RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

Date Mailed: June 30, 2017
MAHS Docket No.: 17-005580
Agency No.: [redacted]
Petitioner: [redacted].

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

## 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; and 45 CFR 205.10. After due notice, a telephone hearing was held on May 31, 2017, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [redacted] Hearing Facilitator.

## ISSUE

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

## FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On September 29, 2016, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On March 15, 2017, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 34-55, 56-71).

3. On March 17, 2017, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 396-399).

4. On April 13, 2017, the Department received Petitioner's timely written request for hearing.

5. Petitioner alleged disabling impairment due to heart conditions, high blood pressure, osteoarthritis, leg swelling, dizziness, asthma, low back pain and mental health conditions.

6. On the date of the hearing, Petitioner was [redacted] with a [redacted] birth date; he is about 6’0” in height and weighs about 280 pounds.

7. Petitioner is a high school graduate with a year and a-half college attendance.

8. At the time of application, Petitioner was not employed.

9. Petitioner has an employment history of work as a maintenance supervisor, auto supplier supervisor, and assembly line worker and supervisor.

10. Petitioner has a pending disability claim with the Social Security Administration (Exhibit B).

## CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

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

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (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 ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work

experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

**Step One**
The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he is not ineligible under Step 1, and the analysis continues to Step 2.

**Step Two**
Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-

workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The medical evidence presented at the hearing was reviewed and is summarized below.

A [redacted] CT chest angiography showed evidence of aortic stenosis with heavy calcification of the probable anterior conjoined cusp of bicuspid valve, dilated aortic root, and bibasilar atelectasis. (Exhibit A, pp. 356-357.) On [redacted], Petitioner's internist recommended an ICD (implantable cardioverter-defibrillator) after Petitioner experienced out-of-hospital sudden cardiac death, VF (ventricular fibrillation) arrest and he was noted to have a structurally abnormal aortic valve (likely bicuspid) (Exhibit A, p. 369). On [redacted], Petitioner had a single-chamber implantable cardiac defibrillator placement performed. (Exhibit A, pp. 360-361.) A [redacted] chest x-ray post CABG (coronary artery bypass graft) operative showed surgical changes, right lower lobe atelectasis and partial left lower lobe atelectasis, and small bilateral pleura effusions. (Exhibit A, p. 355.) A [redacted], a transthoracic echocardiogram (EKG) showed preserved left ventricular systolic function with EF (ejection function) visually estimated at 60-65%; grossly normal wall motion other than mild atypical septal motion; moderate diastolic dysfunction; normally functioning bio-prosthetic valve in the aortic position; well-seated prosthetic aortic valve; no evidence of aortic valve regurgitation; and normal aortic root size (Exhibit A, pp. 364-367). A [redacted] cardiac evaluation showed that Petitioner was not pacemaker-dependent with normal device function one week post implant (Exhibit A, p. 368).

On [redacted], Petitioner's internist noted that Petitioner had been in a motor vehicle accident but suffered no significant injuries except a bit of neck pain that was insignificant from his perspective. The doctor noted that Petitioner's back pain was under adequate control with Norco and his bipolar disease and anxiety with Xanax, with Depakote if he was having a bad day. (Exhibit A, p. 375). On [redacted] and [redacted], Petitioner complained of chronic chest wall pain and back pain. The doctor noted minimal edema at the September visit. (Exhibit A, p. 379, 382.) At the [redacted] visit, the doctor updated Petitioner's Xanax for his chronic generalized anxiety and his hydrocodone for his chronic pain. The doctor recommended smoking cessation and weight reduction, noting his BMI (body mass index) was 36.7. (Exhibit A, p. 384). At the [redacted] visit, the doctor updated Petitioner's Norco and counseled him on the importance of pain medication compliance (Exhibit A, p. 386). At the [redacted] visit following an emergency department visit for a fall and concussion, the doctor noted that Petitioner did not appear in any significant distress, did not seem confused, and was oriented to time and day. His blood pressure was 128/68 and heart rate and rhythm was regular. His lungs revealed decreased breath sounds but were otherwise clear. His left wrist showed good range of motion with no obvious swelling. (Exhibit A, p. 388). At the [redacted] visit, in connection

with completing disability paperwork, the doctor noted that Petitioner had bipolar disorder, depression and chronic pain. The doctor noted that Petitioner's bipolar symptoms were helped with Depakote treatment. He also took medication for his chronic pain issues and generalized high anxiety. His weight was consistent with obesity, with a BMI of 34.8. (Exhibit A, p. 390.)

