[redacted]
[redacted], MI [redacted]

Date Mailed: October 23, 2019
MOAHR Docket No.: 19-009041
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 September 25, 2019, from Detroit, Michigan. Petitioner appeared for the hearing with his caregiver, [redacted] and represented himself. The Department of Health and Human Services (Department) was represented by Zelia Cobb, Medical Contact Worker.

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 [redacted], 2019, Petitioner submitted an application for cash assistance on the basis of a disability.

2. On or around June 24, 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. (Exhibit A, pp. 11-36)

3. On June 26, 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. 3-8)

4. On August 16, 2019, Petitioner submitted a written Request for Hearing disputing the Department's denial of his SDA application.

5. Petitioner's case file indicates he also requested a hearing to dispute the Department's actions with respect to the Family Independence Program (FIP); however, Petitioner confirmed that there was no issue concerning his FIP benefits and thus, the request for hearing was withdrawn and will be dismissed.

6. Petitioner alleged physically disabling impairments due to lung disease, syncope, hypoxia, rheumatoid arthritis, and a broken left arm. Petitioner confirmed that he did not allege any mental disabling impairments.

7. As of the hearing date, Petitioner was [redacted] years old with a [redacted], 1968 date of birth; he was [redacted]'[redacted]" and weighed [redacted] pounds.

8. Petitioner completed high school and obtained a high school diploma. Petitioner has reported employment history of work being self-employed performing renovations and as a retail store manager. Petitioner has not been employed since December 2018.

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 consisted of approximately 1,437 pages documenting Petitioner’s treatment with various medical providers. It is noted that many of the records presented were duplicates. The medical evidence was thoroughly reviewed and is briefly summarized below.

Petitioner’s records from his medical treatment at the VA Medical Center were presented and reviewed. Records indicate that Petitioner was receiving treatment for medical history including hypertension, low back pain, rheumatoid arthritis (RA), interstitial lung disease (ILD), hypoxemic respiratory failure, restrictive lung disease, syncope, and a fracture of the humerus after a fall. The records presented indicate that he was being treated by pulmonary and rheumatology specialists. Respiratory therapy progress notes from March 22, 2019, indicate that Petitioner underwent a bronchoscopy procedure due to a productive cough, shortness of breath and hypoxia. He was observed to ambulate with the assistance of a wheelchair, and he had a fall risk score of 40. It was noted that Petitioner has a history of RA that has progressed to ILD. He has failed treatment on CellCept and was currently on oxygen 24 hours a day as well as 20 mg of prednisone daily. His rheumatologist was to begin immunotherapy and requested that pulmonary infection be ruled out, which resulted in the bronchoscopy procedure. Respiratory therapy progress notes from a March 13, 2019 visit indicate that Petitioner had complained of worsening shortness of breath and cough and reported that a few

weeks prior, he was trying to go up the stairs when he felt dizzy and lost consciousness. When he woke up, he was at the bottom of the stairs and was unable to move. This resulted in Petitioner suffering from a fracture of the left humerus. Notes indicate that Petitioner was evaluated by pulmonology and a decision was made to increase his prednisone to 60 mg daily, which he was to have started two weeks prior, after his chest CT scan results and showed worsening of ground glass opacities. Notes further indicate that Petitioner developed worsening of pulmonary symptoms in January 2019, experienced syncopal episodes, and a possible open lung biopsy was to take place. Petitioner's medication treatment history was documented and included Enbrel, methotrexate and Humira, both of which he did not respond well to and developed ILD. Examination showed crackles on both lung bases, more on the right side. Pulmonary progress notes from his April 3, 2019 visit indicate that Petitioner presented for a follow-up evaluation of ILD and associated hypoxic respiratory failure. It was noted that Petitioner presented in a wheelchair due to his exertion related hypoxia, as well as limitation in functional status due to his fractured left humerus. Notes further indicate that Petitioner requires about 3 to 4 L of oxygen with exertion and that he has a pulse oximeter at home when he uses to check his pulse box regularly. On or around March 22, 2019, he underwent outpatient bronchoscopy with BAL with micro results negative for any infectious process. Pulmonary progress notes from a visit on March 1, 2019 indicate that Petitioner was using albuterol inhaler and nebulizer daily along with various other medications and reported suffering from symptoms of hypoxia upon walking to the bathroom. (Exhibit A, pp. 50-210, 399-712, 883-971)

