STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

[redacted]
MI [redacted]

Date Mailed: June 13, 2018
MAHS Docket No.: 18-002966
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 hearing was held on May 22, 2018, from East Tawas, Michigan. [redacted], Petitioner, appeared on his own behalf. [redacted], Sister, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Barbara Schram, Family Independence Manager (FIM).

The following Exhibits were entered into the record during the hearing:

Department Exhibits

A- Disability Determination Services (DDS) Decisions/Payment Documents:

- Coversheet (p. 1)
- February 12, 2018, Medical-Social Eligibility Certification (pp. 2-8)
- February 10, 2018, Psychiatric Review Technique (pp. 9-23)
- February 10, 2018, Mental Residual Functional Capacity Assessment (pp. 24-27)
- February 12, 2018, Medical Evaluation (p. 28)
- Case Development Sheet (pp. 29-32)
- Coversheet (p. 33)
- October 13, 2016, Medical-Social Eligibility Certification (pp. 34-40)

B- DDS Jurisdiction Documents/Notices:

- Coversheet (p. 41)
- June 23, 2017, Notice of Upcoming Social Security Hearing (p. 42)

C- DDS Disability Development and Documentation:

- Coversheet (p. 43)
- August 1, 2017, Authorization to Release Protected Health Information (pp. 44-46)
- August 1, 2017, Medical Social Questionnaire Update (pp. 47-50)
- November 10, 2017, Activities of Daily Living with Coversheets (pp.51-57)
- Undated Work History Questionnaire with coversheets (pp. 58-67)
- November 18, 2017, Activities of Daily Living- Third Party with coversheets (pp. 68-77)

D- DDS Medical Records:

- Coversheet (p. 78)
- July 26, 2017, letter from [redacted] with coversheets (pp. 79-81)
- SharePoint Casual Scanning Sheet (p. 82)
- February 1, 2018, Consultative Psychiatric/psychological Medical Report with coversheet (pp. 83-88)
- February 20, 2017, through July 10, 2017, AuSable Valley Community Mental Health Authority records (pp. 89-103)
- February 7, 2017 through August 16, 2017, St. Joseph Health System records with coversheets (pp. 104-123)
- September 29, 2017, letter from [redacted] (p. 124)
- September 20, 2017, record from [redacted] (pp. 125-126)
- May 9, 2017, record from [redacted] (pp. 127-129)
- January 13, 2017, Discharge Summary from Speech Pathologist [redacted] with coversheet (pp. 130-132)
- May 9, 2017, CT Angiogram Head (pp. 133-135)
- Coversheet (p. 136)
- April 4, 2016, June 16, 2016, and July 8, 2016, letters from [redacted] (pp. 137-142)
- Copy of business cards for providers (p. 143)
- June 6, 2016, letter from Lincoln Haven Social Service (p. 144)
- April 4, 2016, June 16, 2016, and July 8, 2016, letters from [redacted] (pp. 145-147)
- July 20, 2016, letters from [redacted] (pp. 148-149)
- Miscellaneous material coversheet (p. 150)
- April 4, 2016, June 16, 2016, and July 8, 2016, letters from [redacted] (pp. 151-156)
- Copy of business cards for providers (p. 157)

- June 6, 2016, letter from Lincoln Haven Social Service (p. 158)
- April 4, 2016, June 16, 2016, and July 8, 2016, letters from [redacted] (pp. 159-161)
- July 20, 2016, letters from [redacted] (pp. 162-163)
- April 4, 2016, June 16, 2016, and July 8, 2016, letters from [redacted] (pp. 164-169)
- Copy of business cards for providers (p. 170)
- June 6, 2016, letter from Lincoln Haven Social Service (p. 171)
- April 4, 2016, June 16, 2016, and July 8, 2016, letters from [redacted] (pp. 172-174)
- July 20, 2016, letters from [redacted] (pp. 175-176)

E- Notice of SDA closure:

- February 27, 2018, Notice of Case Action (pp. 177-181)

