STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES

IN THE MATTER OF:

[redacted]

MAHS Reg. No.: 15-016913
Issue No.: 4009
Agency Case No.: [redacted]
Hearing Date: November 12, 2015
County: Wayne (76)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on November 12, 2015, from Detroit, Michigan. Petitioner appeared and was represented by [redacted] of [redacted]. The Michigan Department of Health and Human Services (MDHHS) was represented by [redacted], specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner is not a disabled individual.

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 22, 2014, Petitioner applied for SDA benefits.

2. Petitioner's only basis for SDA benefits was as a disabled individual.

3. On September 14, 2015, the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibits 4-5).

4. On September 17, 2015, MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action informing Petitioner of the denial.

5. On September 18, 2015, Petitioner requested a hearing disputing the denial of SDA benefits.

6. As of the date of the administrative hearing, Petitioner was a 49-year-old female.

7. Petitioner has not earned substantial gainful activity since before the first month of benefits sought.

8. Petitioner's highest education year completed was the 12th grade (via equivalency degree).

9. Petitioner has a history of semi-skilled employment, with no transferrable job skills.

10. Petitioner alleged disability based on restrictions related to black-outs, bipolar disorder, left-sided weakness, back pain, leg pain, and neuropathy.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Prior to a substantive analysis of Petitioner's hearing request, it should be noted that Petitioner noted special arrangements in order to participate in the hearing. Petitioner wanted her representative present for the hearing. Petitioner's request was granted and the hearing was conducted accordingly.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id*. To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1.A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id.

There was no evidence that any of the above circumstances apply to Petitioner. Accordingly, Petitioner may not be considered for SDA eligibility without undergoing a

medical review process (see BAM 815) which determines whether Petitioner is a disabled individual. *Id*., p. 3.

Generally, state agencies such as MDHHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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. SDA differs in that a 90 day period is required to establish disability.

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id*., p. 9. Significant duties are duties used to do a job or run a business. *Id*. They must also have a degree of economic value. *Id*. The ability to run a household or take care of oneself does not, on its own, constitute SGA. *Id*.

The person claiming a physical or mental disability has the burden 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. "Current" work activity is interpreted to include all time since the date of application. The 2015 monthly income limit considered SGA for non-blind individuals is $1,090.

Petitioner credibly denied performing any employment since the date of the SDA application; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA and has not performed SGA since the date of application. Accordingly, the disability analysis may proceed to Step 2.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id*.

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon Petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen,* 880 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Petitioner's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented medical documentation.

An undated physician statement (Exhibit 29) was presented. It was noted that Petitioner could not work until November 14, 2014, due to black-out spells.

An Integrated Health Assessment (Exhibits 39-43; 87-91), dated December 1, 2014, was presented. It was noted Petitioner reported taking the following medications: Paxil, Metoprolol, Coreg, Prilosec, Aspirin, Tramadol, Ativan, and Micardis.

A Psychiatric Evaluation (Exhibits 36-38; 77-79), dated December 3, 2014, was presented. It was noted Petitioner was a newly treating patient. Petitioner reported depression, paranoia, mood swings, anxiety, and racing thoughts. Petitioner reported being raped in November 2014. Insight and judgment were noted to be poor. An Axis I diagnosis of bipolar disorder (with psychosis) was noted. Petitioner's GAF was noted to be 50. A treatment plan of therapy and medication was noted.

A Medication Review Note (Exhibit 74) dated, December 9, 2014, was presented. It was noted Abilify was discontinued after Petitioner reported it complicated her HTN and that she still had mood swings.

A Progress Note dated December 4, 2014, (Exhibits 75-76), from Petitioner's counselor was presented. It was noted Petitioner expressed anger but was making good progress.

