[redacted]

Date Mailed: December 27, 2019
MOAHR Docket No.: 19-011779
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 November 27, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Melissa Kingsley, Hearing Facilitator.

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 9, 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 past relevant work. (Exhibit A, pp. 10-41)

3. On October 14, 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. 5-9)

4. On October 23, 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 diabetes, fractured right leg, shoulder tear, COPD, and depression.

6. As of the hearing date, Petitioner was [redacted] years old with a [redacted], 1964 date of birth; he was 5'11" and weighed 190 pounds.

7. Petitioner obtained a GED and has reported employment history of work in restaurants as a cook and dishwasher, and a laborer in a warehouse. 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 at the hearing was thoroughly reviewed and is briefly summarized below.

On [redacted], 2019, Petitioner participated in a consultative medical evaluation examination during which, his chief complaint was COPD. Petitioner reported history of emphysema over the past six years for which he is using Ventolin as needed and Bevespi twice daily. He reported that his walking is limited to two blocks due to a fractured leg. Petitioner's immediate, recent and remote memory was intact with normal concentration. His insight and judgment were appropriate, and his mental status examination was otherwise normal. A mild degree of impairment was noted upon examination of the chest, and breath sounds were clear to auscultation and symmetrical. Pulmonary function testing was as follows: FEV1 before bronchodilator: 2.38, 2.41, 2.26 and after bronchodilator: 2.51, 2.53, 2.41. FVC before bronchodilator 3.15, 3.07, 3.15 and after bronchodilator: 3.40, 3.23, 3.23. Notes indicate that Petitioner was short of breath after each test but gave his best effort. Petitioner was diagnosed with emphysema and had a mild obstruction. There were no findings of heart failure and he did not appear dyspneic or hypoxic. (Exhibit A, pp.170-172)

Records from an [redacted], 2019 visit with [redacted] indicate that Petitioner presented with complaints of left shoulder pain that has worsened over the past year. The pain is characterized as dull aching and aggravated by lifting and extending the arm too far. Decreased and painful range of motion, intermittent numbness and tingling were noted. Records indicate that Petitioner had previous diagnostic testing including MRI in [redacted] 2019 and previous evaluations from his primary care physician, occupational therapy and physical therapy. Physical examination of his musculoskeletal system revealed tenderness to palpation with isolation of supraspinatus of the left shoulder and

limited range of motion. Records indicate that Petitioner had diagnosis of osteoarthritis, labral tear of the left shoulder, uncontrolled diabetes with a hemoglobin A1c level of 11.8. Petitioner was taking insulin daily. Mild restriction in motion on the left shoulder was noted and it was recommended that Petitioner undergo arthroscopy with debridement of the labral tear. X-ray images taken that day show that the humeral head is well seated, and glenoid shows mild degenerative changes with early osteophyte formation. Acromial clavicular joint shows minimal degenerative changes. (Exhibit A, pp. 176-178)

On [redacted], 2019, Petitioner underwent a physical consultative examination during which he complained of right leg problems, shoulder pain, COPD, type II diabetes and depression. Petitioner reported history of COPD for seven years, symptoms of which include shortness of breath and humidity and extreme cold, a chronic cough which results in a greenish brown thick mucus. Respect to his right leg pain and shoulder pain, Petitioner reported that he had ankle reconstruction on his right side and in 2018 he fractured his right leg. He reported that all of the materials from his initial ankle reconstruction were removed and a steel rod was placed from his knee down to his ankle. Notes indicate that Petitioner participated in physical therapy and it was recommended that he be evaluated by an orthopedic surgeon. He reported that the pain limits him and causes difficulty changing shirts on and off and showering. He reported an ability to walk one block without pain. Petitioner reported polyuria and polyphagia with neuropathy in his bilateral legs and feet. He does not require an assistive device for ambulation. Examination of the pulmonary system showed Petitioner had a barrel chest and hyperinflation, as well as inspiratory wheezing in the left upper load and expiratory wheezing in the right lower lobe. There were no additional significant abnormalities found upon physical examination and it was noted that Petitioner was able to sit, stand, bend, stoop, carry, push, pull, bun buttons, tie shoes, dress and undress, dial a phone, open the door, make a fist, pick up a coin and pencil and write, squat down and get back up and climb stairs. Limited range of motion to the shoulder was noted, as was crepitus of the right knee. Follow up with physical therapy for his right leg pain and with an orthopedic surgeon for his shoulder pain was recommended. It was also recommended that Petitioner be evaluated by a pulmonologist for his uncontrolled COPD and an endocrinologist for his uncontrolled diabetes. The doctor was of the opinion that Petitioner has a moderate functional deficit secondary to his COPD. (Exhibit A, pp.203-209)