Petitioner Exhibits

1- Petitioner's Additional Documentation:

- March 26, 2018, letter from [redacted] (p. 1)
- May 4, 2018, letter from AuSable Valley Community Mental Health Authority (p. 2)
- April 18, 2018, letter from Petitioner's attorney regarding the status of his appeal with the Social Security Administration (pp. 3-4)
- May 9, 2018, letter from [redacted] (p. 5)

ISSUE

Whether the Department properly determined that Petitioner was no longer disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. On October 13, 2016, Petitioner was found disabled and was eligible for SDA based on a determination that he met or equaled listed impairment 11.18. (Exhibit A, pp. 34-40)

2. On July 1, 2017, the Department was to review Petitioner's ongoing medical eligibility. (Exhibit A, p. 39)

3. Petitioner's case was sent to Disability Determination Services (DDS) for review for the SDA program with current documentation. (Exhibits A-D; FIM Testimony)

4. On February 12, 2018, DDS found Petitioner not disabled for SDA based on a determination that he was capable of performing other work. (Exhibit A, pp. 2-8)

5. On February 27, 2018, the Department notified Petitioner of the DDS determination regarding SDA. (Exhibit E, pp. 177-181)

6. On March 16, 2018, the Department received Petitioner's timely written request for hearing. (Hearing Request)

7. Petitioner alleged disabling impairments including short term memory loss, high blood pressure, remission for cancer, traumatic brain injury, and depression. (Exhibit C, p. 47; Petitioner Testimony)

8. At the time of hearing, Petitioner was 53 years old with a February 26, 1965, birth date; was 5'8" in height; and weighed 145 pounds. (Petitioner Testimony)

9. Petitioner obtained a General Equivalency Diploma (GED) and has a past relevant work history of aviation mechanic. (Exhibit C, pp. 61-62; Exhibit D, pp. 84-87; Petitioner Testimony)

10. 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 impariment 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 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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).

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. In evaluating a claim for ongoing MA benefits, federal regulation requires a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease, and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Petitioner's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii).

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v). If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

(i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology related to the ability to work;
(ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
(iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
(iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

(i) A prior determination was fraudulently obtained;

(ii) The individual failed to cooperated;
(iii) The individual cannot be located;
(iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Petitioner's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

In the present case, Petitioner alleged disabling impairments including short term memory loss, high blood pressure, remission for cancer, traumatic brain injury, and depression. (Exhibit C, p. 47; Petitioner Testimony)

On October 13, 2016, Petitioner was found disabled and was eligible for SDA based on a determination that he met or equaled listed impairment 11.18. (Exhibit A, pp. 34-40) This listing states:

> **11.18 <u>Traumatic brain injury</u>** characterized by A or B:
>
> A. Disorganization of motor function in two extremities (see 11.00D1), resulting in an extreme limitation (see 11.00D2) in the ability to stand up from a seated position, balance while standing or walking, or use the upper extremities, persisting for at least 3 consecutive months after the injury.
>
> OR
>
> B. Marked limitation (see 11.00G2) in physical functioning (see 11.00G3a), and in one of the following areas of mental functioning, persisting for at least 3 consecutive months after the injury:
>
> 1. Understanding, remembering, or applying information (see 11.00G3b(i)); or
> 2. Interacting with others (see 11.00G3b(ii)); or
> 3. Concentrating, persisting, or maintaining pace (see 11.00G3b(iii)); or
> 4. Adapting or managing oneself (see 11.00G3b(iv)).