An Intake Assessment (Exhibits 58-73), dated December 15, 2014, was presented. The assessment was completed by a licensed counselor from a newly treating mental health agency. It was noted Petitioner lost her job after suffering a stroke in May 2014. Petitioner then had her car repossessed, and her medication and possessions stolen. After Petitioner moved to Michigan in July 2014, she reported getting into a car accident. Petitioner then said her car was stolen. Petitioner reported then getting raped at a party in November 2014. Reported mental health symptoms included difficulties with concentration, getting along with others, and adapting quickly to stress.

A Treatment Plan Meeting (Exhibits 44-51), dated December 18, 2015, was presented. The form was completed by treating social workers. Various weekly individual and group therapies were noted as planned.

A Medication Review Note (Exhibit 35), dated January 5, 2015, was presented. It was noted Petitioner reported mood swings, paranoid thoughts, hyperactivity, and racing thoughts. Risperdal and Neurontin were prescribed.

A Medical Examination Report (Exhibits 14-16), dated June 1, 2015, was presented. The form was completed by a family practice physician with an approximate 9-month history of treating Petitioner. Petitioner's physician listed diagnoses of GERD, HTN, CHF, COPD, lumbar pain, and depression. Current medications included Ativan, Prilosec, Motrin, Neurontin, and Paxil. An impression was given that Petitioner's condition was stable. It was noted that Petitioner can meet household needs.

A mental health report (Exhibits 17-18), dated July 20, 2015, from a case worker at a treating mental health agency was presented. Reported symptoms included poor sleep, poor impulse control, mood swings, and racing thoughts.

A General Medical Examination Report (Exhibits 19-20), dated July 27, 2015, was presented. The report was completed by a treating physician with an unstated history with Petitioner. It was noted Petitioner reported sciatic nerve damage, COPD, GERD,

major depression, HTN, vertigo, and left-sided weakness. Restrictions to the following activities were noted: walking, lifting, pushing, pulling; restrictions were stated to be justified due to syncope. It was noted Petitioner was unable to drive.

An internal medicine examination report (Exhibits 96-105), dated August 13, 2015, was presented. The report was noted as completed by a consultative physician. Petitioner reported complaints of asthma, HTN, stroke, heart disease, headaches, depression, chronic back pain, right arm pain, bilateral wrist pain, vertigo with black-outs, and GERD. It was noted Petitioner smoked ½ a pack of cigarettes per day. Petitioner admitted she has no weakness from her stroke. It was noted Petitioner wore a left knee brace and did not use a cane. A slight left-sided limp was noted. Petitioner refused to perform tandem walk, toe walk, and heel walk. Reduced ranges of motion were noted in Petitioner's lumbar flexion (80°- normal 90°) and bilateral hip forward flexion (50° on the right and 40° on the left- normal 100°). It was noted that Petitioner was able to perform all 23 listed work-related activities which included sitting, standing, lifting, carrying, stooping, bending, and reaching, though most had unspecified restrictions due to pain. The examiner stated that clinical evidence supported a need for a left knee brace. A lumbar x-ray was noted to show no evidence of injury. It was noted Petitioner followed-up with a neurologist in September 2014.

Petitioner testified she was in a car accident in 2010, where she was hit from behind. Petitioner testified she suffered bursitis and tendonitis in her neck and sciatic nerve damage. Petitioner testified that her injuries cause her ongoing pain and permanent left-sided arm weakness.

Petitioner testified she fell in 2012, and injured her left knee. Petitioner testified she has ongoing left-knee problems because of her fall. A consultative examiner confirmed a need for a left knee brace.

Petitioner testified she missed an entire month of work in April 2014, due to various medical problems. Petitioner testified her weight dramatically decreased from 198 to 125 pounds that month.

Petitioner testified she had an ischemic stroke in 2014, which led to an overnight hospitalization; hospital documents were not presented. Petitioner testified she lost her job shortly thereafter, in part, because of her medical problems.