On [redacted], 2019, Petitioner participated in a consultative mental examination, during which he identified history of depression since 2006 and other physical ailments. He reported requiring additional time and rest periods due to pain and movement problems, as well as difficulty with stairs and kneeling, with lifting and reaching and limited use of his left shoulder. Petitioner reported history of two reconstructive surgeries to his right leg and previous inpatient mental health treatment for depression and alcohol in 2017. He reported symptoms of depression including over sleeping, loss of pleasure in activities, sullenness, feeling helpless or hopeless, low energy, variable motivation. He denied suicidal ideations. In summary, Petitioner was assessed as having an ability to

comprehend and carry out simple direction within normal limits, his ability to perform repetitive, routine simple tasks within normal limits, his ability to comprehend complex tasks were within normal limits, as was his ability to carry out complex tasks with physical limitations. His prognosis was found to be fair, depending on his medical outcomes for his physical impairments. (Exhibit A, pp. 211-215)

Encounter Notes from Petitioner's visit with the endocrinologist on [redacted], 2019 indicate that he has uncontrolled diabetes and hypertension. He reported neuropathy, numbness and tingling in the bilateral feet, right greater than left. His A1c level was 11.8 which was worse than the 11.6 tested in [redacted] 2019. He reported symptoms including shortness of breath when walking, lightheaded upon standing, increased urinary frequency, fatigue, depression. He was observed to be overweight and showed signs of discomfort. Similar findings were made during [redacted] 2019 and [redacted] 2019 appointments. (Exhibit A, pp. 182-196)

Results of a [redacted], 2019 MRI of Petitioner's left shoulder show posterosuperior labral tearing and mild supraspinatus tendinosis but no rotator cuff tear. (Exhibit A, pp. 230-231)

Records indicate that Petitioner participated in physical therapy through [redacted] for four weeks in [redacted] 2018-[redacted] 2018 after undergoing surgery to his right ankle. In [redacted] 2018, Petitioner presented to the [redacted] for a 4.5-month post-operative recheck following an open reduction internal fixation (ORIF) of the right tibia and fibula surgery. He noted continued weakness and decreased mobility in the lower leg. Notes indicate that Petitioner's recovery has been very slow. The operative report from Petitioner's [redacted] 2018 right ankle surgery were presented for review. X-ray results of the right tibia and fibula from [redacted] 2019 show an unspecified fracture of the right tibia and right fibula, subsequent encounter for closed fracture with routine healing and 1-year post op ORIF of closed fracture of the fibular shaft and tibia. During his one year postoperative follow up appointment in [redacted] 2019, Petitioner reported that there has been no change in his symptoms and that he continues to have difficulty going up and down the stairs, along with pain on the lateral side of the ankle and knee. He reported that his pain is burning sensation. After examination and x-ray testing, the doctor indicated that Petitioner's fracture had been completely healed. (Exhibit A, pp. 271-320, 332-412)

Records from Petitioner's [redacted] 2019 to [redacted] 2019 physical therapy treatment with [redacted] were presented and reviewed. Petitioner had an initial evaluation on [redacted], 2019 for his left shoulder pain, during which he reported that his condition has worsened and that it is causing significant difficulty with range of motion, impeding his daily functioning. He also reported that he is unable to lift his left upper extremity to put deodorant on, that he has severe difficulty putting on his coat and taking off his shirt, as well as being unable to reach to wash behind his head or behind his back to put on a belt or tuck in a shirt. He reported he is only able to carry light groceries and has asked friends for help with light home maintenance tasks. He

continued to participate in physical therapy through [redacted] 2019. Discharge notes indicate that his prognosis at the time of discharge was fair and while his strength has improved, his range of motion was maintained or slightly decreased. There were concerns noted with a hard end feel during abduction and flexion. It was recommended that Petitioner be evaluated by an orthopedic specialist. (Exhibit A, pp. 420-500)