Regarding the 11.18 B criteria, 11.00G2 and 11.00G3 state:

2. Marked Limitation. To satisfy the requirements of the functional criteria, your neurological disorder must result in a marked limitation in physical functioning and a marked limitation in one of the four areas of mental functioning (see 11.00G3). Although we do not require the use of such a scale, "marked" would be the fourth point on a five-point scale consisting of no limitation, mild limitation, moderate limitation, marked limitation, and extreme limitation. We consider the nature and overall degree of interference with your functioning. The term "marked" does not require that you must be confined to bed, hospitalized, or in a nursing home.

    a. Marked limitation and physical functioning. For this criterion, a marked limitation means that, due to the signs and symptoms of your neurological disorder, you are seriously limited in the ability to independently initiate, sustain, and complete work-related physical activities (see 11.00G3). You may have a marked limitation in your physical functioning when your neurological disease process causes persistent or intermittent symptoms that affect your abilities to independently initiate, sustain, and complete work-related activities, such as standing, balancing, walking, using both upper extremities for fine and gross movements, or results in limitations in using one upper and one lower extremity. The persistent and intermittent symptoms must result in a serious limitation in your ability to do a task or activity on a sustained basis. We do not define "marked" by a specific number of different physical activities or tasks that demonstrate your ability, but by the overall effects of your neurological symptoms on your ability to perform such physical activities on a consistent and sustained basis. You need not be totally precluded from performing a function or activity to have a marked limitation, as long as the degree of limitation seriously limits your ability to independently initiate, sustain, and complete work-related physical activities.

    b. Marked limitation and mental functioning. For this criterion, a marked limitation means that, due to the signs and symptoms of your neurological disorder, you are seriously limited in the ability to function independently, appropriately, effectively, and on a sustained basis in work settings (see 11.03G3). We

do not define “marked” by a specific number of mental activities, such as: the number of activities that demonstrate your ability to understand, remember, and apply information; the number of tasks that demonstrate your ability to interact with others; a specific number of tasks that demonstrate you are able to concentrate, persist or maintain pace; or a specific number of tasks that demonstrate you are able to manage yourself. You may have a marked limitation in your mental functioning when several activities or functions are impaired, or even when only one is impaired. You need not be totally precluded from performing an activity to have a marked limitation, as long as the degree of limitation seriously limits your ability to function independently, appropriately, and effectively on a sustained basis, and complete work-related mental activities.

3. Areas of physical and mental functioning.

a. Physical functioning. Examples of this criterion include specific motor abilities, such as independently initiating, sustaining, and completing the following activities: standing up from a seated position, balancing while standing or walking, or using both your upper extremities for fine and gross movements (see 11.00D). Physical functioning may also include functions of the body that support motor abilities, such as the abilities to see, breathe, and swallow (see 11.00E and 11.00F). Examples of when your limitation in seeing, breathing, or swallowing may, on its own, rise to a “marked” limitation include: prolonged and uncorrectable double vision causing difficulty with balance; prolonged difficulty breathing requiring the use of a prescribed assistive breathing device, such as a portable continuous positive airway pressure machine; or repeated instances, occurring at least weekly, of aspiration without causing aspiration pneumonia. Alternatively, you may have a combination of limitations due to your neurological disorder that together rise to a “marked” limitation in physical functioning. We may also find that you have a “marked” limitation in this area if, for example, your symptoms, such as pain or fatigue (see 11.00T), as documented in your medical record, and caused by your neurological disorder or its treatment, seriously

limit your ability to independently initiate, sustain, and complete these work-related motor functions, or the other physical functions or physiological processes that support those motor functions. We may also find you seriously limited in an area if, while you retain some ability to perform the function, you are unable to do so consistently and on a sustained basis. The limitation in your physical functioning must last or be expected to last at least 12 months. These examples illustrate the nature of physical functioning. We do not require documentation of all of the examples.

b. Mental functioning.

i. Understanding, remembering, or applying information. This area of mental functioning refers to the abilities to learn, recall, and use information to perform work activities. Examples include: understanding and learning terms, instructions, procedures; following one- or two-step oral instructions to carry out a task; describing work activity to someone else; asking and answering questions and providing explanations; recognizing a mistake and correcting it; identifying and solving problems; sequencing multi-step activities; and using reason and judgment to make work-related decisions. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the examples.

ii. Interacting with others. This area of mental functioning refers to the abilities to relate to and work with supervisors, co-workers, and the public. Examples include: cooperating with others; asking for help when needed; handling conflicts with others; stating your own point of view; initiating or sustaining conversation; understanding and responding to social cues (physical, verbal, emotional); responding to requests, suggestions, criticism, correction, and challenges; and keeping social interactions free of excessive irritability, sensitivity, argumentativeness, or suspiciousness. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the examples.

