

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. Petitioner's date of birth is REDACTED 1981.
2. Petitioner lives with his mother.
3. Petitioner's highest level of education is high school.
4. Petitioner completed training to obtain a commercial driver's license (CDL).
5. Petitioner participated in construction classes through the Michigan Laborers Local 1329.
6. Petitioner is proficient in the English language.
7. Petitioner is right-handed.
8. Petitioner is able to see with glasses to correct his vision.
9. Petitioner is able to hear without any hearing correction.
10. Petitioner is able to drive a vehicle, but Petitioner's driver's license is currently suspended.
11. Petitioner uses smokeless tobacco products.
12. Petitioner does not currently consume alcohol; Petitioner stopped consuming alcohol approximately one year ago.
13. Petitioner does not use marijuana or any illicit substances.
14. Petitioner is able to sit, stand, walk, reach, bend, and climb stairs.
15. Petitioner is able to walk approximately one mile at a time.
16. Petitioner's strength is limited, which affects Petitioner's ability to complete physical functions.

17. Petitioner is able to follow instructions, remember, concentrate, complete tasks, and work with others.
18. Petitioner is able to dress, bathe, transfer positions, toilet, and eat on his own.
19. Petitioner is able to manage finances, manage medications, prepare food, clean, and do laundry.
20. Petitioner does not use any adaptive medical equipment such as a cane, walker, or wheelchair.
21. From 2016 to November 2024, Petitioner was employed as a construction laborer through the REDACTED. Petitioner performed concrete work, framing, and general labor. Petitioner spent 100% of his time standing. Petitioner regularly had to lift heavy items weighing up to approximately 75 pounds. Petitioner operated machinery, including a forklift. Petitioner's employment came to an end when he was laid off.
22. Petitioner did not return to work because Petitioner began experiencing problems with his health.
23. Petitioner began experiencing difficulty with walking, balance, coordination, speech, and his mental functioning.
24. On REDACTED 2025, Petitioner applied for state disability cash assistance from the Department. (Exhibit A, pp. 7-20).
25. Petitioner completed a medical social questionnaire and submitted it to the Department. (Exhibit A, pp. 28-33). In the medical social questionnaire, Petitioner reported that the illness that limits his ability to work is multiple sclerosis. Petitioner stated that he has "trouble walking, standing, lack of concentration, lack of balance, [and] impaired fine motor skills."
26. Petitioner completed a functional report and submitted it to the Department. (Exhibit A, pp. 68-75). In the functional report, Petitioner described that his illness limits his ability to work by: "I've got numbness in my legs and no balance, numbness in my hands, no concentration, hard to stay focused. I worked heights and had to move around a lot but the disease I can't walk, move, or use my hands like I used to. I no longer have strength to dig holes, rake, or operate equipment. I also can't climb ladders."
27. The Disability Determination Service (DDS) reviewed Petitioner's application together with his medical social questionnaire, his functional report, his work history, and his medical records.
28. Petitioner's medical records reflected the following pertinent information:

