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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: January 30, 2020  
MOAHR Docket No.: 19-012109  
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 December 9, 2019, from Detroit, Michigan. The Petitioner was represented by himself. ██████████ appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by April Nemec, 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 was received and marked into evidence and contained an MRI of the lumbar spine and a ██████████ 2019 record from ██████████. Exhibit C was received and marked into evidence and contained physical therapy records for ██████████ ██████████.

The Interim Order also requested a DHS-49 Medical Examination Report be completed and one year of medical treatment records be returned from ██████████ and were not returned. The Interim Order also requested the medical treatment and testing records and a DHS-49 Medical Examination Report from ██████████ of the ██████████ ██████████. Only one treatment record was received for ██████████ 2019, and no testing records and no DHS-49 were received; no other treatment records were provided. The record closed on January 8, 2020, 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 Medical Assistance (MA) and/or 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 July 2, 2019, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On October 28, 2019, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 6-12).
3. On October 30, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 119-120).
4. On November 12, 2019, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 4).
5. Petitioner alleged disabling impairment due to bilateral foot pain due to arthritis in both feet and two ankle surgeries and low back pain with radiation and fracture of cervical spine.
6. On the date of the hearing, Petitioner was ■ years old with an ■ birth date; he is ■ in height and weighs about ■ pounds.
7. Petitioner is a high school graduate. Petitioner attended special education classes for reading and writing due to dyslexia and has difficulty with math.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work in a shipping and receiving Department scanning items in computer system and lifting parts; at the same company, Petitioner also worked on a line running parts; Petitioner also drove a hi-lo; and performed janitorial work, cleaning parts at a factory.
10. Petitioner has a pending disability claim with the Social Security Administration.

### **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 90 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.

The Petitioner was prescribed physical therapy and was evaluated on [REDACTED] 2019. The Petitioner presented for evaluation with complaints of low back pain with left-sided sciatica and unspecified back pain laterally. The physical therapy (PT) evaluation noted subacute and chronic back pain with radiating pain and chronic back pain with related generalized pain. Lumbar bending in all directions was decreased by 50% and reported as painful during motion and at the end of the range. With respect to the lumbar spine, pelvis and hip strength, the evaluator found no frank weakness to the bilateral lower extremities except for bilateral ankles presenting with weakness; at the time of the evaluation, the Petitioner was recommended for three weeks of PT two times per week.

On [REDACTED] 2019, after completing six physical therapy sessions, the Petitioner was seen at the Ambulatory Therapy Department. The diagnosis was low back pain with left-sided sciatica, unspecified back pain laterally. The Petitioner presented with complaints of low back pain with radiating numbness and tingling down the left lower extremity occasionally to the left foot. The pain started approximately 3 to 4 months ago. The Petitioner also presents with a history of chronic pain, obesity and bilateral foot surgeries, and reports still has significant pain on bilateral feet especially with prolonged standing. Petitioner reports he has gained 100 pounds since his foot surgeries. The notes of the physical exam noted right quadratus lumborum muscle is reported as painful with palpation. Right lumbar paravertebral muscles are reported as painful with palpation. Spring testing of L3-L4 is noted as painful, as well as L4-L5. L5-S1 is also noted as painful on spring testing. Notes indicate the Petitioner requires the use of a single-point cane for mobility and is able to ambulate independently at a slow pace, and an antalgic gait/limp was observed. Forward bending was decreased by 50% and painful at and range. Lumbar spine active backward bending is decreased by 50%. Side bending to the left and right both are decreased by 50%, as is right and left lumbar rotation. Petitioner's bilateral ankles due to previous ankle issues present with weakness.

During his physical therapy assessment, notes indicate he still has significant issues stemming from his foot surgeries and the manner in which he ambulates as a result. His endomorphic body type is also a significant limiting factor since his activities are limited by pain. It was highly recommended that Petitioner continue with physical therapy to further the progress he has made. The patient has improved but still presents with subacute and chronic back pain with radiating pain and chronic back pain with related generalized pain.

Notes further indicate that the Petitioner's goal of tolerating standing for five minutes without pain onset has been met. Long-term goals included ability to stand, to complete daily tasks such as washing dishes, grooming, showering without limitations of pain. The clinical progress note indicated progress was good; and in order to attain gains in function as outlined in the therapy goals, the therapist recommended that Petitioner undergo additional strengthening, improved range of motion and mobility and improve core strength/stability. This assessment was done after completing physical therapy 6/6 sessions. At the conclusion, the Petitioner wished to consult with his doctor to see the steps going forward and declined to continue with physical therapy until he consults with

his doctor. No additional physical therapy records were presented after [REDACTED] 2019 and apparently therapy was not continued. The Petitioner was prescribed a three-prong cane from his foot doctor in [REDACTED] 2019 and testified that he has a brace on both feet so they don't move. Petitioner further testified that he had received injections which did not improve his condition.