Results from a February 28, 2019 CT of Petitioner's thorax (chest) showed moderate to severe reticular and patchy ground glass opacities diffusely seen throughout both lungs without a definite apical or basilar predominance, overall significantly increased/ progressed since June 27, 2018 and a small amount of left pleural fluid measuring higher than simple fluid density was observed, which was suggestive of blood. There was borderline cardiomegaly of the mediastinum with mild coronary artery calcifications. There was mild atherosclerotic calcification of the thoracic aorta. Prominent lymph nodes were diffusely seen throughout the mediastinum and right axillary region, measuring up to 1 cm in short axis. Examination of the bone showed acute nondisplaced fractures of the left posterior fifth, sixth, and seventh ribs as well as acute displaced fractures of the left posterolateral eighth, ninth, 10th and 11th ribs. Mild degenerative changes of the shoulders and spine were also noted. Results indicate that Petitioner had worsening ILD and while the appearance was not classic for anyone subtype, an NSIP pattern was favored. Differential considerations included atypical infection, non-cardiogenic pulmonary edema, hypersensitivity pneumonitis connective tissue disease and drug toxicity. Additional pulmonary therapy notes indicate that the surgical lung biopsy would be postponed until the ILD exacerbation improves. (Exhibit A, pp. 50-210,399-712, 883-971)

Records indicate that Petitioner was admitted to the [redacted] hospital on February 28, 2019 and discharged on March 1, 2019 due to loss of consciousness resulting from low oxygen, as well as recurrent syncope, chronic hypoxic respiratory failure, and RA. Notes

suggest that he had also just been admitted at [redacted] Hospital for a one-week stay and a stress echo performed on March 1, 2019 showed mild left ventricular hypertrophy, an ejection fraction of 60-65%, and abnormal relaxation filling pattern of the left ventricle for age (Stage 2 diastolic dysfunction). A 21-day event monitor was to be used by cardiology. It was noted that Petitioner required moderate assistance with dressing. Results of a prior pulmonary function test showed evidence of moderately severe restrictive ventilatory defect and a partial response/reversibility after bronchodilator administration. Cardiology consultation notes from his admission indicate that Petitioner reported several episodes of syncope which included symptoms of shortness of breath feeling hot, nausea, palpitations and tunnel vision. On February 27, 2019, Petitioner was evaluated and it was recommended that he participate in occupational therapy due to his left arm fracture. (Exhibit A, pp. 50-210, 399-712, 883-971)

Radiology reports indicate that as of May 29, 2019, Petitioner's fracture follow-up demonstrated stable alignment with moderate progression of bony healing. However, it was noted that progression has been mild. Petitioner was to continue non-weightbearing of the left upper extremity but was authorized to discontinue his brace and sling. Records show that chest x-rays taken on March 13, 2019 revealed degenerative changes of the thoracic spine with mild dextroconvex scoliosis and severe diffuse interstitial lung disease similar to the prior studies in previous months. (Exhibit A, pp.331 – 398, 399-712, 883-971)

Progress Notes indicate that on May 1, 2019, Petitioner presented in a wheelchair and came to the chemotherapy department for his second Rituxan infusion under the direction of the rheumatologist for his treatment of seropositive RA and ILD diagnoses. Notes suggest that Petitioner returned to the hospital in late January and February 2018 with worsening of his shortness of breath symptoms for which full evaluation was performed including bronchoscopy with BAL and transbronchial biopsies. Progress notes from an April 1, 2019 visit indicate that Petitioner had an abnormal PFT, suggestive of moderately severe restrictive lung disease with severely reduced DLCO. (Exhibit A, pp. 399-712, 883-971)