iii. Concentrating, persisting, or maintaining pace. This area of mental functioning refers to the abilities to focus attention on work activities and to stay on-task at a sustained rate. Examples include: initiating and performing a task that you understand and know how to do; working at an appropriate and consistent pace; completing tasks in a timely manner; ignoring or avoiding distractions while working; changing activities or work settings without being disruptive; working close to or with others without interrupting or distracting them; sustaining an ordinary routine and regular attendance at work; and working a full day without needing more than the allotted number or length of rest periods during the day. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the examples.

iv. Adapting or managing oneself. This area of mental functioning refers to the abilities to regulate emotions, control behavior, and maintain well-being in a work setting. Examples include: responding to demands; adapting to changes; managing your psychologically based symptoms; distinguishing between acceptable and unacceptable work performance; setting realistic goals; making plans for yourself independently of others; maintaining personal hygiene and attire appropriate to a work setting; and being aware of normal hazards and taking appropriate precautions. These examples illustrate the nature of this area of mental functioning. We do not require documentation of all of the examples.

The brief analysis with the October 13, 2016, determination states “06/06/2016- Nursing home and rehab after evaluation of repair of 2 cerebral aneurysms. Surgical procedures were performed at U of M Has cognitive deficits that remains unresolved at the point including poor recall of long and short term memory.” (Exhibit A, p. 36) The rationale portions states “Clmt meets listing 11.18. Clmt needs 24 hour constant supervision.” (Exhibit A, p. 37) Accordingly, it appears that Petitioner was found to meet 11.18B based on a combination of marked limitation in physical functioning as well as difficulties with mental functioning. However, the more recent medical records and Petitioner’s testimony indicate there have been significant improvements. While there are still difficulties with mental functioning, such as memory loss, the evidence does not

establish ongoing marked limitation with physical functioning as described in 11.00G2 and 11.00G3. (Exhibit D, pp. 78-176; Petitioner Testimony)

April 4, 2016, June 16, 2016, and July 8, 2016, letters from [redacted] document that the surgery originally scheduled for April 4, 2016, was not performed until May 18, 2016. The July 8, 2016, letter documented that Petitioner was still off work until evaluation by physical medical and rehabilitation. (Exhibit D, pp. 137-142; 145-14; 151-156; 159-161; 164-169; and 172-174)

A June 6, 2016, letter from Lincoln Haven Social Service documents that Petitioner was a current resident of Lincoln Haven Nursing and Rehabilitation Facility following the surgical repair of cerebral aneurysms. Petitioner had cognitive deficit that remained unresolved at that time, including poor recall of long and short term history. (Exhibit D, pp. 144, 158, and 171)

July 20, 2016, letters from [redacted] address Petitioner's sister providing transportation and assistance with medical information and care. (Exhibit D, pp. 148-149, 162-163, and 175-176)

A January 13, 2017, Discharge Summary from Speech Pathologist [redacted] documented that Petitioner had made significant progress in the last three months with short memory. It was recommended that Petitioner go back to work somewhere on a temporary basis while awaiting approval to return to his previous employer or go back on a trial basis, maybe light duty or non-technical at first. The short term memory deficit was characterized as mild at that time and was expected to continue to improve. Additional recommendations included pursuing a driving test through the state and a referral to a behavioral therapist. (Exhibit D, pp. 130-132)