The Petitioner was seen on [REDACTED] 2019, at [REDACTED] by [REDACTED]. The Petitioner presented with bilateral foot pain. The Petitioner was not wearing his ankle braces. Notes indicate that Petitioner also complained of numbness tingling shooting down his left leg and chronic back pain. The physical examination noted on weightbearing the arches of the feet flatten out even more. Nearly absent subtalar joint range of motion bilaterally. Minimal to no pain on palpation over the subtalar joint bilaterally. First ray appears elevated. Muscle strength is 4 out of 5 for dorsiflexors and plantar flexors and invertor and evertors. No pain with attempted strength testing. Decreased ankle joint range of motion noted bilaterally. Dorsalis pedis and posterior tibial pulses are palpable bilaterally. Capillary filling time is less than three seconds for all digits. The impression was Equinus/hyperpronation/Cavus/Plantar Flex-left foot. Pain in right ankle and joints of right foot. Flat foot/Pes Planus, congenital right foot. Degenerative osteoarthritis right ankle and foot. Degenerative osteoarthritis left ankle and foot. Flat Foot/Pes Planus, congenital left foot. Pain in left ankle and joints of left foot. Equinus/Hyperpronation/Cavus/Plantar Flex-Right foot. Pain due to internal orthopedic prosthetic device. The Petitioner was given an injection to the left subtalar joint and right subtalar joint bilaterally. Notes indicate that due to his financial situation he cannot undergo any surgical intervention. He is to continue either custom braces or inserts to try to provide relief. Petitioner was made aware that at some point he will need surgical intervention and was delaying the inevitable. Also discussed was complaint of numbness in his left leg and back pain, and notes indicate concern there is a radiculopathy and possible sciatic component. The doctor stressed to Petitioner that he needs to be seen by his primary care physician for further workup and evaluation. Suggested that Petitioner find a new primary care physician in order to get the evaluation of his back completed. The exam concluded that Petitioner would not be a surgical candidate until he had a further workup on his back as well. Petitioner was instructed to ice the area of his feet 3 to 5 times a day for 15 to 20 minutes. He could also alternate with warm water soaks in Epsom salts. The doctor also recommended analgesic creams. The foot was to be elevated to treat for pain relief. No follow-up appointment was made. No other records were available.

An MRI of the lumbar spine was completed on [REDACTED] 2019. The indications were low back pain. The findings were as follows: alignment of spine is satisfactory; no acute fracture or acute dislocation is seen involving lumbar spine. Vertebral body heights are well maintained. Mild disc desiccation and reduce disc height involving L5-S1 intervertebral disc. Prevertebral soft tissue appears unremarkable. Paraspinal musculature appear unremarkable, the Conus medullaris terminates normally and shows normal signal intensity. At L5-S1 a 7 mm left paracentral disc herniation superimposed on diffuse circumferential disc bulge causing moderate left-sided neural foraminal

narrowing. No significant spinal canal stenosis seen. Right neural foramina is patent. At L4-L5 and L3-L4, mild diffuse circumferential disc bulge. No significant spinal canal stenosis or neural foraminal narrowing is seen. At L2-L3, L1-L2 and T 12-L1, no significant disc herniation, spinal canal stenosis or neural foraminal narrowing is seen. At the conclusion of the exam, the impression was no acute fracture or dislocation is seen involving lumbar spine. A 7 mm left paracentral disc herniation superimposed on diffuse circumferential disc bulge at L5-S1 level causing moderate left-sided neural foraminal narrowing. The conus medullaris terminates normally and shows normal signal alignment. On [REDACTED] 2019, the Petitioner's doctor prescribed a three-prong cane due to a diagnosis of back pain with ataxia. Exhibit B.

