[redacted]

Date Mailed: July 23, 2019
MOAHR Docket No.: 19-005513
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, a telephone hearing was held on June 24, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [redacted], Hearing Facilitator.

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 February 7, 2019 Petitioner submitted an application for cash assistance on the basis of a disability.

2. On or around April 29, 2019, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. The DDS determined that it had insufficient evidence to evaluate Petitioner's disability. (Exhibit A, pp. 5-12)

3. Although the DDS received and analyzed the medical evidence in Petitioner's record, the Medical-Social Eligibility Certification, Medical Evaluation, and Case Development Sheet suggest that the DDS decision of insufficient evidence was based on Petitioner's alleged failure to return requested documents including work history and activities of daily living forms. The documents presented further

suggest that DDS was to send Petitioner for a consultative examination upon receipt of the requested forms. (Exhibit A, pp. 5-21)

4. Petitioner disputed the DDS finding and asserted that he returned the requested forms on two occasions.

5. On May 1, 2019, the Department sent Petitioner a Notice of Case Action denying his SDA application based on DDS' finding that he was not disabled. (Exhibit A, pp. 368-369)

6. On May 24, 2019, Petitioner submitted a written Request for Hearing disputing the Department's denial of his SDA application.

7. Petitioner alleged physically disabling impairments due to a brain tumor, vision and hearing loss, hernia, kidney stones, ankle pain, COPD, and acid reflux. The records indicate Petitioner also has mental impairments and diagnoses of bipolar disorder and attention deficit hyperactivity disorder (ADHD).

8. As of the hearing date, Petitioner was [redacted] years old with a July 29, [redacted] date of birth; he was [redacted]" and weighed [redacted] pounds.

9. Petitioner completed high school and some college classes. Petitioner reportedly has had no employment since 2007 and prior to that time, indicated that he was employed as a dish washer at a restaurant.

10. 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:

Records from [redacted] were reviewed. (Exhibit A, pp. 311-359). In November 2018, Petitioner presented to the emergency department with complaints of a rash. Physical examination was normal with the exception of petechiae and tenderness of the right hand. He was treated and released. On November 13, 2018, Petitioner underwent upper endoscopy, biopsies and dilatation for a preoperative diagnosis of dysphagia. Postoperatively, Petitioner was diagnosed with a hiatal hernia, Schatzki's ring status post dilation with 20mm balloon, and a biopsy taken from the esophagus to rule out eosinophilic esophagitis. Biopsy results showed esophageal squamous and glandular mucosa with focal mild reflux associated changes. No signs of significant eosinophilic infiltrate or specialized intestinal mucosa with goblet cell metaplasia were noted. A renal ultrasound performed on November 5, 2018 showed

multiple non-obstructive intrarenal calculi and the previously seen mild fullness of the left renal collecting system was no longer noted. An October 30, 2018 MRI of Petitioner's brain showed findings consistent with meningioma involving the planum sphenoidale measuring 1.4 x 1.5 x 0.9 cm, and which has slightly increased in size based on previous comparison. Mild age-related cerebral atrophy was also found. The globes, optic nerves, extraocular musculature retroconal that were normal. A CT scan of Petitioner's abdomen and pelvis performed on October 1, 2018 showed bilateral renal calcifications with 3mm proximal left ureteral calcifications and mild fullness of the left renal collecting system but no frank hydronephrosis. There were no bowel obstructions, the appendix was normal, and diverticulitis descending and sigmoid colon without surrounding inflammation was found. A chest x-ray completed on that same date showed minimal right basilar subsegmental atelectasis. (Exhibit A, pp 311- 359).