February 7, 2017, through August 16, 2017, St. Joseph Health System records indicated a history of multiple conditions including aneurysm, musculoskeletal chest pain, cough, diarrhea, hypertension, hyponatremia, ischemic encephalopathy, low back pain, memory loss, nicotine dependence, seborrhea, squamous cell carcinoma of tongue, and vasomotor rhinitis. On February 1, 2017, Petitioner was seen at after hours care for viral syndrome. A February 23, 2017, record indicated a January 13, 2017, note from the rehab specialist, whom Petitioner had been seeing since October, thought that Petitioner could possibly return to work. There were some concerns with depression, mostly related to financial struggles. Petitioner's memory was doing quite well as she found he could retain 6 pieces of information even 30 minutes later. They wanted him to go to an expensive driver's evaluation at U of M, however it was noted that Petitioner had never given up his driver's license. Petitioner felt like he should be able to drive just fine as he has no real motor deficits and his memory was doing much better. The doctor noted that Petitioner was to get with secretary of state to look into a road test and check with his old employer to see about getting on light duty. Petitioner's blood pressure was 132/87. On May 16, 2017, Petitioner's blood pressure was 123/78 and he reported he was still doing good regarding his blood pressure. Petitioner was noted to repeat himself quite a bit. Petitioner reported he had been driving without any

issues, he did not want to pay to go to the U of M driving school, and he had not gone to the secretary of stated. It was noted that U of M saw Petitioner last week and they wanted him to back on light duty at work (non-mechanic work) to see if it would help. Petitioner wanted to start just half time to see how he does. On August 16, 2017, Petitioner's blood pressure was 116/78 and it was noted that he had not taken any of his medications that day. Petitioner reported he had been doing well with blood pressure control since the last visit. Petitioner was currently asymptomatic. (Exhibit D, pp. 104-123)

The February 1, 2017, through July 10, 2017, AuSable Valley Community Mental Health Authority records documented a diagnosis of major depressive disorder. While Petitioner's scoring during the full assessment indicated minimal depression, further assessment indicated Petitioner is very depressed but does not always admit what is really going on. Petitioner was authorized to receive individual therapy and targeted case management services. (Exhibit D, pp. 89-103)

A May 9, 2017, record from [redacted] shows that returning to work and driving were discussed with Petitioner. Petitioner felt that he would be unable to work in an unfamiliar environment and saw working where he was previously employed as his best shot at returning to work in any capacity. Petitioner was not to return to working as an airplane mechanic at that time. It was recommended that Petitioner return to work on a limited basis performing structured tasks such as cleaning and other shop work. Regarding driving, a formal driving assessment was recommended, the U of M drivability program (noting there were resources available to pay for this) as well as testing through the secretary of state. Additionally, regarding sleep and depression, it was recommended that Petitioner: continue counseling with more regular visits; increase his medication; and set a regular schedule for bedtime and waking up in the morning. (Exhibit D, pp. 127-129)

The July 26, 2017, letter from [redacted] did not recommend ongoing caregiver support based on a clinic visit on May 16, 2017, and a January of 2017, neuropsychology evaluation with testing. (Exhibit D, pp. 79-81)

A September 20, 2017, record from [redacted] documented a history of squamous cell carcinoma of the tongue that was excised on October 11, 2014. The record indicated Petitioner is seen every six months for follow up evaluations. Petitioner's blood pressure was 116/71. (Exhibit D, pp. 125-126)

A September 29, 2017, letter from [redacted] stated Petitioner was being seen for his neurosurgical condition. The CTA imaging from May of 2017, was stable. Petitioner was encouraged to quit smoking and keep his blood pressure well controlled. (Exhibit D, p. 124 and 133-135)

The February 1, 2018, Consultative Psychiatric/Psychological Medical Report stated that Petitioner demonstrated adequate understanding of both simple and complex instructions. Petitioner demonstrated significant difficulty with his short term memory.