- a. On REDACTED 2025, Petitioner met with Physician's Assistant Alisha Waseilewski at the Neurology Department of the Marshfield Clinic Marquette Center for an initial evaluation and care of inflammatory demyelinating process. (Exhibit A, pp. 101-103). The medical record noted the following:
 - i. Petitioner reported a 3-4 month history of numbness and imbalance symptoms. Petitioner's symptoms have not worsened. Some days Petitioner's balance is improved.
 - ii. Petitioner reported his voice getting quieter and some difficulty swallowing.
 - iii. Petitioner reported difficulty concentrating.
 - iv. Petitioner has demyelinating lesions in the brain.
 - v. Physical exam performed. Decreased sensation noted in both lower extremities with increasing sensation up to the knees. Strength rated 5/5 in both upper extremities and both lower extremities. Very ataxic gait observed; wide base with imbalance.
 - vi. Diagnosis: demyelinating disease of central nervous system.
 - vii. Plan: provider will review medical records, request images for review, and refer Petitioner to Mayo Clinic Neuroimmunology and/or cerebrovascular specialist.
 - viii. Encouraged Petitioner to apply for disability benefits and noted that Petitioner's balance will not allow him to return to working construction safely.
- b. On REDACTED 2025, Petitioner met with Physician's Assistant Alisha Waseilewski at the Neurology Department of the Marshfield Clinic Marquette Center for evaluation and care of inflammatory demyelinating process. (Exhibit A, pp. 59-61). The medical record noted the following:
 - i. There were no real changes to report. Petitioner continues to have weakness in arms and legs. Petitioner continues to have variable tingling and numbness in the bottoms of his feet.
 - ii. Physical exam performed. Strength rated 4/5 in right upper extremity, 5/5 in left upper extremity, 4/5 in right lower extremity, and 5/5 in left lower extremity. Gait observed to be mildly imbalanced.
 - iii. Plan: provider will order lab tests, order physical therapy, and consider speech language pathology treatment. Petitioner should

continue with referral to Mayo Clinic Neuroimmunology and/or cerebrovascular specialist and follow-up in three months.

- c. On REDACTED 2025, Petitioner met with Physical Therapist Emily Scroggs at the Outpatient Therapy Department of the Baraga County Memorial Hospital to begin physical therapy. (Exhibit A, pp. 116-119). The physical therapist noted its assessment as follows: “further neurologic testing was performed during today’s session. While ambulating, [Petitioner] demonstrated a mild steppage gait pattern along with increased outward positioning of the left arm, suggesting possible underlying neuromuscular involvement. Neurological condition testing revealed minor overshooting during finger-to-nose assessment, with more pronounced deficits in the left lower extremity (LLE) compared to the right (RLE). [Petitioner] displayed impaired coordination during rapid alternating movement tasks, particularly affecting the LUE. A bilateral positive Babinski sign was noted, characterized by minor toe flaring and extension of the great toe, further indicating potential upper motor neuron involvement. Balance testing was also notably impaired. [Petitioner] was unable to maintain single leg stance (SLS) for more than 5 seconds, with greater difficulty and increased shakiness on the left foot compared to the right. These findings reflect reduced proprioceptive control and postural stability, placing [Petitioner] at an elevated fall risk. Given the presence of neurological signs and the continued functional limitations, [Petitioner] was advised to follow up promptly on pending spinal tap results. Recommend further diagnostic testing. [Petitioner] continues to require skilled physical therapy to monitor and address evolving neuromuscular symptoms, improve balance, gait, and coordination, and reduce fall risk. . . .”
- d. On REDACTED 2025, Petitioner completed physical therapy at the Outpatient Therapy Department of the Baraga County Memorial Hospital. (Exhibit A, pp. 120-123)
- e. On REDACTED 2025, Petitioner completed physical therapy at the Outpatient Therapy Department of the Baraga County Memorial Hospital. (Exhibit A, pp. 124-126)
- f. On REDACTED 2025, Petitioner met with Physical Therapist Penny Tussing at the Outpatient Therapy Department of the Baraga County Memorial Hospital to re-evaluate Petitioner’s plan of care. (Exhibit A, pp. 165-167). The physical therapist noted that Petitioner has made progress since starting physical therapy, but Petitioner continues to have difficulty with standing and walking. The physical therapist determined that Petitioner would benefit from continued skilled physical therapy.
- g. On REDACTED 2025, Petitioner completed physical therapy at the Outpatient Therapy Department of the Baraga County Memorial Hospital. (Exhibit A, pp. 127-130)