Petitioner testified she had a heart attack on July 19, 2014. Petitioner testified the heart attack was caused by HTN. Petitioner testified she was released the following day. Petitioner testified she was told she'll have to take baby aspirin for the rest of her life because of her heart.

Petitioner testified she regularly suffers blackouts since her heart attack. Petitioner's testimony estimated she's had 8-9 black-out episodes over last 6 months.

Petitioner testified she sees a psychiatrist for depression and bipolar disorder. Petitioner testified she sees a psychiatrist once per month and a therapist 3 times per week. Petitioner also testified she regularly attends classes (e.g. grief and loss, self-awareness, anger management) at her treating mental health agency. Petitioner testimony implied that she has ongoing psychological restrictions.

Petitioner testified she experiences shortness of breath. Petitioner also conceded she is still an active tobacco smoker.

Petitioner testified she has neuropathy in her fingers and toes. Petitioner testified she is prescribed Neurontin for her nerve pain.

Petitioner testified her primary care physician prescribed her a cane approximately two months ago. Petitioner testified the cane helps with her balance.

Presented evidence sufficiently verified some degree of restrictions related to mental health, left-sided weakness, and black-outs. Based on a de minimus standard, it is found that Petitioner established significant impairment to basic work activities for a period longer than 90 days. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

The third step of the sequential analysis requires determining whether the Petitioner's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a Petitioner's impairments are listed and deemed to meet the durational requirement, then the Petitioner is deemed disabled. If the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

Petitioner's primary impairment was bipolar disorder. Bipolar disorder is an affective disorder covered by Listing 12.04 which reads as follows:

> **12.04** ***Affective disorders***: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.
>
> A. Medically documented persistence, either continuous or intermittent, of one of the following:
> 1. Depressive syndrome characterized by at least four of the following:
> a. Anhedonia or pervasive loss of interest in almost all activities; or
> b. Appetite disturbance with change in weight; or
> c. Sleep disturbance; or
> d. Psychomotor agitation or retardation; or

e. Decreased energy; or
f. Feelings of guilt or worthlessness; or
g. Difficulty concentrating or thinking; or
h. Thoughts of suicide; or
I. Hallucinations, delusions, or paranoid thinking

OR

2. Manic syndrome characterized by at least three of the following:
a. Hyperactivity; or
b. Pressure of speech; or
c. Flight of ideas; or
d. Inflated self-esteem; or
e. Decreased need for sleep; or
f. Easy distractibility; or
g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
h. Hallucinations, delusions or paranoid thinking

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:
1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Petitioner only verified approximately one month of psychiatric treatment (from December 2014). Considering Petitioner testified she attends therapy three times per

week and monthly psychiatric treatment, significantly more treatment history would be expected. Petitioner presented no psychiatric treatment documentation dated after January 5, 2015. One therapy document from July 2015, noted Petitioner reported affective disorder symptoms, however, this was not particularly insightful into Petitioner's treatment history. Also, the document was not from an acceptable medical source (see SSR 06-03p).

Petitioner's GAF was noted to be 50 as of December 2014. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." Such a low GAF is indicative of marked restrictions which may meet listing requirements. Petitioner's low GAF was consistent with a diagnosis of bipolar disorder (with psychosis). Psychosis is indicative of a more severe mental disorder in which contact with reality is diminished.

An obstacle into accepting that Petitioner's is severely mentally diminished is the lack of supporting evidence. There was no statement of marked restrictions from a treating psychiatrist or psychologist. There was no evidence of past psychiatric hospitalizations. There was an absence of psychological symptoms consistent with marked restrictions (e.g. hallucinations, psychosis, suicidal/homicidal ideation…). The evidence at least established some symptoms (e.g. paranoia, poor insight, concentration restrictions, social restrictions…) which could be indicative of listing requirements.