On ██████████, a cardiologist Petitioner's primary care doctor referred him to after his complaints of increased shortness of breath and fatigue with exertion, examined Petitioner. The cardiologist noted that Petitioner denied any angina, palpitations, dizziness, or syncope. The cardiologist noted Petitioner's EKG was within normal limits and recent ICD interrogation showed appropriate function with no arrhythmias detected. The doctor assessed Petitioner with dyspnea on exertion; status post aortic valve replacement with aortic root replacement; hypertension sub-optimally controlled; history of sudden cardiac death, status post implantable cardioverter-defibrillator implantation (ICDI); and normal coronary arteries by preoperative cardiac catheterization. The doctor added medication for better blood pressure control and referred Petitioner for an echocardiogram. (Exhibit A, pp. 346-347.)

A ██████████ transthoracic EKG showed normal LV (left ventricle) systolic function with a visually estimated ejection fraction of 60%; moderately dilated left ventricle; normal thickness left ventricular wall; basal inferior hypokinesis; moderately dilated left atrium; grossly normal mitral valve; and mild mitral regurgitation. It was noted that there was a bioprosthetic valve in the aortic position that was functioning normally. (Exhibit A, pp. 333-335, 343-345.)

On █████████████, Petitioner went to the emergency department after falling down a flight of stairs the prior night with concerns that he had a concussion and was unconscious for about ten minutes. He woke up with left rib pain, left wrist pain, and persistent headache. A left wrist x-ray was normal. Chest x-rays showed left-sided AICD device placement but no acute pulmonary disease. A brain CT showed no acute intracranial hemorrhage. The physical exam was negative and showed no signs of trauma. The final impression was concussion with loss of consciousness of 30 minutes or less, wrist sprain, and rib contusion. Petitioner was discharged. (Exhibit A, pp. 298-332.)

Routine ICD checks on ████████████████; ███████████ █████████████; and ████████████████ showed no arrhythmias, stable capture and sensing threshold, and normal device function. The evaluations showed that Petitioner was not pacemaker dependent. (Exhibit A, pp. 341-342, 349-354.)

On ███████████████, Petitioner was evaluated by a licensed psychologist at the Department's request, and the psychologist prepared a psychiatric/psychological medical report. Petitioner reported extreme fatigue, low energy, and heart problems with shortness of breath and difficulties with physical work since his heart attack two years earlier. He indicated having pain and mobility problems in both ankles and his right knee; pain in his lower back, near the pelvis area; in his chest from the open heart

surgery; and in his hands, which were often swollen. He reported being diagnosed with bipolar disorder 14 years earlier and being very depressed with very low energy and fatigue. The psychologist noted that Petitioner was tearful during the evaluation and his eye contact was poor. Petitioner reported being independent with his personal care but lacking motivation to tend to it. He infrequently showered and dressed. While he could shop and drive, he did his shopping at night when no one was around. The psychologist noted that Petitioner was on time for his appointment, was alone, and drove himself. He walked slowly but with a steady gait and climbed the steps adequately. The psychologist noted that Petitioner was generally in contact with reality, had low, fragile self-esteem and slightly slowed motor activity but within normal limits. He was poorly motivated and had marginal insight. He maintained a spontaneous stream of mental activity. The psychologist diagnosed Petitioner with unspecified bipolar disorder and adjustment disorder with mixed anxiety and depressive symptoms and concluded that he was unable to perform detailed or complex tasks, was very sensitive to stress, and would likely have difficulty managing common work stressors effectively. He would have difficulty working effectively with other people. He would be capable of performing simple and repetitive tasks but would likely have difficulty doing so on a sustained basis. His prognosis was poor. (Exhibit A, pp. 281-287).

Petitioner's performance evaluation for 2015, which the psychologist reviewed in connection with the evaluation, showed that Petitioner was exceeding expectations for job knowledge, objectives, work quantity, initiative, judgment, and problem solving and greatly exceeded expectations for cost control. He needed improvement in customer service (responding promptly) and dependability (attendance and punctuality). His overall rating was exceeding expectations. His manager commented that Petitioner needed to work on attendance, adding "[s]ome days I am unsure if you will be able to continue your job because you communicate or act as though you are too exhausted." (Exhibit A, pp. 288-290.)

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

**Step Three**

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

Based on the medical evidence presented in this case, listings 4.05 (recurrent arrhythmias), 12.04 (depressive, bipolar and related disorders), and 12.06 (anxiety and obsessive-compulsive disorders) 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). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) activities of daily living; (ii) social functioning; (iii) concentration, persistence, and pace; and (iv) episodes of decompensation. 20 CFR 416.920a(c)(3). For the first three functional areas, a five-point scale is applied (none, mild, moderate, marked, and extreme); for the fourth functional area (episodes of decompensation), a four-point scale is applied (none, one or two, three, four or more. 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner testified that he walked very slowly, using a cane for support, could sit not more than 30 minutes due to his back pain, could stand not more than 20 minutes, and found a laundry basket too heavy to lift. He lived with a friend. He bathed in the seated position because he could not stand. He was generally able to dress himself. He made easy microwavable meals. He sometimes went shopping with his cousin but usually avoided it because of pain or his mental condition. He testified that he shook, and the Department representative confirmed that he was shaking during the hearing. He complained that he had anxiety attacks, memory issues, did not deal well with crowds and other people, and had no energy.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

