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Date Mailed: December 17, 2019
MOAHR Docket No.: 19-009580
Agency No.: [redacted]
Petitioner: [redacted]

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 October 17, 2019, from [redacted] Michigan. The Petitioner was represented by himself. [redacted] also appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Caroline Owczarzak, Eligibility Specialist, and Terri Chase, 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 and marked into evidence. The records from Michigan Psychiatric Associates were received and marked into evidence as Exhibit C; the Petitioner's past MRIs, x-rays and CT scans and EMGs regarding Petitioner neck and back were received and marked into evidence as Exhibit D; the six months of medical records from Dr. [redacted] were not received, nor was the DHS-49-D and DHS-49-E that were to be sent to [redacted]. The record closed on November 18, 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 June 18, 2019, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On August 20, 2019, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 12-18).

3. On August 19, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on Petitioner failing to apply for Supplemental Security Income (SSI). The following day, the DDS made a finding that Petitioner had no disability and was capable of performing other work. The Department's Hearing Summary stated that at the prehearing conference it advised Petitioner that the SSI application was no longer relevant due to the DDS determination he was not disabled. (Exhibit A, pp. 6-10 and p. 1).

4. On September 4, 2019, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 3-5).

5. Petitioner alleged physical disabling impairment due to back pain and lumbar spine grade 1 anterolisthesis of L4-L5 and compression deformity. The Petitioner alleges mental impairment due to anxiety, Major depressive disorder, Post Traumatic Stress Disorder (PTSD) and cannabis use disorder, moderate.

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 is a high school graduate.

8. At the time of application, Petitioner was not employed.

9. Petitioner has an employment history of work installing furnaces, building trusses for a home manufacturer, working as a lawn mower repair mechanic and engine repair.

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 (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.

The Petitioner has been in treatment for his mental health issues with [redacted] behavioral health located in [redacted] Michigan. The Petitioner has been diagnosed with major depressive disorder, recurrent episodes, anxiety disorder, unspecified, PTSD, and cannabis use disorder, moderate. The Petitioner had a Clinical Assessment on [redacted] 2019, as a first-time consumer. Petitioner presented wanting to access mental health services and psychiatric medications to ensure he can continue to meet his basic needs. The Petitioner reported receiving prior mental health treatment at two other facilities. The Petitioner lives with his mother who is ill and lacks funds to make needed repairs to the home and reports he is not able to make repairs that he used to do in the past. The assessment notes that the Petitioner is currently experiencing pain, including back pain and left arm aches at night. He is currently taking 600 mg Ibuprofen. The Petitioner still reported nightmares regarding the death of his father at age 15. The mental status exam reports the following categories were within normal limits appearance, eye contact weight appetite, ability to learn and apply new skills thought content, orientation, insight and his overall degree of sensory impairment. The notes indicate the following: Petitioner's psycho motor presentation was lethargic during the exam; his speech was pressured; his mood was afraid, irritable, labile, overwhelmed, withdrawn, depressed, helpless, panic, worried, anxious and hopeless. His affect was noted as moderately inappropriate and concentration was poor and memory was noted as moderately impaired. Petitioner's coping ability was poor and Petitioner presented with racing thoughts with mildly impaired self-direction with respect to goal oriented activities. Petitioner's ability to engage in socially appropriate interactions was rated as moderately impaired and difficulty with sleeping was also noted. There was no indication of current suicide risk factors. A note was made as regards destructive behaviors indicating property destruction by Petitioner. The examination also notes three items which affect aspects of daily living such that self-sufficiency is markedly reduced, which included self-direction, activities of daily living and social transactions and interpersonal relationships. The Petitioner's illness was noted as serious with the following combinations which included a qualifying diagnosis and significant functional disability; and a qualifying diagnosis and sufficient duration of illness. The service recommendations included outpatient therapy and case management as well as psychiatry.

