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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: November 12, 2021
MOAHR Docket No.: 21-003823
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 September 14, 2021. The Petitioner was represented by [REDACTED], Sister, Guardian, and Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by Veronica Rumschlag, Assistance Payments Supervisor (AP Supervisor).

During the hearing proceeding, the Department's hearing summary packet was admitted as Exhibits A, pp. 1-2110. The hearing record was left open for additional medical evidence, which has been received and admitted as Exhibit B, pp. 1-46.

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 [REDACTED] 2020, Petitioner applied for SDA and reported that he was disabled. (Exhibit A, pp. 4-9)
2. On July 8, 2021, the Medical Review Team/Disability Determination Services (MRT/DDS) found Petitioner not disabled. (Exhibit A, pp. 10-17)
3. On July 20, 2021, a Notice of Case Action was issued informing Petitioner that SDA was denied. (Exhibit A, pp. 50-53)

4. On July 29, 2021, the Department received the timely written request for hearing filed on Petitioner's behalf. (Exhibit A, p. 3)
5. Petitioner alleged disabling impairments including: traumatic brain injury, orbital/nasal fracture with delayed recovery, generalized anxiety, major depression severe recurrent, cognitive impairment, and lack of nutrition. (Exhibit A, pp. 2004-2005; Sister Testimony)
6. At the time of application, Petitioner was ■ years old with a ■, 1967, birth date; was ■ in height; and ■ weighed pounds. (Exhibit A, p. 2005)
7. Petitioner completed the 12th grade and has a work history of rollform technician, truck loader, material handler, and inspector. (Exhibit A, p. 2008)
8. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's statements about pain or other symptoms are not, in and of themselves, sufficient to establish disability. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) daily activities; (2) the location/duration/frequency/intensity of an applicant's pain or other symptoms; (3) precipitating and aggravating factors; (4) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain or other symptoms; (5) any treatment other than medication that the applicant has received to relieve pain or other symptoms; (6) any measures the applicant uses to relieve pain or other symptoms; and (7) other factors concerning the applicant's functional limitations and restrictions due to pain or other symptoms. 20 CFR 416.929(c)(3). The applicant's pain or other symptoms must be considered in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.922(a). The individual has the responsibility to

provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(a)(1)(iv)(vi)(vii).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity. Therefore, Petitioner is not ineligible for disability benefits under Step 1.

The severity of Petitioner's alleged impairment(s) is considered under Step 2. Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education, and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.922(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleged disabling impairments including: traumatic brain injury, orbital/nasal fracture with delayed recovery, generalized anxiety, major depression severe recurrent, cognitive impairment, and lack of nutrition. (Exhibit A,

p. 2005; Testimony) While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

On [REDACTED] 2020, Petitioner was in a motor vehicle accident and was hospitalized. Petitioner was an un-helmeted moped scooter rider that struck a car. Petitioner suffered a traumatic brain injury with loss of consciousness. Glasgow coma scale (GCS) of 6 in the emergency room. Petitioner was intubated for airway protection. Petitioner had a small subarachnoid hemorrhage within bilateral frontal and right parietal lobes with a small amount of IVH. An extraventricular drain (EVD) was placed and was able to be removed on [REDACTED], 2020. Petitioner was found to have been ALL sprain, however no bracing was recommended. Petitioner was also found to have facial fractures. Petitioner underwent tracheostomy on [REDACTED], 2020 as well as a PEJ placement on [REDACTED] 2020. Petitioner's hospital course was complicated by pneumonia. Prior to hospitalization Petitioner was functionally independent with mobility and activities of daily living (ADLs) Since the hospitalization Petitioner had a functional decline to where he required maximum assistance to dependence with ADLs and mobility. Petitioner remained hospitalized until his admission to inpatient rehab on [REDACTED], 2020. (Exhibit A, pp. 429, 527-535, 607, 792-793, 1275-1433)

Petitioner was admitted to inpatient rehab from [REDACTED] 2020 through [REDACTED] 2020 because of severe traumatic brain injury with underlying comorbidities including respiratory failure requiring tracheostomy, dysphagia with PGJ tube, impaired cognition, right hemiparesis, depression, impaired arousal, impaired balance and coordination, and MSSA pneumonia. Active issues at discharge included severe traumatic brain injury; impairments of cognition, arousal, dysphagia, vision; agitation secondary to traumatic brain injury; likely mood/personality disorder; and depression. (Exhibit A, pp. 418-520, 536-538, 792, 799-1275, 1433-1436; Exhibit B, pp. 3-17)

[REDACTED] 2020 through [REDACTED] 2020 records from Spectrum Health document diagnosis and treatment of multiple conditions including: balance issues since the [REDACTED] accident; depression; traumatic brain injury; and anxiety. (Exhibit A, pp. 796-799)