Petitioner participated in nine physical therapy sessions from May 2018 to June 2018 to address pain in his right and left ankles. During his appointments, Petitioner described his foot pain as numb, tingly, aching, burning and increasing with walking up and down stairs and walking on uneven surfaces. Towards the end of his sessions, it was noted that Petitioner has made improvements in his ankle strength, some range of motion, his gait pattern including stride length, heel toe walking, and knee flexion during ambulation. Petitioner reported receiving steroid shots to both ankles every two weeks which provide only short-term relief. At the time of his discharge, Petitioner had mild improvement in pain and increased range of motion. Petitioner reported that he is undergoing special testing to rule out a vascular issue due to continued cramping in his legs. (Exhibit A, pp. 265-286)

Records from Petitioner's visits with [redacted] D.P.M., indicate that he was receiving treatment for right and left ankle pain, swelling, and soreness. A diagnosis of bursitis and plantar fasciitis were noted, and it was recommended that Petitioner participate in physical therapy. Records indicate that Petitioner received several injections of dexamethasone and lidocaine to the ankles. Upon evaluation in December 2018, no apparent peroneal tendon involvement or any type of rupture or strain bilaterally was found. Pain with direct palpation over the ATF ligaments and with any palpation deep in the sinus tarsi bilaterally was noted, as was swelling. Range of motion was not impacted. It was recommended that Petitioner ice the areas and possibly use any type of immobilizing device such as an elastic ankle brace or a lace up ankle brace with OTC NSAIDs to reduce discomfort. (Exhibit A, pp. 287-305)

Petitioner was referred to the [redacted] in July 2018 because of significant lower extremity claudication, left worse than right mainly in the calf area. Petitioner reported that he has symptoms after ½ a block of walking and no pain at rest. Petitioner further reported remote history of gunshot to the back with multiple procedures in the past but otherwise no reported issues. Petitioner was diagnosed with atherosclerosis of the native arteries of extremities with intermittent claudication in the bilateral legs. Although recent studies did not suggest any lower extremity arterial significant disease, and aortic duplex ultrasound was recommended to rule out any inflow, iliac stenosis. An abdominal aorta duplex doppler was performed on July 9, 2018

and showed negative findings for abdominal aortic aneurysm and bilateral iliac artery aneurysm. Less than 50% stenosis of the abdominal aorta and bilateral iliac arteries were noted. RT ABI:1.03, RT TBI: 0.99. LT ABI: 1.16, and LT TBI: 0.76. A lower extremity arterial duplex doppler showed 50%-99% stenosis of the right proximal peroneal artery. (Exhibit A, pp. 261-277)

On December 12, 2018, Petitioner underwent lithotripsy for right renal calculi after the x-ray showed multiple right renal calcifications the largest lower pole measuring 7mm in diameter. A CT of Petitioner's abdomen and pelvis performed on December 21, 2018 in the emergency department showed residual obstructive changes involving the right kidney and ureter which appear to be related to a recently passed 4mm calculus which now lies within the dependent portion of the urinary bladder. Additional impression of bilateral nephrolithiasis, the larger and more numerous calculi lie within the lower pole on the right was referenced. Petitioner's physical examination was within normal limits. (Exhibit A, pp. 103-130)

Petitioner's records from his visits at the [redacted] from May 2018 to March 2019 were reviewed and show that he was being treated for benign essential hypertension, photopsia of the right eye, bilateral dry eyes, edema of optic disc in the right and left eyes, ocular hypertension bilaterally, amblyopia of left eye, and strabismus. No hypertensive retinopathy, no retinal detachment or retinal tear were noted. In June 2018, Petitioner underwent YAG laser capsulotomy of his right and left eyes. (Exhibit A, pp 135 – 171).

