[redacted]

Date Mailed: February 5, 2020
MOAHR Docket No.: 19-011777
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 December 9, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Renee Jones, Eligibility Specialist.

During the hearing, Exhibit A, pp. 1-695 was admitted into the record on behalf of the Department. Petitioner brought additional records to the hearing that were forwarded to the undersigned Administrative Law Judge (ALJ) and received on December 11, 2019. The records were marked and admitted into evidence as Exhibit 1. At the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records, specifically, updated mental health records. There were no additional records submitted to or received by the undersigned ALJ. The record was subsequently closed on January 8, 2020 and the matter is now before the undersigned for a final determination on the evidence presented.

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 October 14, 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. 10-32)

3. On October 16, 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. 5-6)

4. On October 28, 2019, Petitioner submitted a written Request for Hearing disputing the Department's denial of his SDA application. (Exhibit A, pp. 3-4)

5. Petitioner alleged disabling impairments due to chronic gout, hypertension, kidney disease, back pain, loss of balance, tremors in his hands, schizoaffective disorder, anxiety and depression.

6. As of the hearing date, Petitioner was [redacted] years old with a [redacted], 1960 date of birth; he was 6'3" and weighed 220 pounds.

7. Petitioner is a high school graduate and has reported employment history of work as a parking lot attendant, a security guard, and in retail sales. Petitioner has not been employed since February 2018.

8. 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 under 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 was thoroughly reviewed and is briefly summarized below.

Petitioner presented a Medical Source Statement (Mental) completed by his treating psychiatrist in [redacted] 2019 which indicates that he has been receiving treatment since [redacted] 2016 and that his diagnosis includes schizoaffective disorder and generalized anxiety disorder. The treatment Petitioner was receiving included monthly psychiatry visits for medication management, case management services, and supportive therapy. He was prescribed daily medications including Cymbalta and Saphris. The clinical findings indicated that Petitioner has a history of severe irritability, mood disturbance, anxiety, sleep problems, isolated behavior and hypervigilance. His prognosis was noted to be fair. With respect to mental abilities and the aptitudes

needed to do unskilled work, Petitioner was found to be unable to meet competitive standards regarding his ability to: maintain attention for a two hour segment, work in coordination with proximity to others without being unduly distracted, complete a normal workday and work week without interruptions from psychologically-based symptoms, perform at a consistent pace without an unreasonable number and length of rest periods, and accept instructions and respond appropriately to criticism from supervisors. He was found to be seriously limited but not precluded from remembering work like procedures, maintaining regular attendance and being punctual with and customary, usually strict tolerances, sustaining an ordinary routine without special supervision, making simple work-related decisions, getting along with coworkers or peers without unduly distracting them or exhibiting behavioral extremes, responding appropriately to changes in a routine work setting, and dealing with work stress. The doctor described Petitioner's limitations including hyperarousal (vigilance, suspiciousness) would be likely to interfere with concentration and productivity. His irritability would be likely to lead to conflicts with others. Difficulty with concentration and short-term memory were noted, as was Petitioner's inability to appropriately interact with the general public. The doctor noted that Petitioner's psychiatric condition exacerbates his experience of pain or other physical symptoms and explained that chronic arthritis pain, likely exacerbated at least partially by meds. She anticipated that Petitioner's impairments in treatment would cause him to be absent from work more than four days per month and that the impairment lasted or is expected to last at least 12 months. (Exhibit 1)

On [redacted], 2019, Petitioner participated in a consultative physical examination. During the examination, Petitioner reported that his primary problems are tremors in his hands and poor balance. He complained of tremors in both of his hands, particularly in the right and weak grip strength in the right hand, stating that his hand locks up occasionally. Petitioner reported that he has a four year history of gout which primarily affects his hands and feet. He estimates experiencing 4 to 5 flares of gout yearly, each lasting days at a time. He reported he is able to walk ½ block before stopping and that he can stand for 10 minutes. He indicated difficulty climbing stairs and that he can no longer perform heavy lifting. While Petitioner reported a history of hypertension, this condition is being medically treated. Past surgical history included extensive soft tissue repair of the right wrist and distal forearm in 1981 as well as arthroscopic right knee surgery at age [redacted] Petitioner was observed to ambulate with a normal gait and did not require the use of an assistive device. He appeared stable in the standing, sitting, and supine positions. Examination of the hands revealed no tenderness, redness, warmth or swelling, but showed that Petitioner had mild boutonniere type deformity of the second through fifth digits of both hands. A mild intention tremor in the right hand was noted, however there is no atrophy and he was able to make a fist bilaterally. There were no Heberden or Bouchard's nodes and grip strength was measured to be normal bilaterally. Examination showed he was able to pick up a coin and pencil with either hand without difficulty. Examination of the legs revealed no tenderness, redness, warmth, swelling, fluid, laxity or crepitus of the knees, ankles or feet, there was no calf tenderness, redness, warmth, cord sign or Homans sign. There were no noted abnormalities upon examination of the cervical and dorsal lumbar spine. Petitioner was

able to walk on his toes and heels, was able to bend and squat but had difficulty performing tandem gait and reported he has fallen twice in the past year. In summary, the doctor concluded that Petitioner's upper extremities had normal function, strength, and range of motion with the noted tremors and the right hand. Lower extremities also had normal function, strength, and range of motion with the exception of his difficulty performing tandem gait. The doctor was of the opinion that Petitioner's ability to perform work-related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying and traveling, as well as pushing and pulling heavy objects is mildly impaired. (Exhibit A, pp. 233-241)