- h. On REDACTED 2025, Petitioner met with Dr. Lana Sharba at the Neurology Department of University of Michigan for evaluation of abnormal MRI findings, right-sided weakness, and speech abnormality. (Exhibit A, pp. 62-66). The medical record noted the following: Petitioner has experienced severe speech problems, which improved less than 2 months ago. Petitioner was able to follow simple commands, but unable to perform complex commands. Petitioner has about one year of progressively worsening weakness, numbness, dysarthria, gait instability, bowel/bladder incontinence, fatigue, and weight loss that has more recently improved/stabilized. Neurologic exam notable for cognitive impairment (at baseline per father), dysarthria, decreased muscle bulk, hyperreflexia, gait instability, diminished sensation in the hands and feet, and worse in the lower extremity, and mild weakness. "Based on review it appears [Petitioner] has numerous brain lesions on MRI of unclear etiology. Differential remains broad though given his clinical course, demyelinating disease is high on the differential. Infection, primary CNS malignancy, or metastatic disease are less likely as one would suspect a much more severe clinical decline over one year if any of these diagnoses were present. Multifocal ischemic strokes are also considered less likely." The provider noted that the provider would obtain prior test results, order lab tests, and refer Petitioner to a social worker.
- i. On July 11, 2025, Dr. Lana Sharba reviewed Petitioner's prior test results and referred Petitioner to Multiple Sclerosis/Neuroimmunology Clinic for evaluation. (Exhibit A, p. 67)
- j. On REDACTED 2025, Petitioner met with Physical Therapist Penny Tussing at the Outpatient Therapy Department of the Baraga County Memorial Hospital to re-evaluate Petitioner's plan of care. (Exhibit A, pp. 168-170). The physical therapist noted that Petitioner has declined since his last physical therapy visit. The physical therapist determined that Petitioner would benefit from continued skilled physical therapy.
- k. On REDACTED 2025, Petitioner completed physical therapy at the Outpatient Therapy Department of the Baraga County Memorial Hospital. (Exhibit A, pp. 131-133)
- l. On REDACTED 2025, Petitioner completed physical therapy at the Outpatient Therapy Department of the Baraga County Memorial Hospital. (Exhibit A, pp. 134-137). The physical therapist noted that Petitioner demonstrated a steppage gait pattern. The physical therapist noted that [Petitioner] demonstrated reduced coordination with finger-to-nose testing and presence of dysdiadochokinesia. The physical therapist noted that Petitioner reported a reduced appetite and appeared to be losing weight. The physical therapist advised Petitioner to speak with a dietician.

- m. On REDACTED 2025, Petitioner completed physical therapy at the Outpatient Therapy Department of the Baraga County Memorial Hospital. (Exhibit A, pp. 138-140)
- n. On REDACTED 2025, Petitioner completed physical therapy at the Outpatient Therapy Department of the Baraga County Memorial Hospital. (Exhibit A, pp. 141-144)
- o. On REDACTED 2025, Petitioner completed physical therapy at the Outpatient Therapy Department of the Baraga County Memorial Hospital. (Exhibit A, pp. 145-147)
- p. On REDACTED 2025, Petitioner completed physical therapy at the Outpatient Therapy Department of the Baraga County Memorial Hospital. (Exhibit A, pp. 148-150). The physical therapist noted that Petitioner reported he lost 30 pounds over the past 6 months. The physical therapist noted that Petitioner's ambulation has decreased as he is ambulating with a wide base of support.
- q. On REDACTED 2025, Petitioner completed physical therapy at the Outpatient Therapy Department of the Baraga County Memorial Hospital. (Exhibit A, pp. 151-153)
- r. On REDACTED 2025, Petitioner met with Physical Therapist Penny Tussing at the Outpatient Therapy Department of the Baraga County Memorial Hospital to re-evaluate Petitioner's plan of care. (Exhibit A, pp. 171-173). The physical therapist noted that Petitioner reported 80% improvement since he started physical therapy. The physical therapist noted that Petitioner still complains of numbness in both hands and feet. The physical therapist noted that Petitioner's gait pattern improved. The physical therapist noted that Petitioner seemed to have responded well to infusions he received over the past few weeks. The physical therapist noted that Petitioner still presented below his baseline and would benefit from continued skilled physical therapy.
- s. On REDACTED 2025, Petitioner met with Physician's Assistant Alisha Waseilewski at the Neurology Department of the Marshfield Clinic Marquette Center for evaluation and care of inflammatory demyelinating process/multiple sclerosis. (Exhibit A, pp. 59-61). The medical record noted the following:
 - i. Update: Petitioner saw a specialist at the University of Michigan, and the specialist diagnosed Petitioner with multiple sclerosis. Petitioner has not had exacerbation since having prednisone infusion on August 25, 2025; Petitioner was able to walk much better after that. Petitioner's right arm and leg are weaker than previously thought; Petitioner is doing physical therapy. Petitioner's speech is better.