Progress notes from Petitioner's treatment with Dr. [redacted] at the [redacted] show that Petitioner reported blurry vision, difficulty focusing on things, and headaches among other associated symptoms. In October 2018, Petitioner reported that the vision in his left eye has worsened for both near and far and that he has continued headaches on the left side. It was noted that Petitioner wears glasses for reading only. In January 2019, Petitioner was receiving treatment for diagnosis of exotropia, left hypertropia that was noticed after cataract extraction with IOL, most noticeable in the distance and in well-lit situations. No issues were noted at near sighted and double vision is intermittent. The plan was to have Petitioner undergo bilateral lateral rectus rescission for 15 and left inferior oblique myotomy which was scheduled for April 2019. Additional diagnosis and treatment for idiopathic intracranial hypertension (IIH), Pseudophakia, myopia astigmatism presbyopia (for which he was to undergo strabismus surgery), and bilateral upper lid ptosis were referenced. (Exhibit A, pp. 79 – 96)

On February 15, 2019, Petitioner was evaluated by the [redacted] for a second opinion for his optic disc edema, during which Petitioner reported that he is seeing double, seeing tracers, and seeing white lights that are not there. He reported past history of two surgeries including glaucoma surgery and indicated that he has had worsening vision since then. He reported horizontal diplopia in which he sees overlapping images and reported that he has to stare at something for a while in order to get his eyes to focus. He further reported history of strabismus for which [redacted] is in

the process of setting up surgery. He reported continuing to have headaches daily, despite being told that his disc edema is improving. He described his headaches as having a pressure sensation felt in his temples and in the frontal area and pain levels that can get to a 7/10. He reported that he is phonophobic and recently got hearing aids which is exacerbating his headaches. Petitioner reported that he has an MRI every three months to monitor the stability of the brain meningioma. There were no major concerns or abnormalities noted on the records with respect to Petitioner's physical examination and with respect to his ophthalmology internal exam, anterior segment, posterior segment, and neurological system. (Exhibit A, pp,45-49)

Petitioner was receiving mental health treatment for his diagnosis of bipolar disorder, current episode depressed, severe, without psychotic features; other psychoactive substance dependence; and ADHD, predominantly inattentive type through [redacted] and records were presented from his January 2018 through March 2019 visits. During a Medication Review appointment on March 4, 2019, Petitioner reported that he is getting bilateral cataract surgery, that his eating and sleeping is okay, and he denied suicidal or homicidal ideations as well as denied having hallucinations or delusions. The Medication Review Notes completed indicate that there has been a vast or marked improvement, complete or nearly complete remission of all symptoms as they relate to the therapeutic effect for the psychotropic medication Petitioner was on. His GAF score was 50. In December 2018, he reported no issues with focus and concentration, mood swings, or irritability, although he reported feeling depressed. Petitioner was encouraged to get a hobby, a job, or make friends in order to avoid sitting at home all day in a state of depression. (Exhibit A, pp. 176-213)

Clinical notes from Petitioner's March 2018 to March 2019 visits at [redacted] indicate that he was receiving treatment for diagnoses of COPD, chronic obstructive lung disease, sleep apnea, unspecified asthma, and GERD. During a March 12, 2019 visit Petitioner reported no worsening shortness of breath, no cough, no sputum production, no fever, no chills, no wheezing, no hemoptysis. Records indicate that Petitioner was prescribed Symbicort, Singulair and theophylline. A sleep study was performed and showed positive results for obstructive sleep apnea for which Petitioner was to be on CPAP therapy, however, notes indicate that he is not very compliant with CPAP treatment and is not tolerating it well. A pulmonary function test (PFT) performed on September 10, 2018 showed FVC pre 1.67, post 2.47; FEV1 pre 1.16, post 1.83. (Exhibit A, pp. 64-73)

Petitioner was receiving medication treatment through [redacted]y for his psoriasis and dermatitis. Notes from a January 2, 2019 visit indicate that although Petitioner reported having issues with his right palm and volar digits that get red, itchy, sore, and develop fissures, none were present upon examination. The doctor noted that Petitioner's psoriasis was doing splendidly well overall with the medication Tremfya. (Exhibit A, pp. 50-55)

Petitioner presented pages 3, 4, and 13 of a 13-page decision issued on June 5, 2019 by a federal Administrative Law Judge denying his claim for Social Security disability

benefits, as well as a letter from his attorney verifying that an appeal would be filed. (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 physical and mental impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

