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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

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DIRECTOR

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Date Mailed: August 26, 2019
MOAHR Docket No.: 19-005736
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 27, 2019, from ██████████ Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Jennifer DePoy, Eligibility Specialist.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. Exhibit B was received at the hearing and marked into evidence and contains a history of prior x-rays of the lumbar and cervical spine as well as medical records and consists of 14 pages. Exhibit C was received and marked into evidence and consists of medical records for the last six months from the ██████████ Pain Management Center (██████████ Pain Clinic), an MRI of the lumbar spine dated ██████████ 2018; a Medical Examination Report completed by Dr. ██████████ and medical treatment records from Dr. ██████████. The record closed on July 27, 2019; and the matter is now before the undersigned for a final determination based on the evidence presented.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

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 February 15, 2019, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On April 16, 2019, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 390-396).
3. On April 16, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on DDS finding of no disability (Exhibit A, pp. 409-412).
4. On May 29, 2019, the Department received Petitioner's timely written request for hearing.
5. Petitioner alleged disabling impairment due to cervical spinal fusion of three vertebrae, and lumbar pain due to condition at L5-S1. The Petitioner did not allege mental disabling impairment.
6. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED], birth date; he is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Petitioner completed a GED.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as Janitor as part of the yard crew doing snow removal by hand. The Petitioner also worked as a mechanic and heavy construction.
10. Petitioner has a pending disability claim with the Social Security Administration.

CONCLUSIONS OF LAW

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

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

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason

of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five-step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step 1

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 2

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has

lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimis* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; *SSR 96-3p*.

The medical evidence presented at the hearing, *and in response to the interim order*, was reviewed and is summarized below.

By way of history, only on [REDACTED] 2001, the Petitioner had an x-ray of the lumbar spine. The Impression was mild degenerative change L4-L5. A subsequent x-ray of the lumbar spine was conducted on [REDACTED] 2005. The x-ray showed further narrowing of the lumbosacral disk space on comparison, with small amount of sclerosis in the opposing vertebral body surfaces; and at this level, there was also some sclerosis to the posterior apophyseal joints. The Impression was Increased degenerative changes L5-S1. Another set of x-rays were taken on [REDACTED] 2007. It notes near obliteration of the S1 disc is seen with reactive endplate changes and spondylotic spurring that may narrow the neural canal as well as the foramina of the L5 roots. MRI is suggested to include a gadolinium study to assure not a disc space infection. Impression was probable spinal

stenosis. Degenerative disc and bony changes cannot exclude discitis. On [REDACTED] 2008, further x-rays were taken. The Impression was Progressive L5-S1 disc and bony degenerative change. These changes have advanced from the previous with further narrowing of the disc. There were also some hypertrophic facet changes very prominently present.

On [REDACTED] 2019, the Petitioner received a lumbar caudal epidural for pain. In [REDACTED] of 2019, the Petitioner had been diagnosed with cervical spondylosis with myelopathy.

On [REDACTED] 2018, the Petitioner had an MRI of the lumbar spine which was compared with an MRI completed on [REDACTED] 2012. The findings not that there is decrease in height and signal of intervertebral discs throughout worse at L2/L3 and L5/S1. At L5-S1, showed diffuse disc bulge and superimposed broad-based central and right central disc herniation. There was mild bilateral facet disease. The central canal is patent. There is moderate right and mild-to-moderate left lateral recess and moderate-to-sever right and moderate left foraminal stenosis. There is abutment of bilateral S1 nerve roots more so on right. Findings have slightly progressed from prior study. The Impression was multilevel degenerative changes and lumbar spondylosis. The findings are worse at L5/S1, L4/L5 and L2/L3. Possible abutment of bilateral S1 nerve roots at L5/S1 more so on right. Slight interval progression.

The Petitioner testified that he is scheduled to have an L5-S1 spinal fusion on [REDACTED] 2019.

On [REDACTED] 2019, the Petitioner underwent a C5-6, C6-C7 anterior cervical discectomy and fusion. The surgery was successful; and after two days, the Petitioner was discharged with a 10-pound weight restriction.

A medical Examination Report was completed on [REDACTED] 2019, by Dr. [REDACTED] a neurosurgeon. The diagnosis was cervical spondylosis. The clinical impression was the patient was stable. The doctor imposed no restrictions or limitations. The doctor imposed no weight-lifting/carrying restrictions finding the Petitioner could lift up to 50 pounds frequently; the doctor determined the Petitioner could use his hands/arms for simple grasping, reaching, pushing/pulling and fine manipulating. The Petitioner could operate foot controls with both feet.

At a follow-up visit on [REDACTED] 2019, (three months post-surgery), the diagnosis was chronic neck pain, chronic back pain, and neuropathy right arm, back and right leg numbness. The visit was a three-month follow-up from his cervical discectomy and fusion on [REDACTED] 2019. Per the notes, the Petitioner states he was doing well overall. He denied any numbness, tingling or weakness in his arms or hands. Some pain in the right shoulder was reported with some reaching pain but is still improved since before surgery. Mild stiffness swallowing. Pain is well controlled; currently taking Gabapentin and Robaxin and Norco. Petitioner had full strength in all extremities, with shoulder shrug full strength bilaterally. Gait and station were normal with negative for

Babinski and Hoffman reflexes bilaterally. At the conclusion of the exam, the doctor indicated that the patient could return to work. The visit diagnosis was cervical spondylosis with myelopathy, neck pain and low back pain, unspecified back pain laterally, unspecified chronicity with sciatica presence unspecified.