At the examination and evaluation, Petitioner presented as depressed and anxious having struggled with unregulated mood since 2007. He is unable to concentrate. Of late, he is easily frustrated and agitated, often angry and will break things. Petitioner presents as overwhelmed, worried and feeling helpless and hopeless and is afraid. A number of health concerns are noted with a possible pending surgery on his back but cannot undertake surgery until he stops smoking, which he is struggling with. Petitioner is noted as isolated and cut off from the community. A plan of service was developed on [redacted] 2019. The progress notes during treatment indicate that the Petitioner

fluctuates between stable mood with increase in pain and is seen weekly to biweekly by his therapist.

On [redacted] 2019, the Petitioner had a psychiatric psychological consultative exam. The exam notes indicate that Petitioner drove himself to the evaluation, and his gait was slow and involved limping. The examiner observed no unusual motor activity and noted Petitioner was pleasant and cooperative with adequate insight and without tendency to exaggerate or minimize his symptoms. She noted Petitioner expressed feelings of worthlessness but denied any suicidal ideations and sleep disruption. His mood was depressed with sad affect and expression of worry about finances and not working. The Petitioner was able to perform and repeat eight numbers forward and three backward, recalled two of three objects after three minutes and seemed well-oriented. He was able to perform some multiplication and addition, but declined calculations of subtracting serial threes and sevens from hundred. At the conclusion of the exam, the diagnosis was persistent depressive disorder, adjustment disorder with anxiety, alcohol use disorder, moderate cannabis use disorder, severe cocaine use disorder, severe and full reported remission. The prognosis medical source statement noted that Petitioner attended counseling in the past couple of years for depression and anxiety. He presented with depressed and sad affect and described worry about his finances; notes indicate that Petitioner demonstrated adequate understanding of both simple and complex instructions; demonstrated adequate ability to interact appropriately with others and his prognosis for improved psychological and adaptive functioning is guarded.

The Petitioner was seen on [redacted] 2018, at [redacted] with a mental status and plan and diagnosis of adjustment disorder, mood disorder on this specified and tobacco use disorder with recent relapses on alcohol and stimulant (cocaine) the Petitioner had been sober for 1.5 years. The examiner noted depressed mood and anxiety due to being on probation for carrying/selling cocaine. With relapse during Super Bowl drinking. During an exam session, medication review on [redacted] 2018, the Notes indicate working full-time, still in construction and noted related pain due to work and other stresses. Notes indicate minimal motivation to shower and care for self and ongoing depression. During a [redacted] 2019 mental status exam and plan, the summary indicates Petitioner was alert and oriented with no apparent distress or movements with fair concentration and was cooperative with appropriate eye contact. His with linear thought process. Notes also indicate that at a medication review on [redacted] 2018, the Petitioner was working in construction and was dealing with a lot of neck and back pain with muscle spasms. And has applied for disability due to pain and injuries inhibiting him from working. His depression was noted as moderately severe. A drug screen was performed during the visit and was negative for drugs. In [redacted] 2019, the Petitioner noted that he was 75 percent better with respect to his neck pain and numbness and thought that the problem was working itself out. However, he continued to have chronic low back pain with pain down his right lower leg to his foot. So, let's look at the chart; if I put him sedentary, it was back pain.

Petitioner was seen on [redacted] 2019, for left shoulder pain which has been ongoing for at least six months without any known cause or injury. Also reported feeling a tingling in hands sometimes and also numbness on occasion. On examination, a deformity of the bicep tendon and the medial side of the biceps muscle seem to be bunched up more proximately. The elbow showed full range of motion without deficit in the function of the bicep tendon. The examiner noted it was possible Petitioner may have a partial tear of the bi-ceps tendon and avulsion of the distal end on the medial side. After reviewing the MRI studies of the shoulder and elbow, the doctor indicated the condition could not be taken care of surgically as it may not help or give him any improvement in symptoms. On that date, the doctor felt Petitioner did not need treatment regarding the biceps tear which was probably noted as chronic.

The Petitioner had an x-ray of the lumbar spine on [redacted] 2019. The comparison was made to a CT of the lumbar spine of same date. The findings noted grade 2 anterolisthesis of L4 on L5, which is unchanged when comparing both flexion and extension views. There is a redemonstration of compression deformity involving the superior endplate of L2. There is narrowing of the interbody disc spaces at L1-L2, L4-L5 and L5-S1; there is question of bony neural foraminal narrowing at L4-L5. The Impression was great to anteriorly thesis of L4 and L5 with no evidence of transient subluxation. Compression deformity involving the superior endplate of L2. The Petitioner also had an x-ray of his chest on [redacted] 2019, with the impression no evidence of acute pneumonia or congestive heart failure.

On [redacted] 2019, the Petitioner had a CT guided S1 joint unilaterally of his sacroiliac joint and received an injection due to indications of facet arthropathy, foraminal stenosis, radiculopathy of leg and spondylolisthesis. During the exam, a grade 1 bilateral spondylosis with grade 1 spondylolisthesis at L4 L5. A radiology consultation note was made on [redacted] 2019, noting the mild compressive deformity of the anterior superior endplate of L2 without retro potion appears to be of remote vintage. The Patient complains of ongoing chronic low back pain without any numbness tingling of his lower extremities and reports no loss of bladder control. There was no noted tenderness along the spinal column with full range of motion noted at the waist.

In electromyogram and nerve conduction study was performed on [redacted] 2019, of the lower extremities. The notes indicate the Petitioner presented with low back pain radiating to legs bilaterally. The motor sensory nerve conductions were performed on both the left and right peroneal, tibial and Searle nerves. The diagnostic interpretation was that there was electrodiagnostic evidence of chronic right L5 radiculopathy. On [redacted] 2019, the Petitioner had an MRI of the elbow left without contrast. The impression was tendinosis of the origin of the common extensor tendon lateral to the elbow with no tears seen and, tendinosis of the bicep tendon near the insertion to the radius. No tear or retraction of the tendon is seen.

The Petitioner had an MRI of the left shoulder joint on [redacted] 2019. The impression was moderate osteoarthritis AC joint. Tendinosis of the supraspinatus tendon with no

tears seen. Mild tenosynovitis bicep tendon. Signal abnormality suspicious but not definitive for a tear in the anterior and superior glenoid labrum near the origin of the bicep tendon. An earlier MRI was conducted on [redacted] 2019, and noted at L4-L5 grade 1 spondylolisthesis, narrow disc space with disc desiccation of the disk and mild bulging disc osteophyte complex with moderate size right foraminal disc protrusion with bilateral facet arthropathy. Mild left lateral recess and moderate left neural for a mental stenosis mild right lateral recess and moderate to severe right neural for a mental stenosis exaggerated by shortened pentacles.

A CT of the lumbar spine was performed on [redacted] 2019, with the following impression: mild compressive deformity anterior superior endplate L2 without retro potion remote vintage. Mild generalize lumbar spondylosis vocally more prominently involving the posterior apophyseal joints at the L3 and L4 level without spinal stenosis. Grade 1 of four spondylolisthesis with moderately severe disc narrowing at L4-L5 with bilateral L4 spondylosis.

On [redacted] 2019, the Petitioner was seen at neurosurgery with current complaints to be more located at the right L5 facet, which was completed on [redacted] 2019, with two to three days of relief. Surgical treatment was discussed with instrumented fusion; however, Patient is a current 1-to-2 pack per day smoker with current inability to stop. During the examination, the gate and station was noted as abnormal. Petitioner walks with a limp to the right and demonstrates being uncomfortable with sitting. Also noted was radicular testing showed a positive straight leg raise with mild tenderness over the right sacroiliac joint. The doctor examining Petitioner also noted the CT indicated moderately severe disc space narrowing over L4-L5 with bilateral foraminal narrowing with evidence of pars defect at this level. Also noted was disc degeneration changes at L4-L5 with severe right and moderate left foraminal narrowing. There is also evidence of L4-L5 anteriorly thesis and at L5-L6 there is a slight rest a little thesis with mild left foraminal narrowing. At the conclusion of the exam, the impression was Patient presenting with low back pain with right leg L4's/L5 radicular symptoms. MRI/CT show degenerative changes as well as L4 and L5 bilateral pars defect with grade 1-2 anterolisthesis. At the conclusion of the exam, a plan for the Petitioner to work with his primary care physician to stop smoking so he may have surgery. On [redacted] 2019, an earlier MRI which noted L4-L5 severe right-sided for a mental stenosis with moderate left. L5 S1 severe right-sided for a mental stenosis mild on the left with rest a little thesis of L5 on S1. On [redacted] 2019, the Petitioner was seen at neurosurgery with regard to his lumbar spine with the same results as the [redacted] 2019 exam.

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, listings 12.04 depressive, bipolar and related disorders, 12.06 anxiety and obsessive-compulsive disorders and 12.08 personality and impulse control disorders, as well as were 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, 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 (understand, remember, or apply information; interact with others; concentrate, persist, or maintain pace; and adapt or manage oneself) 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 condition. Petitioner testified that he could stand for a few minutes and walks with a cane. Petitioner further testified that throughout the day he alternates between lying down in his bed and a sitting in a chair for no more than 20 minutes. The Petitioner testified he can walk between 10 and 50 feet, cannot perform a squat and can bend at the waist a little as well as shower and dress himself. His limitations physically with respect to squatting and walking are due to lower back pain. He testified he cannot

tie his shoes because he can't reach them and does not touch his toes. He is capable of showering and dressing himself and uses a shower chair. The Petitioner's usual level of pain is approximately 7.5 out of 10, and he is right-handed. The heaviest weight that Petitioner can carry is 10 pounds and experiences numbness from hand to his neck and elbow. The petitioner smokes cigarettes. The Petitioner also further testified to daily panic attack and anxiety. The Petitioner described his memory is horrible indicating he has missed appointments and needs help with paperwork due to his poor concentration. His social interactions currently are somewhat limited as he lives with his mother who is on oxygen. During the hearing, he testified he felt depressed and afraid.

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 sedentary work as defined by 20 CFR 416.967(a).

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has mild to moderate limitations on his mental 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 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 a lawnmower mechanic and walked three hours out of the day and stood six hours out of the day and was required to lift 25 pounds frequently and no more than 100 pounds as the heaviest weight he lifted. And required light physical exertion. The Petitioner also built trusses for a home manufacturer he walked and stood eight hours of the day and on completion of a trust would lift them off the table and place them in a pile. The heaviest weight he lifted was 100 pounds and frequently lifted 50 pounds or more and

as such performed at a heavy physical exertion level. As a furnace installer, Petitioner rib was required to stand and walk eight hours per day including kneeling bending crouching and stooping up to four hours per day. In that job, he lifted furnaces and heating supplies frequently weighing 50 pounds. The heaviest weight he was required to lift was 100 pounds and he supervised two individuals. This job required heavy physical exertion.

Based on the RFC analysis above, Petitioner's exertional RFC limits him to no more than sedentary work activities. As such, Petitioner is incapable of performing past relevant work.

Because Petitioner is unable to perform past relevant work, Petitioner 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).

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 turns [redacted] years of age on [redacted] and thus, considered to be closely approaching advanced age (age 50-54) for purposes of Appendix 2. He is a high school graduate with a history

of work experience as a furnace installer, building housing trusses and a motorcycle mechanic. 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.

In this case, the Medical-Vocational Guidelines result in a disability finding based on Petitioner's exertional limitations; and thus, the Petitioner is disabled at Step 5.

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

DECISION AND ORDER

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

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

1. Reregister and process Petitioner's [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;

3. Review Petitioner's continued eligibility in December 2020.

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)

Kim Cates
MDHHS-[redacted]Hearings
BSC2
L Karadsheh

Petitioner (via first class mail)

[redacted]
[redacted]
[redacted] MI [redacted]