Records from Petitioner's hospitalizations and visits with his pulmonologist and rheumatologist in 2017 and 2018 indicate that he was receiving treatment for extensive bilateral pneumonia, shortness of breath, dizziness, joint pain and swelling, acute hypoxic respiratory failure, RA, ILD, the symptoms of which did not seem to have significantly improved as of the hearing date. July 2017 x-ray results show mild facet arthritis of the right SI joint, left SI is within normal limits, and degenerative changes were seen at the facet joints at the L5 – S1 level. On August 25, 2017, fluid from Petitioner's left knee was aspirated due to joint pain and swelling, as well as synovitis. Records indicate that Petitioner expressed symptoms of radiculopathy due to low back pain and MRI results showed heterogeneous signal in the entire lumbar spine and temporal bodies which needed further evaluation with a bone scan. Mild broad-based bulging of the disc at L4 – L5 which encroached the lateral listhesis and impinged the

nerve roots sleeves without compromise in AP dimension was noted. (Exhibit A, pp. 883-971,1125-1265, 1319- 1433)

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(s) (due to any cause)), 1.07 (fracture of an upper extremity), 3.02 (chronic respiratory disorders), 3.14 (respiratory failure), and 14.09 (inflammatory arthritis) 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 was diagnosed with RA two and half years ago and that he suffers from swelling of the joints in his hands, fingers, knees, and ankles. He testified that in the last three months, he has lost 70 pounds and that his RA is not responding to medication treatment. Petitioner testified that as a result of the RA, he developed lung disease and now has scarring on his lungs. Petitioner testified that he suffers from hypoxia when he gets up and moves around, as well as syncope and dizzy spells. As a result, he is required to limit his movement, and has chairs set up all around the house so he can sit down. Petitioner reported that his oxygen and blood pressure levels drop often, and he has had multiple episodes of falling, including fainting off the stairs, which resulted in his broken arm that had not fully healed as of the hearing

date. Petitioner stated that he requires the use of oxygen daily. Petitioner testified that he is able to stand and/or walk for only 10 minutes at his home and that he requires the use of a walker and cane daily since February 2019. He testified that he uses a cane for balance at home and as referenced above has chairs set up at his home so he can sit down and rest if he gets to dizzy. Petitioner reported that he uses a walker stroller outside of the home on a daily basis. Petitioner testified that he can sit for only 30 minutes before his dizziness sets in. He indicated that he is unable to bend or squat because of the dizziness and that he uses a hand grip or tool to reach for items. He stated that he does not climb stairs due to risk of falling. Petitioner testified that he is unable to open jars, bottles, and cannot pick items up with his fingers due to difficulty gripping and grasping items with his hands as a result of his RA and joint pain. He reported that he is unable to lift a gallon of milk. Petitioner reported that he lives alone and has an office chair with wheels that he uses to get around his house in lieu of walking. He testified that he requires the assistance of his caregiver to help with bathing and personal hygiene, as well as dressing. He testified that he must avoid hot showers, as they cause syncope. Petitioner reported that his caregiver performs all household chores including cooking, cleaning, laundry, and shopping. He reported that he is unable to drive, as he was placed on a driving restriction due to his dizzy spells and potential to pass out behind the wheel. Petitioner receives transportation from the VA hospital to and from his medical appointments.

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, 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).

Petitioner has additional nonexertional limitations with respect to performing manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. Based on the medical evidence presented, as well as Petitioner's testimony, it is found that Petitioner has mild to moderate limitations on his nonexertional 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's work history in the 15 years prior to the application consists of work as a retail store manager and self-employed as the owner of a company performing renovation, installation, demolitions, remodeling and construction of residential buildings. Upon review, Petitioner's past employment as a retail store manager is categorized as requiring light to medium exertion. Petitioner's prior self-employment required significant walking and standing and included among other tasks; lifting heavy materials such as drywall, tools, cabinets. Therefore, this past employment is categorized as requiring medium to heavy exertion. (Exhibit A, pp. 42-45, 216 -218).

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 51 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 with skilled/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, with the noted additional nonexertional limitations. Thus, based solely on his exertional RFC, the Medical-Vocational Guidelines result in a disability finding based on Petitioner's exertional limitations and an analysis of the additional nonexertional limitations will not be addressed. 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 hearing request with respect to FIP is **DISMISSED** and 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 [redacted], 2019 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 September 2020.

ZB/tm

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

DHHS

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Petitioner

[redacted], MI

cc: SDA: L. Karadsheh
AP Specialist-Wayne County