[redacted]

Date Mailed: March 29, 2018
MAHS Docket No.: 18-001127
Agency No.: [redacted]
Petitioner: [redacted]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

## HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on March 1, 2018, from Detroit, Michigan. The Petitioner appeared for the hearing with his fiancé [redacted] and represented himself. The Department of Health and Human Services (Department) was represented by Tacarra Jones, Assistance Payments Supervisor.

## 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 or around [redacted], 2017 Petitioner submitted an application seeking cash assistance benefits on the basis of a disability. (Exhibit A, pp.1-24)

2. On or around January 9, 2018 the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. The DDS determined that Petitioner was capable of performing other work. (Exhibit A, pp. 99-105)

3. On January 11, 2018 the Department sent Petitioner a Notice of Case Action denying his SDA application based on DDS' finding that he was not disabled. (Exhibit A, pp. 286-289)

4. On [redacted], 2018 Petitioner submitted a timely written Request for Hearing disputing the Department's denial of his SDA application. Petitioner also checked

the box indicating he disputed the Department's actions concerning the Family Independence Program (FIP). (Exhibit A, pp. 291-292)

5. Petitioner confirmed that he did not have an issue with the FIP and that he checked the FIP box by mistake.

6. Petitioner alleged physical disabling impairments due to chronic back pain and mental disabling impairments due to major depression, suicidal ideations, anxiety, and post-traumatic stress disorder.

7. As of the hearing date, Petitioner was [redacted] years old with a [redacted], 1969 date of birth; he was [redacted]" and weighed [redacted] pounds.

8. Petitioner has a college degree and employment history of work as the owner of a retail store, a production scheduler, and a materials/inventory coordinator. (Exhibit A, pp. 26-27)

9. Petitioner has not been employed since March 2017.

10. Petitioner has a pending disability claim with the Social Security Administration (SSA). (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 (April 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 (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 individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the de minimis standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. Id.; SSR 96-3p.

The medical evidence presented at the hearing was thoroughly reviewed and is briefly summarized below:

An MRI of Petitioner's lumbar spine taken on [redacted] 2017 showed: minimal bulging of the disc and degenerative changes of the facet joints, resulting in mild narrowing of the neuroforamina at the L2-3 level; a focal area of fatty change at the L3 vertebral body suggesting the presence of a hemangioma; loss of signal in the L2-3, L3-4, and L-5 discs; a small to moderate size central and left paracentral disc protrusion at the L4-5, associated with hypertrophy of the facet joints resulting in narrowing of the neuroforamina and mild narrowing of the spinal canal at this level; mild to moderate bulging of the disc, along with hypertrophy of the facet joints resulting in narrowing of the neuroforamina and mild narrowing of the spinal canal at the L3-4 level; and moderate degenerative changes at the facet joints at the L5-S1 level with a small central protrusion present at this level. (Exhibit A, pp. 282-284).

On [redacted], 2017 Petitioner, who reported history of chronic pain and depression presented to the emergency department with suicidal ideations and cutting behavior. Petitioner reported being more depressed and has been cutting himself with a piece of glass. He reported that he recently broke a drinking glass and has been cutting himself to "ventilate" his feelings. He stated that he has cuts on his chest, abdomen and bilateral upper arms. He denied auditory or visual hallucinations and any additional self-

harm attempts. Petitioner reported that his chronic pain and limited ability to function make his depression worse and stated that his plan for hurting himself would be to slice his wrists severely. Petitioner reported the following symptoms associated with depression: anhedonia, depressed mood, difficulty concentrating, fatigue, feelings of worthlessness/guilt, hopelessness, insomnia, decreased appetite, loss of interest in activities, sleep disturbance, and recurrent thoughts of death and suicidal thoughts with specific plan. He also reported symptoms of anxiety including racing thoughts. Petitioner was diagnosed with major depression recurrent and anxiety. He was admitted to the inpatient psychiatric unit for safety, stabilization and medication management and subsequently discharged on [redacted], 2017. Petitioner was to have inpatient and outpatient treatment was to follow-up with Riverwood Center Behavioral Health. It was noted that his last hospitalization was in [redacted] 2017. (Exhibit A, pp. 238-278)