- ii. Plan: Provider will work toward management with relapsing-remitting multiple sclerosis diagnosis. Provider ordered ocrelizumab treatment – 300 mg on day 0, 300 mg on day 14, and 600 mg every 6 months thereafter. Provider reordered MRI brain, C-spine, and T-spine imaging. Provider instructed Petitioner to continue physical therapy and return for a follow-up visit in 8 weeks.
 - t. On November 8, 2025, Petitioner met with Dr. Debra Smith for a mental status evaluation pursuant to a referral received from DDS to assist DDS in determining Petitioner's eligibility for disability benefits. (Exhibit A, pp. 82-87). Dr. Smith evaluated Petitioner's mental ability to perform work-related activities. Dr. Smith determined that Petitioner had a mild limitation in his mental ability to understand, retain, and follow instructions. Dr. Smith determined that Petitioner had a moderate limitation in his mental ability to sustain attention and perform simple repetitive tasks. Dr. Smith determined that Petitioner had no limitation in his mental ability to relate to others, including fellow workers and supervisor. Dr. Smith determined that Petitioner had no limitation in his mental ability to tolerate the stress/pressures associated with day-to-day work. Dr. Smith noted that Petitioner's prognosis was poor as Petitioner's illness will progress and result in permanent disability.
 - u. On REDACTED 2025, Petitioner met with Physician's Assistant Alisha Waseilewski at the Neurology Department of the Marshfield Clinic Marquette Center for evaluation and care of inflammatory demyelinating process/multiple sclerosis. (Exhibit A, pp. 59-61). The medical record noted the following:
 - i. Update: Petitioner advised that he wanted to eliminate his symptoms. Petitioner requested chronic steroid to improve his walking. Petitioner finished ocrelizumab treatment on November 4, 2025. Petitioner's next dose will be due in May 2026.
 - ii. Plan: Petitioner did not report any new symptoms, but Petitioner has had progression of his dysfunction in walking and weakness in body. Provider encouraged Petitioner to have ocrelizumab treatment every 6 months. Provider instructed Petitioner to continue physical therapy home exercise program. Provider prescribed dalfampridine 10 mg tablet, extended release, once daily for Petitioner's gait. Provider instructed Petitioner to return for a follow-up visit in 6 months.
29. On November 17, 2025, the DDS determined that Petitioner was not disabled because he was capable of performing other work. (Exhibit A, pp. 192-193)

30. On November 18, 2025, the Department issued a notice of case action to Petitioner to notify him that his application for state disability cash assistance was denied. (Exhibit A, pp. 194-197)
31. Petitioner requested a hearing to dispute the Department's determination.

CONCLUSIONS OF LAW

Department policies are contained in DHHS Bridges Administrative Manual (BAM), DHHS Bridges Eligibility Manual (BEM), and DHHS Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHHS administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.*, and Mich Admin Code, R 400.3151 to R 400.3180.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 1, 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 benefits based on disability or blindness. *Id.* at 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. *Id.* at 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. *Id.*

In general, the individual alleging a disability 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 has not engaged in SGA during the period at issue. Therefore, Petitioner cannot be assessed as not disabled at Step 1, so the evaluation 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 at 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 416.922(b).