Presented documentation also sufficiently established a series of unfortunate and psychologically challenging events throughout 2014 (e.g. job loss, heart attack, syncope episodes, sexual assault…). Such a case history would be consistent with marked concentration and/or social restrictions

Petitioner applied for SDA in September 2014. Presented documents sufficiently verified symptoms and marked restrictions as of December 2014. Based on Petitioner's testimony and case history, it is reasonable to accept that Petitioner's mental health condition was comparable at the time she applied for SDA. It is also reasonable to accept Petitioner's mental capacity was as markedly restricted through January 2015, the month of her last verified psychiatric treatment. The timeframe is a period longer than 90 days which meets SDA eligibility requirements.

It is found that Petitioner meets the listing for affective disorders through January 2015. The analysis must separately address Petitioner's restrictions as of February 2015.

As noted above, Petitioner failed to verify any psychiatric treatment after January 2015. The lack of evidence precludes a finding of marked restrictions which meet listing levels for the period beginning February 2015. This conclusion is also based, in part, by factoring that Petitioner's GAF of 50 is on the borderline of moderate restrictions. It is

not unreasonable to presume that Petitioner's functioning levels increased following initial treatment.

It is found that Petitioner failed to establish meeting the listing for affective disorders for the period beginning February 2015. The analysis will continue to examine if Petitioner meets other SSA listings.

A listing for joint dysfunction (Listing 1.02) was considered based on Petitioner's complaints of knee and arm pain. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively or perform fine and gross movements.

A listing for spinal disorders (Listing 1.04) was considered based on Petitioner's lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for chronic pulmonary insufficiency (Listing 3.02) was considered based on Petitioner's complaints of dyspnea. The listing was rejected due to a lack of respiratory testing evidence.

A listing for chronic heart failure (Listing 4.02) was considered based on Petitioner's low ejection fraction testing. The listing was rejected because of the absence of evidence of the following: inability to perform an exercise test, three or more episodes of acute congestive heart failure or a conclusion that an exercise test poses a significant risk to Petitioner's health.

Listings for epilepsy (Listings 11.02 and 11.03) based on Petitioner's reporting of black-outs. The listings were rejected due to the absence of a detailed seizure pattern and/or detailed documentation of treatment.

A listing for peripheral neuropathies (Listing 11.14) was factored based on a documented diagnosis. The listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

It is found that Petitioner failed to establish meeting a SSA listing. Accordingly, the analysis moves to the fourth step.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a Petitioner can perform past relevant work. *Id*.

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in

the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Petitioner testified she worked for several years as a phlebotomist. Petitioner testified her duties included drawing blood from patients, processing lab work, and processing blood cultures.

Petitioner testified she was a supervisor at a cleaning service. Petitioner testified her duties included inspecting her staff's work and performing cleaning duties.

Petitioner's testimony implied she is unable to perform the lifting/carrying and/or ambulation required of past employment. For purposes of this decision, Petitioner's testimony will be accepted. It is found that Petitioner is unable to perform past employment and the analysis may proceed to the final step.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. 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). To determine the physical demands (i.e. 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 are considered non-exertional. 20 CFR 416.969a(a). Examples of non-exertional limitations 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 (e.g. 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.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Petitioner's age, education and employment history, a determination of disability is dependent on Petitioner's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Petitioner testified she is restricted to 2 blocks of walking before she gets winded. A diagnosis for COPD was verified, as was Petitioner's continuing smoking habit. Pulmonary function testing was not presented. A diagnosis of COPD without respiratory testing is insufficient to infer that Petitioner is incapable of performing the ambulation required of sedentary employment.

Petitioner testified she is also restricted in ambulation due to leg burning. Petitioner's medical history verified some restrictions which are consistent with ambulation restrictions (e.g. left-sided weakness, need for a knee brace…). It was not verified that Petitioner requires a walking-assistance device (though Petitioner stated one was prescribed). Generally, a lack of verified need for a cane is consistent with an ability to perform the ambulation required of sedentary employment.