[REDACTED] 2020 records from the internal medicine doctor documented diagnosis and treatment of multiple impairments including: recurrent mild depression, sequela from traumatic brain injury with loss of consciousness; sequela from motor vehicle accident; and anxiety. (Exhibit A, pp. 63-67, 92-97, and 136-151)

From [REDACTED] 2020 to [REDACTED], 2021, Petitioner participated in a day rehab program. Petitioner was discharged when the clinical team determined that Petitioner met his goals and no longer required 9 plus hours of therapy required by the program. Referrals were made for multiple other services, such as outpatient physical therapy to address continued mobility impairments, including lack of coordination and impaired high-level balance. (Exhibit A, pp. 203-416)

A [REDACTED], 2020 record from the Internal Medicine doctor's office documented diagnosis and treatment of multiple conditions including: sequela from traumatic brain

injury with loss of consciousness; anxiety, and mild recurrent major depression. (Exhibit A, pp. 591-595, 686-690, 718-723, 763-778, 2082-2086)

A [REDACTED], 2020 speech and language pathology evaluation indicated Petitioner had cognitive-communication and swallowing impairments. (Exhibit B, pp. 19-21)

A [REDACTED], 2020, psychology evaluation indicated Petitioner was appropriate for day rehabilitation services and psychological services. (Exhibit B, pp. 24-29)

A [REDACTED], 2020 record from Spectrum Health documented diagnosis and treatment of multiple conditions including: anxiety; chronic low back pain with sciatica laterally; depression; gastroesophageal reflux disease; and Barrett's esophagus without dysplasia. (Exhibit A, pp. 1444-1447)

A [REDACTED], 2021 ophthalmology clinic record documented a complaint of double visions and diagnosis of superior oblique palsy. (Exhibit A, pp. 34-36)

A [REDACTED], 2020 ophthalmology clinic record documented diagnoses of diplopia, difficulty reading due to visual problem, anisocoria, and traumatic brain injury with loss of consciousness sequela. (Exhibit A, pp. 539-540)

[REDACTED] 2021 through [REDACTED] 2021 records from the Internal Medicine doctor's office document diagnosis and treatment of multiple conditions including: traumatic brain injury, chronic low back pain with sciatica laterally, anxiety, and mild recurrent major depression. (Exhibit A, pp. 550-590, 2042-2081)

Petitioner had occupational, physical, and speech therapy appointments in [REDACTED] 2021. (Exhibit A, p. 2097)

A [REDACTED], 2021 ophthalmology clinic record documented a diagnosis of superior oblique palsy. (Exhibit A, pp. 31-33)

Petitioner was assessed for outpatient occupational, physical, and speech therapy from [REDACTED] 2021 through [REDACTED] 2021 as a continuation of therapy services for ataxia, ataxic gait, memory challenges, decreased balance, right lower extremity strength deficits, impaired gait pattern, motor speech and cognitive deficits with emphasis on memory, executive functions, oral agility tasks, and compensatory strategies for increased independence with instrumental activities of daily living (IADLS).(Exhibit A, pp. 602-653)

An [REDACTED] 2021 neurosurgery office visit record documented that Petitioner was seen for a traumatic brain injury. (Exhibit A, pp. 2101-2102)

An [REDACTED] 2021 ophthalmology clinic record documented diagnoses of diplopia, anisocoria, and traumatic brain injury with loss of consciousness sequela. (Exhibit A, pp. 541-543, 2099-2100)

A [REDACTED] 2021 Internal Medicine record documented multiple diagnoses including: major recurrent mild depression; chronic low back pain with sciatica laterally; subsequent encounter for traumatic brain injury with loss of consciousness; anxiety; and gastroesophageal reflux disease with esophagitis. (Exhibit A, pp. 545-549, 2037-2041)

Petitioner had physical therapy appointments in [REDACTED] 2021. (Exhibit A, p. 2098)

An [REDACTED] 2021, record from Petitioner's prior doctor documents multiple diagnoses including: weight loss; Barrett's esophagus without dysplasia; traumatic brain injury with loss of consciousness; major recurrent mild depression; dislocation of temporomandibular joint; pain of right ring finger; chronic right knee pain; and intrinsic eczema. (Exhibit B, pp. 37-38)

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that he does have some limitations on the ability to perform basic work activities. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted, or can be expected to last, continuously for 90 days; therefore, Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms diagnosis and treatment of multiple impairments including: traumatic brain injury with loss of consciousness; chronic low back pain with sciatica; gastroesophageal reflux disease; Barrett's esophagus without dysplasia; superior oblique palsy; diplopia, difficulty reading due to visual problem, anisocoria; weight loss; dislocation of temporomandibular joint; pain of right ring finger; chronic right knee pain; intrinsic eczema; depression; anxiety; and cognitive-communication and swallowing impairments.