Petitioner demonstrated limited ability to interact appropriately with others due to his continuous repeating of information that he had already shared but had forgotten that he had shared. Exhibit D, (pp. 83-88)

A March 26, 2018, letter from [redacted] states that Petitioner has long term symptoms secondary to surgery consistent with a closed head injury. Petitioner has significant problems with short term memory. It is also stated that Petitioner was unable to get back to work with his employer sweeping floors. (Exhibit 1, p. 1) However, Petitioner's testimony indicated that there was no actual light duty work attempt with the former employer because they were unable to take him back on at the light duty level. (Petitioner Testimony)

A May 4, 2018, letter from AuSable Valley Community Mental Health Authority states that Petitioner is working with a mental health therapist and case manager with a current goal of managing symptoms of PTSD, depression, and anxiety related to his current deficits and ability to cope with stress and manage daily routines. Petitioner is unable to return to his former employment, but a referral was made to a supported employment program and moving towards getting him into Michigan Rehabilitation Services. This is a lengthy process and there are limited resources in Petitioner's county for traumatic brain injury survivors. Petitioner's symptoms include depression, anxiety, and memory deficits. (Exhibit 1, p. 2) Petitioner's testimony indicated he was currently trying to get into Michigan Rehabilitation Services. (Petitioner Testimony)

A May 9, 2018, letter from [redacted] states that Petitioner would not be successful with return to work at this time and he is not cleared to return to work as an airline mechanic. (Exhibit 1, p. 5)

Based on the objective medical evidence, considered listings included 11.00 Neurological Disorders, 4.00 Cardiovascular System, and 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Petitioner cannot be found disabled, or not disabled at this step.

Step 2 requires a determination of whether there has been medical improvement. The medical records and testimony establish that there has been medical improvement since Petitioner was found disabled on October 13, 2016. Petitioner has been doing well with blood pressure control. Petitioner made significant progress with short term memory during the three months with the speech pathologist. It has been recommended that Petitioner return to light duty work since early 2017. Petitioner was in the process of trying to get into Michigan Rehabilitation Services. (Exhibit D, pp. 78-176; Petitioner Testimony) In consideration of all medical evidence, it is found that, overall, there has been some medical improvement. The exceptions contained in 20 CFR 416.994(b)(3) and 20 CFR 416.994(b)(4) are not applicable. Accordingly, an assessment of the Petitioner's Residual Functional Capacity (RFC) to perform past relevant work is required. 20 CFR 416.994(b)(5)(vi).

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 nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity 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.*

Petitioner's testimony indicated he can walk 1 hour and stand for 2-3 hours. While Petitioner estimated he could lift 50 pounds, Petitioner's sister explained that Petitioner is still not to pick up heavy items to alleviate any pressure on his head from lifting. Petitioner indicated that physically he seems to be ok, he may get tired but mostly the difficulties are with his memory. (Petitioner and Sister Testimony) Petitioner's testimony regarding his limitations is mostly supported by the medical evidence and found credible. As described above, the medical records repeatedly recommended Petitioner return to light work and support ongoing difficulties with short term memory. After review of the entire record it is found, at this point, that Petitioner maintains the residual functional capacity to perform limited light work as defined by 20 CFR 416.967(b). As found in the Mental Residual Functional Capacity Assessment, limitations would include simple, rote, and repetitive tasks. (Exhibit A, pp. 24-26)

Petitioner has a past relevant work history of aviation mechanic. (Exhibit C, pp. 61-62; Exhibit D, pp. 84-87; Petitioner Testimony) 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 this step. Therefore, the analysis continues to an assessment of whether the Petitioner is able to perform other work in consideration of vocational factors such as Petitioner's age, education, and past work experience.

An assessment of the individual'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 hearing, the Petitioner was 53 years old and, thus, considered to be closely approaching advanced age for purposes of this review. Petitioner obtained a GED and has a past relevant work history of skilled work as an aviation mechanic. 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 maintains Petitioner maintains the residual functional capacity to perform limited light work as defined by 20 CFR 416.967(b). Limitations would include simple, rote, and repetitive tasks. Even considering these limitations, significant jobs would still exist in the national economy. After review of the entire record, and in consideration of the Petitioner's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.14, it is found that Petitioner is able to adjust to other work. Accordingly, Petitioner is found not disabled for purposes of the SDA program.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.

CL/bb

Colleen Lack
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) 763-0155; 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

DHHS

Barbara Schram
2145 East Huron Road
East Tawas, MI 48730

Iosco County, DHHS

BSC1 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[redacted], MI [redacted]