shopping, he reported he takes frequent breaks stopping and sitting every few minutes. Petitioner stated that he is prescribed 15 medications that he takes on a regular basis and which have side effects that interfere with his daily life. He prepared a medication list, a list of his medications side effects, and a detailed description of his injuries, illnesses and conditions and how they impact his daily life. (Exhibit A, pp. 219-221).

The Department representative present for the hearing testified that she has known Petitioner for a while and has met with him on eight different occasions. She indicated that she has observed him to walk much slower than normal, that he walks with a limp and that throughout the duration of the hearing, he has had to readjust positions by standing up and sitting down at least five times. She further testified that she observed him to have difficulty sitting and standing as well as removing his coat.

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. Based on a thorough review of Petitioner's medical record and in consideration of the reports and records presented from Petitioner's treating physicians, the consultative examination performed, and Petitioner's diagnostic imaging results, 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 sedentary work as defined by 20 CFR 416.967(a). However, Petitioner is unable to perform the full range of sedentary work due, thus, the occupational base is eroded by her additional limitations or restrictions. SSR 96-9p.

Based on the medical records presented including those documenting Petitioner's osteoarthritis, osteoporosis, carpal tunnel syndrome, bone spurs, obesity, and spinal stenosis, among other conditions, Petitioner has moderate to marked limitations on his non-exertional ability to perform basic work activities, with respect to performing manipulative or postural functions of some work such as gripping, reaching, handling, stooping, climbing, crawling, or crouching.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a field operations coordinator and supervisor for a janitorial and property management company, a janitorial custodian, a factory worker, a pizza delivery driver and a restaurant dishwasher. Petitioner's past employment as a field operations coordinator and supervisor for the janitorial and property management company included tasks of procuring and delivering equipment, resolving employee disputes, general management

duties, and required standing up to eight hours daily and frequently lifting up to 100 pounds worth of paper boxes, supplies, broken down rocks and cement from jobsites and other equipment. His employment as a mold injector for a plastics and rubber parts factory required little walking but did require standing up to eight hours and lifting molds that weighed approximately 100 pounds and that were made up of fiberglass, wood and epoxy that were 4 feet long and 5 feet wide. Thus, this past employment is characterized as requiring heavy exertion. Petitioner's past employment as a custodian, a pizza delivery driver and a dishwasher are characterized as requiring light exertion. Based on the RFC analysis above, Petitioner's exertional RFC limits him to sedentary work activities. As such, Petitioner is incapable of performing past relevant work. Because Petitioner is unable to perform past relevant work, he cannot be found disabled, or not disabled, at Step 4, and 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 ██ years old at the time of application and 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 and has an associate degree with semi-skilled work history that is nontransferable. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical

demands to perform sedentary work activities, however, as referenced above, the occupational base is eroded by additional limitations or restrictions. Thus, based solely on his exertional RFC, the Medical-Vocational Guidelines, result in a finding that Petitioner is not disabled.

However, as referenced above, Petitioner also has nonexertional impairments imposing additional limitations. As a result, and based on the evidence presented, he has a nonexertional RFC imposing moderate to marked limitations in his ability to perform basic work activities with respect to performing manipulative or postural functions of some work such as gripping, reaching, handling, stooping, climbing, crawling, or crouching. 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 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.

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

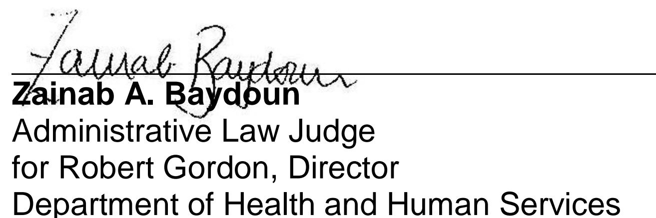
Accordingly, the Department's SDA determination is **REVERSED**.

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 October 18, 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 Office Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention:
MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

Petitioner – Via First-Class Mail: