



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: December 30, 2019  
MOAHR Docket No.: 19-010488  
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 October 23, 2019, from ██████████ Michigan. The Petitioner was represented by ██████████ his Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by Lianne Scupholm, Hearing Facilitator.

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, a Medical Examination Report, was received and marked into evidence. Exhibit C, consisting of medical records from ██████████, was received and marked into evidence. Exhibit D, consisting of ██████████ records, was received and marked into evidence. The DHS-49 from Nurse Practitioner, ██████████ at ██████████, was not received. The record closed on November 22, 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 ██████████, 2019, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On September 5, 2019, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 51-57).

3. On September 9, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on DDS's finding of no disability (Exhibit A, pp. 83-96).
4. On September 18, 2019, the Department received Petitioner's timely written request for hearing (Exhibit A and B).
5. Petitioner alleged disabling impairment due to high blood pressure and diabetes, arthritis in his knees and back. The Petitioner also has controlled asthma. The Petitioner also alleges mental disabling impairments due to bipolar disorder, psychosexual disorder and explosive anger disorder.
6. On the date of the hearing, Petitioner was [REDACTED] years old with an [REDACTED] birth date; he is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Petitioner did not complete high school, but did earn a GED.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as a fast food worker at [REDACTED] at [REDACTED] performing tire mounting and oil changes, as a general laborer for [REDACTED] constructing and installing swimming pools, as a general laborer for a temporary work service, as a garden and lawn sales associate for [REDACTED] and tire and lube express at [REDACTED]. The Petitioner last worked in 2011.
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 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, s/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.

On [REDACTED] 2019, the Petitioner was evaluated by the doctor he has seen since [REDACTED] 2019 who completed a DHS-49 Medical Examination Report. The Current diagnosis was asthma, bipolar disorder, radiculopathy in the cervical region, cervicgia, neck pain and autoimmune disorder. The physical examination was normal except for neck pain. The doctor's clinical impression was the Petitioner's condition was stable. The doctor imposed limitations as follows: the Petitioner could frequently lift up to 50 pounds or more; he could stand or walk up to two hours in a six-hour workday. No limitations were imposed regarding sitting. The Petitioner had full use of his hands and arms bilaterally for simple grasping, pushing pulling, fine manipulation and reaching. The Petitioner was evaluated as capable of using his feet and legs for operating foot and leg controls bilaterally. The medical findings noted autoimmune disorder without elaboration with narrowing of the cervical spine. The Petitioner was found to be capable of meeting his needs in the home.

The Petitioner had an MRI of the cervical spine on [REDACTED] 2017. The findings indicate with the exception of C7-T1 disc, the remaining discs all demonstrate a degree of distance dislocation and loss of height, mild anterior osteophyte formation is present from C5 through C7. C2-C3 demonstrate a mild posterior disc protrusion there is a mild right and moderate left neural for a mental narrowing, secondary to disc osteophyte complex formation. At C3-C4 there is a broad-based disc protrusion with moderate to severe bilateral neural for a mental narrowing secondary to the disc osteophyte complex formation. At C4-C5, a broad-based disc protrusion with moderate to severe bilateral neural for a mental narrowing secondary to disc osteophyte complex formation. At C5-C6 a broad-based disc protrusion with a more prominent left paracentral segment. There is moderate to severe bilateral neural for a mental narrowing secondary to the disc osteophyte complex formation. A broad-based disc protrusion with a more prominent left paracentral and left for a mental segment. There is moderate right in moderate-to-severe left neural for a mental narrowing there is moderate to severe left lateral recess narrowing. The AP diameter spinal canal measures 7 mm. At C6-C7, there is demonstration of a mild bilateral neural for a mental narrowing. At C7-T1, demonstrate signal within the cervical spinal cord is normal. The final impression was there are diffuse degenerative changes of the cervical spine. These changes include moderate to severe left lateral recess narrowing and moderate to severe left neural foraminal narrowing at C5-C6 secondary to an asymmetric disc protrusion. At C3-C4, C4-C5 demonstrate moderate to severe bilateral neural for a mental narrowing secondary to disc osteophyte complex formation. A prior MRI performed in January 2017 had the same results as the later MRI detailed above. Apparently, Petitioner underwent a cervical fusion but no records were available regarding the surgery or post-surgery treatment.

On [REDACTED] 2018, the Petitioner had a two view x-ray of his chest. The impression was no acute cardiopulmonary process. It was performed due to moderate persistent asthma with acute exacerbation.

The Petitioner was seen on [REDACTED] 2019, for an Independent Medical Physical Examination at the request of the Disability Determination Service. The exam noted that Petitioner was on medication to treat diabetes, high blood pressure, asthma since birth, and arthritis in his back, shoulders and knees, and a number of psychological conditions including bipolar disorder, social psychosexual disorder, explosive anger disorder, sexual deviant, oppositional with authority and noted Petitioner advised he was a sex offender. The Petitioner did not bring a cane to the appointment and advised the examiner that he could climb a flight of stairs if he did so slowly and estimated he could walk maybe two blocks. Also reported, he underwent a reattachment of the bicep tendon on the left in 2012 and on the right in 2016. The Petitioner's weight was [REDACTED] pounds, and his BMI was 38.8(obese). The following observations were noted: affect, mood, dress and effort seemed appropriate without obvious cognitive impairment. Hearing was normal and speech was clear. Gait was stable and within normal limits. The range of motion in the cervical spine was normal in all ranges. The range of motion in the dorsal lumbar spine was also within all normal range of motion as were the knees for flexion and extension. Motor and sensory function testing was notable for exquisite sensitivity of the left index finger and decreased sensation of the right leg as compared

to the left. Straight leg raising was negative in the seated position and positive in the supine position as Petitioner complained of back pain with bilateral hip forward flexion at 45°. The conclusions note that Petitioner complained of back pain with straight leg raising. The Conclusion noted that Petitioner likely is experiencing mechanical neck and back pain. Petitioner complained of back pain with straight leg raising. No evidence of nerve root irritation was appreciated. He may be experiencing an element of degenerative joint disease in a variety of joints. He did not require use of an assistive device to ambulate. Digital dexterity loss was not appreciated.

On [REDACTED] 2019, the Petitioner's nurse practitioner excused him from working for one month. A two-month work excuse was also done for September 2019. The Petitioner was seen on [REDACTED] 2019, for an office visit with his nurse practitioner that noted stable hypertension. Also noted was a problem of worsening snoring. Associated symptoms included sleep apnea during sleep with as excessive fatigue, morning headaches and poor or worsening memory. The sleep study was ordered at the end of the visit. No results of the study were available.

The Petitioner participated in a Consultative Adult Mental Status Examination on [REDACTED] 2019, as arranged for by the Disability Determination Service. The examiner was informed by Petitioner that he was unable to work because of the following conditions: bipolar disorder, social psychosexual disorder, explosive anger disorder, oppositional with authority and sex offender. During the exam, the Petitioner reported that his sleep issues have improved significantly since his medications were changed. The Petitioner denied suicidal thoughts, but noted he had anger issues and lashes out at people, as well as usually not liking people and a tendency to get quickly agitated. Petitioner expressed that while at [REDACTED], a former employer, he was arguing and screaming at his bosses. At the time of the examination, Petitioner reported that he was seeing a therapist at [REDACTED]. The Petitioner has applied to a number of fast food businesses but is not hired because he is a sex offender. The Petitioner does not like going out in public and would rather stay in the house and watch TV because he still gets quote "nerved up." Petitioner reported he spends the majority of his time watching television and is able to cook sometimes. A third-party form completed by his girlfriend noted he needs reminders to groom himself, bathe and change his clothing as well as taking medications and checking his blood sugar levels. The observations noted that Petitioner was clean and his gait was altered. The examiner also noted that Petitioner did not appear to exaggerate symptoms and was cooperative. His thoughts were relevant and logical with no suicidal or homicidal thoughts and no experience of hallucinations or delusions. With respect to Immediate Memory, Petitioner was able to repeat five digits forward and two digits backward. Recent memory noted Petitioner able to remember three of four words after three minutes. At the conclusion of the examination, the diagnosis was bipolar II disorder and antisocial personality disorder. The Medical Source Statement stated that Petitioner has marked limitations with social interactions and has been dismissed from jobs for poor control of anger and verbal aggression. He does not venture out in public frequently. There were no limitations with memory, use of memory and ability to assimilate information. He should be able to learn procedures ranging from simple to complex. His task persistence and attention

span are moderately limited. He may become distracted and his attention may waiver without rest periods. His ability to manage himself is mildly limited.

At an office visit on [REDACTED] 2019, the Petitioner's hypertension was worsening, and his diabetes was stable. Petitioner's hypertension (high blood pressure) medication was increased. Due to his BMI of 38, the Petitioner was encouraged to increase his physical activity. Notes in 2018 for several visits in [REDACTED] noted increase hacking cough and that Petitioner was using his inhaler four times per day. The assessment was moderate persistent asthma with acute exacerbation. The treatment was a short course of steroids were prescribed. In [REDACTED] 2018, the Petitioner was also seen for gastroenteritis with a four-day onset. Symptoms include bloating, diarrhea frequency is 5 to 6 times daily, eructation, fever (with maximum temperature of 101 Fahrenheit and nausea. No continuing treatment of this condition was documented. On [REDACTED] 2018, the Petitioner was seen for an onset of joint pain with joint tenderness and nocturnal awakening. His asthma was noted as improved as was his diabetes. The physical examination noted that there was tenderness to the left knee with range of motion with mild pain with motion right tenderness. The Petitioner was prescribed Tramadol to see if that helped with aches and pains in his joint.

The Petitioner was seen by an eye doctor due to watering eyes with itch and blurred vision at a distance. The impression was bilateral perennial allergic conjunctivitis with no diabetic retinopathy.

The Petitioner completed an asthma form on [REDACTED] 2019, which indicates that overexertion, exercise or fast-paced walking brings on bronchitis and asthma until he uses his rescue inhaler. The only asthma attacks he experienced were when he was young and lived at home with his mother and siblings. The Petitioner uses his breathing machine one or two times a month or when the rescue inhaler alone is not working. The Petitioner described himself as always wheezing.

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 1.04, Disorders of the spine; 1.06 Major Dysfunction of a joint(s) due to any cause; 3.03 Asthma; 9.00(5) Diabetes Mellitus and 14.00 Immune – Adult, 14.02 systemic lupus 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 at the hearing that he could stand for about an hour and sit for about an hour. He further testified that he could walk about a hundred yards and could perform a squat. The Petitioner could bend at the waist with some limitation. The Petitioner can shower and dress himself but requires a reminder to do so. The Petitioner claimed a 20 percent loss of grip strength in the right hand due to a tendon rupture but could carry about a gallon or gallon and a half of milk, roughly 15 pounds. He testified that he does not use drug and drinks minimally, 1 or 2 times a year. Petitioner can prepare a meal in the microwave, grocery shop with his fiancé although he does not like contact with people and avoids leaving the house. Petitioner can do laundry and vacuum but does not like to vacuum. Petitioner also watches television much of the day and avoids going out of the house. While at home, he alternates between sitting, standing and lying down.

The primary care doctor completed a DHS-49 with a clinical impression that the Petitioner's condition was stable. The doctor imposed limitations as follows: the Petitioner could frequently lift up to 50 pounds or more; he could stand or walk two hours in a six-hour workday. No limitations were imposed regarding sitting. The Petitioner had full use of his hands and arms bilaterally for simple grasping, pushing pulling, fine manipulation and reaching. The Petitioner was evaluated as capable of using his feet and legs for operating foot and leg controls bilaterally. The medical findings noted autoimmune disorder with narrowing of the cervical spine. The Petitioner was found to be capable of meeting his needs in the home. No grip strength loss of the

right hand was noted nor was there an indication that Petitioner's detached tendon inhibited him from performing any activities. The Independent Medical Examiner also noted no grip strength loss of the right hand. The examiner also noted positive straight leg raise in supine position with probability that Petitioner is probably experiencing a degenerative joint disease in a variety of joints with no element of nerve root irritation in the back. There was no MRI or x-ray evidence of Petitioner's lumbar spine.

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 testified that he had memory problems; but the independent examiner concluded he has no limitations with his memory, use of memory and ability to assimilate information and learn procedures ranging from simple to complex based on the evaluation after his Mental Status Exam. The Petitioner was markedly limited in his social interactions and noted he was dismissed from jobs due to poor control of anger. The examiner also concluded Petitioner does not venture out in public frequently. He is moderately limited in task persistence and attention span. Petitioner's ability to manage himself was evaluated as mildly limited. The Petitioner's records provided at the hearing and pursuant to the Interim Order did not establish that Petitioner is involved in ongoing mental health treatment and no records were provided for Summit Pointe a CMH.

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 at a fast food restaurant cashiering and required that he stand for much of the day at this job. Petitioner worked for [REDACTED] performing oil changes and tire changes and also

performed similar work at [REDACTED] repairing tires and performing oil changes. In these jobs, Petitioner lifted approximately 30 to 100 pounds when installing or repairing tires, and was on his feet all day which required medium physical exertion. Petitioner also worked at AFG, a glass manufacturing company, and drove a high-lo and loaded washers for making glass and lifted frequently 20 pounds and up to 150 pounds (heaviest weight) which required light physical exertion. Petitioner's work as a swimming pool construction and installation laborer required him to be on his feet all day and was a general laborer which involved light-to-medium physical exertion. The Petitioner also worked stocking inventory and driving a high-lo for [REDACTED] which required standing all day and lifting up to 15 pounds regularly and required light 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. Petitioner also has marked limitations with social interactions and otherwise mild limitations in his mental capacity to perform basic work activities. In light of the entire record, it is found that petitioner's nonexertional does not RFC prohibits him from 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 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 [REDACTED] years old at the time of hearing, and thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. Petitioner completed a GED with a history of work experience performing work in construction and manufacturing requiring medium to light physical exertion and stocking and cashiering. 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.


Based solely on his exertional RFC, the Petitioner is capable of performing sedentary work and is not disabled based on his physical impairments. In addition, Petitioner also has impairments due to his mental condition. As a result, he has a nonexertional RFC resulting in mild to moderate limitations in completing tasks, he is moderately limited in task persistence and attention span and mildly limited in managing himself and is markedly limited in his ability to interact with others. Petitioner has no limitations in his activities of daily living; and was found to have no limitations with his memory, use of memory and ability to assimilate information and learn procedures ranging from simple to complex based upon his independent mental status exam, therefor it is found that those limitations would not preclude him from engaging in simple, unskilled work activities on a sustained basis. Therefore, Petitioner is able to adjust to other work and is not disabled at Step 5.

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

### **DECISION AND ORDER**

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

LMF/jaf



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**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)

Carisa Drake  
MDHHS- [REDACTED] Hearings  
BSC3  
L Karadsheh

**Petitioner** (via first class mail)

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

**Authorized Hearing Rep.**  
(via first class mail)

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