On [redacted], 2019, Petitioner participated in a consultative psychiatric/psychological evaluation. During the evaluation, Petitioner's alleged disabilities were noted to be schizoaffective disorder, delirium tremors/uncontrollable handshaking, gout, and hypertension. He reported an inability to work due to limited use of his right hand, poor balance, problems with standing, lifting and bending as well as difficulty interacting with others appropriately. Petitioner reported that he has been receiving mental health treatment since he was in his [redacted]s and at that time, was experiencing mood disturbances, auditory hallucinations and paranoia. Since then he has been consistently involved an outpatient mental health treatment, though he also self-medicated with drugs and alcohol for many years but has been sober since 2013. Petitioner reported that his mood is fair, that he has some mood swings and that he remains fairly depressed. He indicated he has sporadic sleep and appetite and is socially isolated and withdrawn. He has struggled with the loss of many family members over the years and has nightmares that involve deceased relatives. A psychiatric evaluation from [redacted] dated [redacted], 2018 was reviewed by the evaluator and indicates that Petitioner was receiving treatment for schizoaffective disorder, paranoid thinking and mood disturbances. Petitioner has not been in an inpatient psychiatric hospital for treatment and his treatment was limited to outpatient services through a psychiatrist, therapist, and case manager. Throughout the evaluation, Petitioner's affect was tearful and his mood was sad. His thought process was logical, linear, and goal directed. He denied suicidal and homicidal ideations. He also denied recently experiencing psychotic symptoms, but reported symptoms of paranoia, feeling uncomfortable, and mistrustful around people he does not know. His immediate and recent memory were assessed to be fair and his remote memory was good. The medical source statement indicates that Petitioner appears to have a long history of mental health systems that were co-occurring with significant substance abuse issues. Now, he has been sober for over five years and is treatment compliance on medications. However, his mood remains depressed, as evidenced by sad mood and tearful affect. Given the above information, the following was stated by the examiner regarding Petitioner's psychiatric and/or cognitive impairments as they relate to his ability to function: Petitioner may have mild impairments and understanding, remembering, or applying information and in his concentration, persistence, or pace. Petitioner may have moderate impairments in engaging in social interactions and in adapting or managing himself. Petitioner was diagnosed with schizoaffective disorder by

history and was observed to be in a depressive nature at that time. His prognosis was noted to be fair. (Exhibit A, pp. 249-254)

Patient visit notes from Petitioner's treatment with his primary care physician indicate that during an [redacted], 2019 visit, Petitioner was receiving treatment for hypertension, chronic kidney disease, stage III (moderate), and unspecified tremors among other conditions. Petitioner's physical examination was normal, with the exception of bilateral hand tremors observed. Petitioner was scheduled to have an ultrasound of the right and left kidneys in [redacted] 2019. (Exhibit A, pp. 256-266)

Results from a [redacted], 2019 MRI of Petitioner's brain showed numerous nonspecific foci of T2 prolongation present within the cerebral white matter may be on the basis of chronic microvascular disease, though any inflammatory/demyelinating process could give similar appearance; tiny focus of DWI hyper intensity is seen within the left posterior periventricular white matter. This lesion has intermediate ADC values and could represent a tiny subacute focal infarction of T2 shine, though a demyelinating plaque can also give this appearance. Paranasal sinus mucosal disease was found and there were no abnormal intracranial enhancements noted. (Exhibit A, pp.305 – 306)

Emergency Treatment Notes from Petitioner's [redacted], 2018 visit to [redacted] show that he presented with pain to the top of the right hand and wrist. He reported pain, redness, and swelling but denied any traumatic injury. Musculoskeletal examination showed 2+ radial pulse of the right hand with swelling over the right wrist and mild erythema with full range of motion of the fingers, wrist, and elbow, although pain with flexion and extension of the wrist were noted. Petitioner was assessed as having acute gouty arthritis of the right wrist. Petitioner presented to the emergency department on [redacted], 2018 with complaints of tremors for the last six months and weight loss over the past year. Physical examination showed an observable slight resting tremor of the bilateral hands and lower extremities. Tremors were worsening upon extension of the upper extremities. After examination and evaluation, Petitioner was assessed as having an intention tremor likely extrapyramidal side effect. It was recommended that he follow up with a psychiatrist for the depression and a neurologist for further evaluation. (Exhibit A, pp.286 – 298)