By way of history with respect to the Petitioner's ankle surgery in 2014, a doctor's note from [REDACTED] 2014, regarding Petitioner's ankle injection indicates that the Petitioner was experiencing ankle pain in the morning and after a full work day. The examination noted that pulses were palpable at 2/4 with capillary refill time brisk, the incision was intact and are well healed with no edema or signs of infection. The patient's dorsiflexion is limited on the left side, and ankle joint is noted to have mild effusion. Based on an x-ray, the hardware was intact with no fractures or dislocation. Osteoarthritis is noted in the anterior ankle joint. The assessment was ankle joint arthritis status post-Kidner and Evans on [REDACTED] 2014. The Petitioner was prescribed an orthotic to assist with end of the day pain. In addition, the medical record dated [REDACTED] 2017, indicates a doctor's appointment three months post-surgery of Petitioner's right foot for a flat foot reconstruction referred to as an All American procedure performed on December 6, 2016. X-rays at that time confirmed the surgery had been successfully performed. The treating doctor requested Petitioner participate in aggressive physical therapy to manage his lymphedema and regaining motion of his ankle. Compression stockings were also prescribed. The Petitioner was required to remain non-weight-bearing for eight weeks post operatively.

The Petitioner had x-rays taken of his cervical spine on [REDACTED] 2019. The indications for the x-ray were due to neck pain, bilateral hand numbness and old neck fracture in 2016. The findings were as follows: vertebral bodies have normal height; there is mild lower cervical lordotic straightening and mild upper cervical key focuses/left convex curvature. There is minimal to millimeter anterior subluxation at C5 upon C6. Mild vertebral body bony spurring is seen along the C1-C7 vertebral bodies, with mild posterior element hypertrophy especially along C4-C6. There is chronic mild C5-C6 disk space narrowing. There is widening of the C1-C2 posterior interspinous space, prevertebral soft tissue looks unremarkable. The impression was chronic moderate cervical spondylosis with degenerative C5-C6 grade 1 spondylolisthesis and possibly old C1 and C2 injury. No acute abnormality.

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, 1.02 Major dysfunction of a joint(s) (due to any cause) 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).

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical conditions. Petitioner testified that he could stand 5 to 15 minutes and sit an hour or less. He could walk for 5 minutes and could not perform a squat. Petitioner had limitations bending at the waist due to his weight and low back pain. Petitioner could shower and dress himself and could tie his shoes while sitting and could not touch his toes. The Petitioner is right-handed and indicated that there was nothing wrong with his hands or arms. The Petitioner also testified that the most he could carry was one pound. The Petitioner was able to microwave a meal for himself. Petitioner has a driver's license and can grocery shop with the use of a scooter. The Petitioner can do a load of laundry and uses a prescribed three-prong cane. The Petitioner watches television during the day.

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). The medical evidence provided, the MRI of the lumbar spine and cervical spine x-rays noted moderate conditions in both Petitioner's lumbar and cervical spine without nerve root compression or significant spinal canal stenosis. The medical evidence regarding the Petitioner's pain in his ankles and feet did not indicate he was unable to walk and no final presentation as to whether additional surgery with respect to his feet and ankles was presented. Due to the lack of follow-up treatment the record does not allow the undersigned to draw any further conclusions as to the Petitioner's medical conditions other than as summarized and presented in Step 2.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has some limitations on his ability to perform nonexertional activities such as squatting, crawling, and stooping due to his weight and low back pain.

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 in a shipping and receiving department scanning items in a computer system and lifting parts, at the same company Petitioner also worked on a line running parts. In this position the Petitioner had to stand and walk most of the day and lift up to 100 pound and frequently 20 pounds and as such can no longer perform this work. Petitioner also drove a hi lo requiring him to sit much of the day and lift less than 10 pounds and as such required 2 hours of walking and an hour standing and as such could no longer perform this job. Petitioner also performed janitorial services cleaning parts at a factory which required that Petitioner stand 8 hours per day cleaning painted parts. Petitioner's past work as a in all these positions which required standing much of the day and lifting up to 20 pounds regularly, 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. In light of the entire record, it is found that Petitioner's nonexertional 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 ■ years old at the time of application and ■ years of age at the time of the hearing and thus, considered to be a younger individual (age 18-44) for purposes of Appendix 2. He is a high school graduate, with a mostly unskilled work history of work experience as a shipping and receiving clerk, hi-lo driver, janitorial parts cleaner. 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.

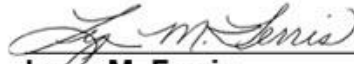
Based solely on his exertional RFC, the Medical-Vocational Guidelines, Rule 201.27, result in a finding that Petitioner is not disabled. In addition, the Petitioner is not disabled based upon his nonexertional limitations as well, as they do not preclude Petitioner from being able to perform sedentary work.

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**

Tamara Morris  
MDHHS- [REDACTED]-Hearings  
BSC2  
D Smith  
EQAD  
L Karadsheh

**Petitioner**

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