On [REDACTED] 2019, several weeks post-surgery, the Petitioner was seen for follow-up and was positive for neck pain and negative for back pain with no gait problem. Surgical incision was clean, dry and intact without infection. Petitioner was encouraged to continue with bending, lifting and twisting with a 10-pound lifting restriction. On [REDACTED] 2019, the Petitioner was seen for a six-week follow-up and reported doing well overall. No numbness, tingling or weakness in arms or hands. The Petitioner had full strength in all extremities; except right deltoid was evaluated as 4/5. Physical therapy was to be started in two weeks.

On [REDACTED] 2018, prior to Petitioner's surgery, he was receiving cervical epidural steroid injections due to cervical radiculopathy from the pain clinic. Notes indicate that the patient got good relief for several weeks and is more functional with the injection. The procedure was a repeat procedure. In [REDACTED] 2018, the injections were no longer working and had no long-term benefits, so the Petitioner was referred back to neurosurgery for evaluation and consideration for surgery.

On [REDACTED] 2019, the Petitioner was seen for lower back issues and pain. The quality of pain was tingling, electric shocks which radiates to bilateral entire legs to feet with pain 10/10. Patient reports that back pain is exacerbated by working, walking, mowing lawn. Straight leg raising was negative bilaterally. The [REDACTED] 2018 MRI was also reviewed. The assessment was lumbar radiculopathy, spinal stenosis of lumbar region with neurogenic claudication. The Petitioner was also scheduled for a lumbar epidural steroid injection. He received the lumbar injection on [REDACTED] 2018.

On [REDACTED] 2019, the Petitioner was evaluated for physical therapy. Notes indicate neck pain constant since [REDACTED] 2010. Petitioner has resumed household tasks and yardwork with some pain with sweeping, but his girlfriend does most of cleaning. Petitioner has resumed grocery shopping and carrying bags into house. Self-care was described as independent with slight difficulty with shaving. The assessment noted that with nine PT visits Petitioner was showing steady signs of improvement in range of motion and strength as well as reported function.

On [REDACTED] 2018, the Petitioner's primary care doctor advised in a letter that he may require occasional restrictions from jobs that require him to lift more than 20 pounds or work with his arms above his head. If he requires these restrictions, he should return for further evaluation.

On [REDACTED] 2018, and [REDACTED] 2018, the Petitioner received an epidural steroid cervical spine injection.

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 3

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, listing 1.04 disorders of the spine was considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3; and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, non-exertional, 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 non-exertional 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 exertional limitations due to his medical condition. Petitioner testified that he could perform vacuuming, sweeping small areas, bathe and

dress himself and do laundry. He also is able to grocery shop. He could stand 15 to 20 minutes and then must sit to take a break. He can sit less than 15 minutes, as he testified, he gets compression spasms. Petitioner testified he can walk the length of half a football field; he cannot perform a squat, cannot bend forward at the waist all the way and cannot bend sideways. Petitioner can tie his shoes if sitting. Petitioner has a pain level of 5 to 6 out of 10 with his medications. He testified he could carry a gallon of milk. Petitioner testified that he has tingling in his right arm and sometimes drops things, and sometimes loses feeling. He also experiences tingling and numbness in his legs and feet. In addition, the Petitioner's doctor (Neurosurgeon) on ██████ 2019, completed a DHS-49 Medical Examination Report, which imposed no limitations or restrictions and found he could frequently lift up to 50 pounds, had full use of his hands and arms and could operate foot controls. Thereafter, the Petitioner's surgeon also indicated that Petitioner was doing well and may return to work.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform medium work as defined by 20 CFR 416.967(c).

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

Step 4

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 an auto mechanic, janitorial office cleaning and self-employment performing lawn care and some mechanic work and construction described as odd jobs. Petitioner's work as an auto mechanic required standing/walking all day and lifting up to 25-50 pounds frequently required heavy physical exertion due to having to lift up to 50 pounds frequently and lift 100 pounds as the heaviest weight. As such, the Petitioner could no

longer perform the full-time mechanic work he performed for [REDACTED] Petitioner's job performing office cleaning janitorial work required that he walk and stand around 3 to 4 hours and frequently lifted 10 pounds; as such, the job required light-to-medium work because he occasionally moved desks, chairs and cabinets to clean. Petitioner's self-employment work doing odd jobs was described by Petitioner as including mechanic work, yard work and construction work, which required that he frequently lifted 10 to 25 pounds and thus, fits the description of medium work. He last performed his self-employment work in [REDACTED] 2018. See Exhibit A, pp.49-53.

Based on the RFC analysis above, Petitioner's exertional RFC limits him to no more than medium work activities. As such, Petitioner is capable of performing past relevant work as he could perform the office janitorial and cleaning employment, as well as his self-employment doing odd jobs as described by the Petitioner; both jobs fit the description of medium work with the janitorial cleaning job fitting the description of light to medium work.

Because Petitioner is able to perform past relevant work, it is determined that Petitioner is not disabled at Step 4; and the disability assessment ends at Step 4. However, even though the Petitioner is determined not disabled, the analysis at Step 5 is also included.

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).

In this case, Petitioner was [REDACTED] years old at the time of application and [REDACTED] years old at the time of hearing, and thus, considered to be closely approaching advanced age (age

50-54) for purposes of Appendix 2. He has obtained a GED, which is a high school education equivalent with a history of work experience as an auto mechanic, janitorial work cleaning offices and was self-employed as a handyman doing odd jobs described as shoveling snow, lawn care, mechanic and construction. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform medium work activities.

Based solely on his exertional RFC, the Medical-Vocational Guidelines, 20 CFR 416.967(c), result in a finding that Petitioner is not disabled at Step 5 as well.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner **not disabled** for purposes of the SDA benefit program.

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

LMF/jaf



Lynn M. Ferris

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

DHHS (via electronic mail)

Denise Croff
MDHHS-Jackson-Hearings

BSC4
L Karadsheh

Petitioner (via first class mail)

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]