Based on the objective medical evidence, considered listings included: 1.00 musculoskeletal disorders; 2.00 special senses and speech; 11.00 neurological disorders, and 12.00 mental disorders. For example, it appears that Petitioner may have met or equaled listing 11.18 traumatic brain injury based on the motor function impairments that persisted for at least three consecutive months after the injury and/or marked limitation in physical functioning as well as mental functioning persisting for at least three consecutive months after the injury. Accordingly, Petitioner can be found disabled, at Step 3.

However, the medical records do indicate subsequent improvements with medication and therapy services. Therefore, Petitioner's eligibility is next considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* 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). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* 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). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered non-exertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, individual's residual functional capacity is compared with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment, along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function 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. can't 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). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The evidence confirms recent diagnosis and treatment of multiple impairments including: traumatic brain injury with loss of consciousness; chronic low back pain with sciatica; gastroesophageal reflux disease; Barrett's esophagus without dysplasia; superior oblique palsy; diplopia, difficulty reading due to visual problem, anisocoria; weight loss; dislocation of temporomandibular joint; pain of right ring finger; chronic right knee pain; intrinsic eczema; depression; anxiety; and cognitive-communication and swallowing impairments. Petitioner's Sister indicated Petitioner can walk 50 feet with a cane; stand 5 minutes; sit 45 minutes; and cannot lift/carry a gallon of milk. Petitioner's sister testified that Petitioner was hospitalized or in inpatient rehab from the [REDACTED] 2020 accident until [REDACTED] 2020. Petitioner then lived with his sister and her husband for two months. Petitioner required assistance with walking utilizing a gait belt, showering, incontinence care, and ensuring he ate. At some points there was some improvement with Petitioner's functioning, but he could not function in a work environment. Petitioner received therapy services through [REDACTED] or [REDACTED] of the next year regarding aphasia, dysphagia, and life skills. Petitioner has improved to being able to walk without the gait belt assistance, but his mental health has declined. Petitioner chose to live with his mother for a period, but his condition declined and a protective services wellness check was done. Petitioner was living in unsanitary conditions, stopped medications, and did not eat regularly. Petitioner had only been back to living with his sister for about a month and a half at the time of the hearing. (Sister Testimony) The testimony of Petitioner's sister regarding Petitioner's impairments and the severity of his limitations was mostly supported by the medical records and is found credible. The medical records document the [REDACTED], 2020 accident, hospitalization until admission to inpatient rehab on [REDACTED] 2020, and discharge from the inpatient rehab on [REDACTED], 2020. From [REDACTED] 2020 through [REDACTED] 2021, Petitioner participated in a day rehab program with intensive therapy services. After discharge from the day rehab program, it appears that Petitioner continued with outpatient therapy services into [REDACTED] 2021. The most recent record, from [REDACTED], 2021, documented that there had been a ten-pound weight loss. Further, Petitioner recently left living with his mother and was now living with his sister after protective services was involved. However, only a portion of the progress note from this visit was submitted. The [REDACTED] 2021 record also documented additional impairment, including dislocation of temporomandibular joint, pain of right ring finger, and chronic right knee pain. (Exhibit B, p. 38)

After review of the entire record it is found, at this point, that Petitioner has a combination of exertional and non-exertional limitations and does not maintain the

residual functional capacity to perform a full range of sedentary work as defined by 20 CFR 416.967(a) on a sustained basis.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is considered. 20 CFR 416.960(b)(3).

Petitioner has a past relevant work history including rollform technician, truck loader, material handler, and inspector. (Exhibit A, p. 2008) In light of the entire record and Petitioner's RFC (see above), it is found that Petitioner is not able to perform his past relevant work. Accordingly, the Petitioner cannot be found disabled, or not disabled, at Step 4; therefore, the Petitioner's eligibility is considered under Step 5. 20 CFR 416.905(a).

In Step 5, an assessment of Petitioner's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of the hearing, Petitioner was [REDACTED] years old and, thus, considered to be closely approaching advanced age for disability purposes. Petitioner completed the 12th grade and has a work history of rollform technician, truck loader, material handler, and inspector. (Exhibit A, p. 2008) Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Petitioner to the Department to present proof that the Petitioner has the residual capacity to substantial gainful employment. 20 CFR 416.960(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). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, 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).

As noted above, Petitioner has a combination of exertional and non-exertional limitations and does not maintain the residual functional capacity to perform a full range of sedentary work as defined by 20 CFR 416.967(a) on a sustained basis. After review of the entire record, and in consideration of Petitioner's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, Petitioner is found disabled at Step 5.

In this case, the Petitioner is found disabled for purposes of SDA benefits, as the objective medical evidence does establish a physical and/or mental impairment that met

the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Petitioner's impairments did preclude work at the above stated level for at least 90 days.

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


DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

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

1. Initiate a review of the application dated [REDACTED], 2020, for SDA, if not done previously, to determine Petitioner's non-medical eligibility. The Department shall inform Petitioner of the determination in writing. A review of this case shall be set for May 2022.

CL/ml



Colleen Lack
Administrative Law Judge