Petitioner testified she can only sit comfortably for 1-2 hour periods because of tailbone pain related to sciatic nerve damage. Petitioner's testimony was somewhat corroborated by a diagnosis. Petitioner's testimony was not supported by radiology and/or neurology treatment. These considerations support a finding that Petitioner can perform the requirements of sedentary employment. Further, an ability to sit for 1-2 hour periods (assuming the periods can be repeated after a short break) is generally not a restriction to the performance of sedentary employment.

Petitioner testified she can dress herself, groom herself, and shop by herself. Petitioner testified she can also bathe herself, though she stated that washing her back is difficult. Generally, Petitioner's ability to independently perform ADLs is consistent with an ability to perform sedentary employment.

Petitioner testified that she is a liability due to recurring black-outs. Petitioner's testimony of regular monthly black-outs was not well supported by presented evidence. Petitioner testified she takes an anti-vertigo medication (Meclizine) to control the episodes. Petitioner testified a side effect to Meclizine is that it knocks her "completely out," though neither the prescription nor the side effect appeared to be documented.

It is also notable that Petitioner continues to drive despite claims that she is restricted from driving. It is appreciated that Petitioner reported she lives in her vehicle and may be forced to drive against medical advice. However, in lieu of medical evidence supporting a finding of restrictions due to black-outs, Petitioner's continued driving only detracts from her claims concerning the severity of her black-outs.

A consultative physician stated that Petitioner was treated by a neurologist in September 2014 (see Exhibit 96); yet, neurology treatment was not presented. Petitioner oddly testified she is waiting to see a neurologist for sleep apnea treatment, expressing no indication that she would be treated for black-outs. Petitioner's failure to present neurologist treatment further detracts from her claims concerning the severity of her black-outs.

As noted in the third step of the analysis, psychiatric restrictions were sufficiently verified before February 2015. The total absence of psychiatric treatment records since February 2015 justifies a finding that Petitioner has no mental health impairments to performing sedentary employment.

Physician statements of restrictions were provided. SSR 96-2p states that if a treating source's medical opinion is well-supported and not inconsistent with the other substantial evidence in the case record, it must be given controlling weight (i.e. it must be adopted). Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner,* 486 F. 3d 234 (6th Cir. 2007)*; Bowen v Commissioner.*

On a Medical Examination Report dated June 1, 2015, Petitioner's family practice physician provided statements of Petitioner's abilities. It was noted that Petitioner's limitation(s) was expected to last 90 days. Standing and sitting restrictions were not noted. Repetitive action restrictions were not stated. Mental limitations were not stated. Petitioner was restricted to occasional lifting/carrying of less than 10 pounds, never 20 pounds or more. In response to a question asking for the stated basis for restrictions, Petitioner's physician did not respond.

The only provided physician-stated restrictions do not restrict Petitioner's ability to perform sedentary employment. It is found that Petitioner is capable of performing sedentary employment.

For the period beginning February 2015, based on Petitioner's exertional work level (sedentary), age (younger individual aged 45-49), education (high school equivalency with no direct entry into skilled employment), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 201.21 is found to apply. This rule dictates a finding that Petitioner is not disabled. Accordingly, it is found that MDHHS properly found Petitioner to be not disabled for purposes of SDA eligibility, effective February 2015.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly denied Petitioner's application for SDA benefits. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

(1) reinstate Petitioner's SDA benefit application dated September 22, 2014;
(2) evaluate Petitioner's eligibility subject to the finding that Petitioner is a disabled individual **only for the months from September 2014 through January 2015;** and
(3) initiate a supplement for any benefits not issued as a result of the improper application denial.

The actions taken by MDHHS are **PARTIALLY REVERSED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's SDA eligibility, effective February 2015, based on a determination that Petitioner is not disabled. The actions taken by MDHHS are **PARTIALLY AFFIRMED**.

Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/20/2015**

Date Mailed: **11/20/2015**

CG/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

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

cc: [redacted]