The medical evidence shows that Petitioner had an ICD implanted in his chest in 2014 following a sudden-cardiac-death incident. There is also physical examination evidence of decreased breath sounds. Thus, there is medical evidence supporting his complaints

of chest pain, fatigue, and shortness of breath. The consultative exam with the psychologist shows a diagnosis of bipolar disorder and adjustment disorder with mixed anxiety and depressive symptoms, supporting his allegations of impairments due to his mental health. Although Petitioner complains of back pain and asthma and there is evidence that he went to his doctor, and was prescribed medication, for back pain, there was no medically determinable impairment presented that would support his allegations of back pain.

Because the medical evidence only supports the cardiac and mental health impairments, the intensity, persistence, and limiting effect of only Petitioner's chest pain, shortness of breath, and bipolar disorder and adjustment disorder is considered. At the ██████ office visit with the cardiologist, Petitioner denied any angina, palpitations, dizziness, or syncope. The cardiologist noted Petitioner's EKG was within normal limits and recent ICD interrogation showed appropriate function with no arrhythmias detected. The doctor assessed Petitioner with dyspnea on exertion and hypertension sub-optimally controlled. 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 light work as defined by 20 CFR 416.967(b).

With respect to Petitioner's limitations due to his mental condition, the consultative psychologist concluded that Petitioner was unable to perform detailed or complex tasks, was very sensitive to stress, and would likely have difficulty managing common work stressors effectively and working effectively with other people. He would be capable of performing simple and repetitive tasks but would likely have difficulty doing so on a sustained basis. She concluded that his prognosis was poor. Petitioner's 2015 work evaluation indicated that Petitioner needed improvement in responding promptly and attendance and punctuality; his supervisor at the time commented that Petitioner's statements and behavior due to his fatigue made it questionable whether he could continue to work. Based on the medical record presented, as well as Petitioner's testimony, Petitioner has mild limitations on his activities of daily living; moderate limitations on his social functioning; and marked limitations on his concentration, persistence, and pace. There are no episodes of decompensation.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

**Step Four**

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past

relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a maintenance supervisor, auto supplier supervisor, and assembly line worker and supervisor. Petitioner's past relevant work, which required standing all day and lifting at least 50 pounds, required, at a minimum, medium physical exertion.

Based on the RFC analysis above, Petitioner's exertional RFC limits him to no more than light work activities. As such, Petitioner is incapable of performing past relevant work. Because Petitioner is unable to perform past relevant work, he cannot be found disabled, or not disabled, at Step 4, and the assessment continues to Step 5.

**Step 5**

If an individual is incapable of performing past relevant work, Step 5 requires an assessment of the individual's RFC and age, education, and work experience to determine whether an adjustment to other work can be made. 20 CFR 416.920(a)(4)(v); 20 CFR 416.920(c). If the individual can adjust to other work, then there is no disability; if the individual cannot adjust to other work, then there is a disability. 20 CFR 416.920(a)(4)(v).

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(c)(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services,* 587 F2d 321, 323 (CA 6, 1978).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). However, 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). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was [redacted] at the time of application and [redacted] at the time of hearing, and, thus, considered to be a younger individual (age [redacted]) for purposes of Appendix 2. He is a high school graduate with some college attendance.

He has a history of semi-skilled work experience but his skills, which are tied to at least medium physical exertion, are not transferrable. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform light work activities.

The Medical-Vocational Guidelines, 202.21, do not result in a disability finding based on Petitioner's exertional RFC. However, Petitioner also has impairments due to his mental condition and, as a result, has a nonexertional RFC imposing mild limitations on his activities of daily living; moderate limitations on his social functioning; and marked limitations on his concentration, persistence, and pace**.** The psychologist who evaluated Petitioner concluded that, while Petitioner was capable of simple, unskilled work, he was unable to sustain such work on a consistent basis and he would have difficulty dealing with common work stressors and other people. The Department has failed to present evidence of a significant number of jobs in the national and local economy that Petitioner has the vocational qualifications to perform in light of his nonexertional RFC, age, education, and work experience. Therefore, the evidence is insufficient to establish that Petitioner is able to adjust to other work. 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.

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. Reregister and process Petitioner's September 29, 2016 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;

2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;

3. Review Petitioner's continued eligibility in December 2017.

ACE/tlf

**Alice C. Elkin**
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

**Via Email:**