Records from Petitioner's visits at [redacted] were presented and reviewed. (Exhibit A, pp. 942-1018). Petitioner was admitted to the hospital on [redacted], 2018 after reportedly suffering a fall that resulted in right ankle pain. It was reported that Petitioner was walking and slipped on the ice, injuring his right ankle. He denied head injury or loss of consciousness, denied chest pain, cough, fevers, dizziness or shortness of breath prior to the fall. CT and X-ray imaging showed fractures of the proximal right fibula and distal right tibia. Orthopedic surgery was consulted, and he was placed in a splint. Petitioner underwent right ankle posterior malleolus closed reduction, percutaneous screw fixation and right tibial shaft intramedullary nail fixation. (Exhibit A, pp. 942-1018)

Records from Petitioner's [redacted], 2019 and [redacted], 2019 visits at [redacted] show that he presented for a follow-up regarding his type II diabetes. He presented with cough and shortness of breath, muscle aches and weakness, arthralgias, joint pain, fatigue and depression. Physical examination showed that he had signs of discomfort and his neurologic exam showed reflexes: DTRs 2+ bilaterally throughout. Sensation: up-to-date foot exam [redacted], 2019, abnormal. Petitioner complained of numbness and tingling in his bilateral feet as well as neuropathy. (Exhibit A, pp. 1024-1033)

Records from Petitioner's treatment at [redacted] were presented and reviewed. Notes indicate that he received treatment for the above referenced right leg/ankle fractures. (Exhibit A, pp.506 – 941).

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 1.02 (Major dysfunction of a joint(s) (due to any cause)), 1.03 (reconstructive surgery of weight bearing joint) 3.02 (chronic respiratory disorders), and 12.04 (depressive, bipolar and related 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 has had two reconstructive surgeries to his right leg/ankle which have resulted in pain and an inability to walk more than two blocks. Petitioner testified that he is able to sit and stand for ½ hour and can lift a gallon of milk or up to 5 pounds but is unable to do any lifting higher than shoulder level, due to the tear in his shoulder. Petitioner stated that he is able to bend but cannot squat or kneel because he will not be able to get back up again. He stated that he has difficulty with stairs and difficulty breathing/shortness of breath as a result of his COPD. He testified that he requires the use of two inhalers daily, as well as two kinds of insulin daily to manage his diabetes. Petitioner noted that his blood sugar levels are in the 400s and his A1c level higher than 11. Petitioner testified that he lives alone and is able to bathe himself and take care of his own personal hygiene. However, he testified he has difficulty dressing, in particular with shirts above his head. He reported that he is able to do basic cooking and cleaning but is unable to do laundry. Petitioner testified that he

has no problems gripping or grasping items with his hands but testified that he has osteoarthritis in his hands. Petitioner stated that he was diagnosed with depression three years ago and currently is under medication treatment of Cymbalta prescribed by his primary care physician. Petitioner does not participate in any other mental health treatment. He reported symptoms of depression including exhaustion, lack of motivation, self-isolating, and limited social interaction. He reported that he can focus for only short amounts of time and that he suffers from crying spells. Petitioner did not identify any thoughts of hurting himself or others and did not report any auditory or visual hallucinations.

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, 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; mild limitations with respect to his ability to interact with others; mild limitations in his ability to concentrate, persist, or maintain pace and mild 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 restaurant dishwasher and cook, as well as. a laborer in a warehouse. Upon review, Petitioner's past employment is characterized as requiring light to medium 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 at the time of hearing, and thus, considered to be advanced age (age [redacted] and over) for purposes of Appendix 2. He obtained a GED and has semi-skilled work history that is nontransferable. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities, with the noted additional nonexertional limitations. Thus, based solely on his exertional RFC, the Medical-Vocational Guidelines result in a disability finding based on Petitioner's exertional limitations and an analysis of the additional nonexertional limitations will not be addressed. Accordingly, Petitioner is found disabled at Step 5 for purposes of the SDA benefit program.

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

DECISION AND ORDER

Accordingly, the 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 [redacted] 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

Amber Gibson
5303 South Cedar
PO BOX 30088
Lansing, MI 48911

Petitioner

[redacted]

cc: SDA: L. Karadsheh
AP Specialist Ingham County (2)