Records from Petitioner's [redacted] 2017 through [redacted] 2019 treatment at [redacted] and [redacted] were presented and reviewed. (Exhibit A, pp. 328- 687). Records indicate that Petitioner was receiving psychiatry, psychotherapy, and case management services. Progress notes from a [redacted], 2019 psychiatric medication review appointment indicate that Petitioner denied any auditory or visual hallucinations as well as denied delusional thinking, suicidal or homicidal ideations, he did not have any loose associations and there were no flight of ideas noted. Records show that he was receiving treatment for schizoaffective disorder evidenced by auditory and visual hallucinations combined with a depressed mood. His GAF score was 52. Similar findings were made during psychiatry visits in February 2019, March 2019, and April 2019. The diagnostic summary notes indicate that while Petitioner denied any

current threat of harm to himself or others and reported his mood and thinking had improved with medication, he would likely deteriorate without treatment, thus, outpatient treatment was recommended to continue. A [redacted], 2019 integrated health assessment shows Petitioner was being treated for his high blood pressure and bilateral hand tremors. Notes from a [redacted], 2018 psychiatric visit show that Petitioner reported feeling pretty good and indicated he was compliant with his medications, reporting that they help them without side effects. He denied having any mental health systems that were not adequately controlled by his current psychotropic medications and denied having recent suicidal or homicidal thoughts, mood swings, hallucinations, paranoia, or problems with sleep. He was alert and oriented to time, place, person, and situation and his insight and judgment were fair. (Exhibit A, pp. 328-508)

An annual Psychiatric Evaluation from [redacted], 2018 shows that Petitioner's memory was intact, his awareness was alert, his concentration was normal, his judgment was fair, he denied any hallucinations, his stream of mental activity was normal and his affect was appropriate. He had no suicidal or homicidal thoughts, urges, plans, attempts and no history of self-mutilation. His prognosis was good/fair with treatment. It was noted that Petitioner is able to manage his own funds and the treatment and recommendation was that he is stable at baseline and was to continue taking his medications and participating in ongoing outpatient treatment. (Exhibit A, pp. 509-515)

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)), 6.05 (chronic kidney disease, with impairment of kidney function), 12.03 (schizophrenia spectrum and other psychotic disorders),12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders) were considered. A thorough review of the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

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

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

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3), to which a five-point scale is applied (none, mild, moderate, marked, and extreme). 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner alleges exertional and nonexertional limitations due to his impairments. Petitioner testified that he suffers from chronic gout, schizoaffective disorder, hypertension, kidney disease which causes back pain, tremors in both of his hands, and loss of balance. Petitioner stated that his chronic gout causes pain and causes his hands to shake and swell. Petitioner reported that although he does not require the use of a walking aid, he is able to walk only ½ block before needing to take a 5 to 10 minute break. He stated that he is able to sit for about two hours, stand for 10 to 15 minutes, and lift 5 to 10 pounds. Petitioner testified that he can bend with difficulty but is unable to squat. He reported that he lives alone and is able to bathe himself and take care of his own personal hygiene, however getting out of the tub is difficult. Petitioner reported that he is able to dress himself but buttoning, tying his shoes, using zippers and belt loops are difficult due to the gout pain and hand tremors. He stated that he is able to cook basic microwavable meals and that his family helps with chores. Petitioner testified that he has a case manager who comes to his home to check on him and who assists with driving Petitioner to the grocery store and to doctors' appointments. Petitioner reported that he does not drive due to his physical and mental limitations. Petitioner reported that he has difficulty gripping and grasping items with both of his hands because both hands shake and have a tremor at rest and upon exertion. With respect to his mental impairments, Petitioner testified that he has been receiving mental health treatment since 1996 and was diagnosed with schizoaffective disorder, anxiety, and depression 10 to 15 years ago. He stated that he participates in

therapy, psychiatry medication services, and case management services, as well as attending support groups. Petitioner indicated that his mental impairments and symptoms have resulted in a lack of comprehension abilities, disagreeable personality, and uneasiness. He reported suffering from anxiety attacks that can last 4 to 5 hours at a time, and which occur three times per month. He stated he is able to focus for 30 minutes before losing concentration and that he suffers from short-term memory problems. He indicated that the medications control his anger issues and he has suffered from auditory and visual hallucinations in the past. Petitioner reported that he currently has no suicidal or homicidal ideations.

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 and 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.

Based on the medical records presented, as well as Petitioner's testimony, Petitioner has: mild limitations with respect to his ability to understand, remember, or apply information; moderate limitations with respect to his ability to interact with others; moderate limitations in his ability to concentrate, persist, or maintain pace and moderate limitations in his ability to adapt or manage oneself.

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 parking lot attendant, a security guard, and in retail sales. Upon review, Petitioner's past employment is characterized as requiring light exertion. 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 [redacted] years old at the time of application and [redacted] years old at the time of hearing, and thus, considered to be advanced age (age 55 and over) for purposes of Appendix 2. He obtained a high school diploma and has unskilled to 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 and mental 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 and mental 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 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 SDA eligibility in October 2020.

Zainab Baydoun

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

Dora Allen
14061 Lappin
Detroit, MI
48205

Petitioner

[redacted]

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