Petitioner's treatment records from [redacted] were presented for review. (Exhibit A, pp. 211-237). An [redacted], 2017 Mental Health Assessment indicates that Petitioner had been psychiatrically hospitalized from [redacted], 2017 to [redacted] 2017 after an intentional overdose. It was noted that Petitioner had a past suicide attempt in 2005 and was psychiatrically hospitalized at that time also. Petitioner was diagnosed with major depressive disorder, recurrent episode severe, and unspecified anxiety disorder. On [redacted], 2017 Petitioner participated in a Psychiatric Evaluation during which he reported a history of psychosis which resulted in hospitalizations. Petitioner was assessed to have a PHQ-9 Assessment Score of 13: Moderate. It was noted that Petitioner became agitated and impatient and left the interview prior to its completion. Petitioner participated in another Psychiatric Evaluation with Medical Exam on [redacted], 2017 during which the doctor had reviewed Petitioner's prior psychiatric hospitalization records. It was noted that he was presently taking various psychotropic medications. During a [redacted], 2017 visit, it was noted that there are some indications that Petitioner is doing better, however he is still quite a bit impaired and his mood was still low. Petitioner was observed to walk with a cane and appeared as if he is in pain when he walks. It was noted that he sort of hobbled with an antalgic gait. Notes from Petitioner's [redacted], 2017 visit indicate that he had an episode a few weeks ago where he was admitted to the hospital due to feeling acutely more suicidal. It was noted that Petitioner received medical evidence of nerve entrapment in the sciatic nerve that was verified by CT scan. Petitioner was observed to walk with a limp and used a cane, he had trouble getting up and down from the standing and seated positions. (Exhibit A, pp. 211-237).

On [redacted] 2017 Petitioner was evaluated by a neurosurgeon, Dr. [redacted] due to low back pain and right leg pain and weakness. It was noted that Petitioner's pain was better with lying down and worse with walking and standing. The doctor indicated that Petitioner's Oswestry disability score was 29 and a review of patient systems shows: he tires easily; his musculoskeletal exam was positive for arthralgia, back pain, gait problem, and myalgia; and he had poor coordination and memory loss. The doctor noted that Petitioner's lumbar pain is somewhat out of proportion to his radiographic findings. He reviewed the above referenced MRI and noted that Petitioner does have mild to moderate degenerative disc changes at L4-5 and L5-S1 with the most significant stenosis at the left L4-5 lateral recess. The doctor recommended that Petitioner exhaust

conservative interventions prior to surgery. A referral was made to physical therapy and pain management. (Exhibit A, pp. 123-128)

Records from Petitioner's treatment with his pain management doctor were presented for review and show that Petitioner was being treated for lumbar radiculopathy and lumbar spondylosis. (Exhibit A, pp. 163-199). During a [redacted] 2017 examination it was noted that Petitioner had axial loading pain and steroid injection was to be scheduled. Notes from [redacted], 2017 indicate that Petitioner had lower back pain at the L3, L4, L5 protrusion and pinched nerve scoliosis. He reported right-sided low back and leg pain worsened by straight leg raise maneuvers and not relieved by physical therapy. On [redacted], 2017 Petitioner underwent a lumbar nerve root injection. (Exhibit A, pp. 163-199).

Records from Petitioner's treatment with [redacted] were presented for review. (Exhibit A, pp. 59-97). On [redacted], 2017 Petitioner presented with extreme lower back pain that radiates to his leg. It was noted that Petitioner had previous treatment with a chiropractor, but it is no longer helping his current pain. Petitioner presented to his doctor on [redacted], 2017 after being discharged from his psychiatric hospitalization due to suicide attempt. Petitioner's mood was flat and it was noted that he was nervous, anxious and depressed. Petitioner continued to be treated for his medical impairments and on [redacted], 2017 reported still having back pain and pain radiating to his leg and it was noted that he walked with a cane. Records also reference Petitioner's [redacted] 2017 inpatient psychiatric hospitalization due to suicidal ideations. (Exhibit A, pp. 59-97)

On [redacted] 2017 Petitioner participated in a consultative physical examination. (Exhibit A, pp. 110-113). Petitioner reported a four year history with diabetes and a history of arthralgias involving the lower back. He reported that his lower back pain is referred down the right left into his calf. He reported that he has undergone cortisone injections at the pain clinic, physical therapy and that he uses a can to assist with ambulation. Petitioner reported that he can walk 20-30 minutes, stand for 15 minutes and sit down for one hour before being limited by discomfort. The doctor noted that there was no joint instability, enlargement or effusion on examination of Petitioner's musculoskeletal system. His grip strength was intact and dexterity unimpaired. It was noted that Petitioner had no difficulty getting on and off the exam table, heel and toe walking and had mild difficulty squatting. Range of motion to Petitioner's joints was found to be within normal limits. Neurological examination showed: that his motor strength and function were normal; reflexes were intact and symmetrical; and Romberg testing was negative. With respect to Petitioner's low back pain, the doctor concluded that: there was evidence of ongoing nerve root impingement; Petitioner walked with a slightly small stepped gait; he has difficulty squatting secondary to discomfort; and MRI studies have revealed moderate bulging of discs at several levels with mild neuroforaminal narrowing and otherwise moderate degenerative changes. (Exhibit A, pp. 110-113)

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 physical and mental 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 1.02 (major dysfunction of a joint(s) due to any cause), 1.04 (disorders of the spine), 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders) and 12.15 (trauma-and stressor-related disorders) were considered. A thorough review of 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). 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). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. Id. The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. Id.