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 Servs*, 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.

The medical evidence presented at the hearing was reviewed and, in consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, it is found to be 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, so the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination of whether 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.

Petitioner's alleged impairment is multiple sclerosis. Therefore, listing 11.09 multiple sclerosis was considered. The medical evidence presented does not show that Petitioner's impairment meets or equals the required level of severity of the listing in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3, so 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, non-exertional, or a combination of both. 20 CFR 416.969a. If an 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 non-exertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). 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, assessing the ability to (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). A five-point scale is used to rate the degree of limitation in each area: 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).

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 non-medical sources. SSR 16-3p.

Petitioner's alleged impairment is multiple sclerosis. Petitioner's multiple sclerosis is both an exertional impairment and a non-exertional impairment because it affects Petitioner's ability to complete physical demands of work as well as other demands of work. Accordingly, Petitioner's impairment will be analyzed as both an exertional impairment and a non-exertional impairment.

Petitioner testified that his multiple sclerosis causes Petitioner to experience problems with all physical demands of work due to his loss of strength and problems with balance and coordination. Petitioner testified that he experiences these problems daily. Petitioner's medical records support Petitioner's testimony for the most part. Petitioner's medical records document a loss of strength, but perhaps not as great a loss of strength as Petitioner described in his testimony. Petitioner's medical records document persistent problems with walking, balance, and coordination. Based on the evidence presented, Petitioner's multiple sclerosis substantially limits Petitioner's ability to meet the physical demands of work. However, Petitioner may still be able to meet the physical demands of sedentary work.

Petitioner did not testify that his multiple sclerosis causes Petitioner to experience problems with the non-physical demands of work, but Petitioner's medical records document problems with Petitioner's ability to meet the non-physical demands of work. Petitioner's medical records document problems with Petitioner's speech and problems with Petitioner's mental ability to follow instructions and perform simple repetitive tasks. Dr. Sharba completed a neurological evaluation and noted problems with Petitioner's speech as well as problems performing complex commands. Dr. Smith completed a mental status evaluation, and she noted Petitioner's speech problems as well as limitations in Petitioner's mental ability to perform some work-related activities. Based on the evidence presented, Petitioner's multiple sclerosis substantially limits Petitioner's ability to meet the non-physical demands of work. However, Petitioner may still be able to meet the non-physical demands of simple work.

In summary, Petitioner's multiple sclerosis is both an exertional impairment and a non-exertional impairment that limits Petitioner's ability to perform work. At this time, Petitioner maintains the exertional capacity to perform sedentary work, and Petitioner maintains the non-exertional capacity to perform simple work. 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 five 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 five years prior to his application consisted of work as a construction laborer through the Michigan Laborers Local 1329. Petitioner's past relevant work was physically demanding heavy work. Based on the RFC analysis above, Petitioner does not maintain the RFC to perform his past relevant work. Therefore, Petitioner cannot be found disabled or not disabled at Step 4, so the assessment continues to Step 5.

Step Five

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).

In this case, Petitioner has both an exertional impairment and a non-exertional impairment that limits Petitioner's ability to perform work. Since Petitioner has a non-exertional impairment, the Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, are insufficient to establish that Petitioner can perform specific jobs in the national

economy. Accordingly, the Department bears the burden to prove that Petitioner has the RFC to obtain and maintain substantial gainful employment. The Department did not present any evidence to meet its burden since the Department did not participate in the hearing. Accordingly, Petitioner is found disabled at Step 5 for purposes of the SDA benefit program.

DECISION AND ORDER

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.

IT IS ORDERED that the Department's determination is **REVERSED**. The Department must reprocess Petitioner's SDA application with a medical determination that Petitioner is disabled. The Department must begin to implement this order within 10 days of the mailing date of this hearing decision.