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

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint(s) due to any cause, 1.04 (disorders of the spine), 3.02 (chronic respiratory disorders), 3.03 (asthma), 12.04 (depressive, bipolar and related disorders), and 12.11 (neurodevelopmental disorders) 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 testified that he is able to walk for about 10 minutes before he needs to rest due to problems with his ankles and his hernia. He testified that he walked to the hearing location and that he was required to stop every 10 minutes and take a 5-minute break. He does not require the use of a walking aid such as a cane, walker, or wheelchair to assist with ambulation. Petitioner reported that he can sit for only 15 minutes before his legs get stiff, and that he is able to stand for only 10 minutes. Petitioner testified that he can lift a gallon of milk but not a bag of groceries. He testified that his doctor placed him on a 5-pound lifting restriction, however, it was unclear which doctor Petitioner was referring to and no evidence in the record was found to support Petitioner's testimony. He reported that he has difficulty gripping and grasping items with his hands due to arthritis and psoriasis. Petitioner stated that he is unable to bend, squat, stoop or twist because he has a bullet in his back. Petitioner further reported having a benign brain tumor, that he receives steroid shots every two weeks due to swelling in both of his ankles, that he has a hernia on his left side for which surgery has not yet been performed, that he has had multiple laser blast surgeries for his kidney stones, and that he suffers from vision and hearing loss. Petitioner testified that he takes nine prescription medications and uses two inhalers daily. He reported suffering from anxiety and irritability, as well as loss of concentration and an ability to only focus for only 15 to 20 minutes. Petitioner stated that he sees a psychiatrist once a month for medication reviews but there was no evidence of ongoing therapy or counseling and no evidence that he had any inpatient hospitalizations for treatment of his mental impairments. Petitioner reported that he has not worked in 13 years, that he has difficulty with his memory, and that he has problems with comprehension. Petitioner testified that he is able to bathe himself and care for his own personal hygiene including dressing himself. He reported that he is able to perform household chores and his own cooking. Petitioner reported that he does not drive because of his vision impairment and lack of ability to concentrate on the road.

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 records presented do not show that Petitioner's treating physicians noted any significant limitations with respect to his ability to sit, stand, walk, carry or lift. Thus, as referenced above, although Petitioner has medically determinable impairments that could reasonably be expected to produce symptoms, Petitioner's statements about the intensity, persistence and limiting effects of his symptoms are not supported by the

objective medical evidence presented for review and referenced in the above discussion.

Therefore, based on a thorough review of Petitioner's medical records and in consideration of the above referenced evidence, with respect to Petitioner's exertional limitations, it is found that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(b).

While records indicate that Petitioner has been diagnosed with and was receiving treatment for bipolar disorder and ADHD and he identified ongoing symptoms associated with the impairments, based on the medical records provided, as well as Petitioner's testimony, he has mild to moderate limitations on his mental and non-exertional ability to perform basic work activities.

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

Step Four

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

Petitioner testified that he has not been employed for 13 years and that his work history in the 15 years prior to the application consists of work as a dishwasher at a restaurant. Upon review, Petitioner's prior employment is categorized as requiring medium exertion. Based on the RFC analysis above, Petitioner's exertional RFC limits him to light 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 [redacted] years old at the time of application and at the time of hearing, and thus, considered to be closely approaching advanced age (age 50-54) for purposes of Appendix 2. He is a high school graduate who has unskilled work history. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform light work activities. 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 impairments due to his mental condition which impose only mild to moderate limitations on his abilities to perform basic work activities and activities of daily living. Based on the evidence presented, at this time, it is found that those limitations would not preclude him from engaging in simple, unskilled work activities on a sustained basis. Therefore, Petitioner is able to adjust to other work and is not 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 **not disabled** for purposes of the SDA benefit program.

DECISION AND ORDER

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

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 of 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: [redacted]

Petitioner – Via First-Class Mail: [redacted]