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical conditions.

Petitioner testified that since May 2017 he has been using a cane all of the time to assist with ambulation. Petitioner stated that he can walk and stand for only 10 minutes and then needs to rest. He stated that he can sit for up to 30 minutes with a cushion under his back and on a regular chair he can only sit for 10 minutes before needing to readjust positions. The Department case worker who was present in the hearing room with Petitioner noted that during the course of the hearing, Petitioner had stood, sat and readjusted positions several times due to his pain and observable discomfort. Petitioner testified that he can lift up to ten pounds if the item is on a table but if he has to bend to lift something from floor level, he can only lift five pounds. Petitioner stated that his ability to bend is limited and with difficulty and that he cannot squat due to pain. Petitioner testified that he lives with his fiancé and her son and that he sometimes needs assistance with dressing but can bathe himself. He stated that his fiancé does most of the household chores and cooking but he is able to do small basic chores and prepares only T.V. dinners. He reported that he has dizziness, vertigo, migraines and hallucinations as side effects of his medications. Petitioner stated that he has not driven since March 2017 because of the dizziness and migraines. He testified that his physical impairments make his depression worse.

With respect to his mental/nonexertional impairments, Petitioner testified that he has been diagnosed with depression, anxiety and PTSD which is triggered by noise and yelling and that he has been receiving mental health treatment since April 2017. He reported history of physical but mostly verbal abuse as a child. He stated that he suffers from severe anxiety attacks daily that result in shaking, chest tightness, trembling, difficulty breathing and blurred vision. Petitioner testified that during the hearing, his anxiety kicked in and he took one of his anti-anxiety pills. He testified that he has a history of depression which included self-harm in the form of cutting. He stated that he has suicidal ideations and has had two inpatient hospitalizations in 2017 due to suicide attempts. Petitioner reported that he has crying spells three to four times weekly and that he has visual hallucinations as a side effect of his nerve pain medication. Petitioner testified that he has difficulty with concentrating for periods longer than 20 minutes and his memory recall is poor.

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 evidence presented is considered to determine the consistency of Petitioner's statements regarding the intensity, persistence and limiting effects of his symptoms. Based on a thorough review of Petitioner's medical record and in consideration of the MRI report, treatment records from Petitioner's neurosurgeon, pain management doctor,

and primary care physician, as well as the consultative exam performed, all of which are referenced above, with respect to Petitioner's exertional limitations, it is found, based on a review of the entire record, that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a).

The medical records presented show that Petitioner had been diagnosed with and was receiving mental health treatment for major depressive disorder, recurrent episode severe. The evidence indicates that Petitioner's symptoms included self-harming behavior such as cutting, that Petitioner was admitted for inpatient psychiatric treatment on more than one occasion, and has received outpatient treatment due to at least two suicide attempts. Based on the mental health treatment records presented, as well as Petitioner's testimony, it is found that Petitioner has moderate to marked limitations on his mental/nonexertional ability to perform basic work activities.

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 employment history in the 15 years prior to the application consists of work as the owner of a retail store, a production scheduler, and a materials/inventory coordinator. (Exhibit A, pp. 26-27). Petitioner's employment as the owner of a retail store required standing for at least eight hours daily and lifting boxes of merchandise of up to 50 pounds. Based on the evidence presented, it is categorized as requiring medium exertion. Petitioner's employment as a production scheduler and inventory coordinator required several hours standing daily and lifting up to 25 pounds regularly. Based on the evidence presented, it is categorized as requiring light exertion.

Based on the RFC analysis above, Petitioner's exertional RFC limits him to sedentary 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, 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] years old at the time of application and at the time of hearing, and thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. He is a college graduate who has skilled and semi-skilled work history that is 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 sedentary work activities. Thus, based solely on his exertional RFC, the Medical-Vocational Guidelines, result in a finding that Petitioner is not disabled.

However, as referenced above, Petitioner also has impairments due to his mental condition. As a result and based on the evidence presented, he has a nonexertional RFC imposing moderate to marked limitations in his activities of daily living, social functioning, and concentration, persistence or pace. 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.

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

## DECISION AND ORDER

Accordingly, the hearing request with respect to FIP is **DISMISSED** and the Department's SDA 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 [redacted], 2017 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; and

3. Review Petitioner's continued eligibility in September 2018.

Zainab Baydoun

ZB/tlf

**Zainab A. Baydoun**
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:**

MDHHS-Berrien-Hearings
BSC3 Hearing Decisions
L. Karadsheh
MAHS

**Petitioner – Via First-Class Mail:**

[redacted]