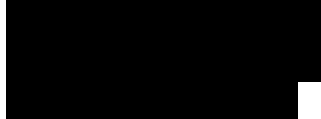


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:



MAHS Reg. No.: 15-015848
Issue No.: 4001
Agency Case No.:
Hearing Date: October 29, 2015
County: Wayne (17) Greenfield/Joy

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on October 29, 2015, from Detroit, Michigan. The Petitioner was represented by the Petitioner, . The Department of Health and Human Services (Department) was represented by , Assistance Payments Worker.

ISSUE

Whether the Department properly determined that the Petitioner was not disabled for purposes of the 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 April 20, 2015, the Petitioner submitted an application for public assistance seeking State Disability Assistance (SDA).
2. On August 18, 2015, the Medical Review Team (MRT) found the Petitioner not disabled. (Exhibit 1).
3. The Department notified the Petitioner of the MRT determination on August 18, 2015.
4. On August 19, 2015, the Department received the Petitioner's timely written request for hearing.
5. An Interim Order was issued October 29, 2015, so that new evidence from treating doctors could be obtained. New evidence was received by the undersigned and reviewed.
6. The Petitioner has not alleged any mental disabling impairment.

7. The Petitioner alleges physical disabling impairments due to severe chronic back pain and left hip pain, osteoarthritis, obesity, hypertension, gout, sleep apnea, asthma and benign brain tumor.
8. At the time of hearing, the Petitioner was [REDACTED] years old with an [REDACTED], birth date. Petitioner is 5' 3" tall in height; and weighs 240 pounds. The Petitioner is left-handed.
9. The Petitioner completed high school. The Petitioner's work experience included performing work as a sales associate and clerk and in-home childcare for four (4) children. The Petitioner last worked in 2011.

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 impairment 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 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). 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 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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, 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). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Petitioner is not involved in substantial gainful activity, and therefore, is not ineligible for disability benefits under Step 1.

The severity of the Petitioner's alleged impairment(s) is considered under Step 2. The Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR

916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

The Petitioner alleges physical disabling impairments due to severe chronic back pain and left hip pain, osteoarthritis, obesity, hypertension, gout, sleep apnea, asthma and benign brain tumor.

The Petitioner has not alleged any mental disabling impairment.

A summary of the medical evidence presented at the hearing and received pursuant to the Interim Order follows.

The Petitioner was seen by her treating doctor on [REDACTED], for follow up. The doctor noted left hip pain. Notes also indicate that patient is scheduled for a head MRI. The Doctor's notes indicate that patient is also treated for hypertension (uncontrolled), shortness of breath, brain tumor, kidney impairment and history of gout and sarcoidosis. The Petitioner was seen on [REDACTED], for complaints of back pain and left hip pain. The treatment notes also indicate heart palpitations with history of anxiety disorder.

The Petitioner was seen on [REDACTED], for a follow-up appointment due to right-foot pain due to right-big-toe trauma. Patient also had left-hip pain. The notes indicated obesity, sleep apnea, hypokalemia, and anxiety, rule out panic disorder.

The Petitioner was seen on [REDACTED], with complaints of back pain with lumbar disc herniation with severe pain.

The Petitioner was seen by her neurologist on [REDACTED]. The report notes history of gout and arthritis and chronic low back pain. An electromyogram (EMG) was done on [REDACTED], which was normal. The EMG was performed to determine if there was radiculopathy with regard to lumbar area. The Petitioner was assigned physical therapy but did not continue therapy due to gout flare up. The Petitioner was reassigned to physical therapy again and was advised if the therapy did not make an improvement surgical options would be revisited with regards to her L4-L5 disc protrusion. The notes indicate use of a cane for the last three months, and back brace, with symptoms of pain in both buttocks, worse on left with radiation down the legs and left-foot numbness. It was not noted whether the back brace or cane were prescribed.

The MRI of [REDACTED], was reviewed and noted stable grade 1 anterolisthesis of L5 in relation to S1 and absence of spondylolysis. Severe facet arthropathy at L5-S1 and L4-L5 levels and mild facet arthropathy at L3-L4, L2-L3 and L1-L2 levels. Compression of the thecal sac by a disc protrusion at L4-L5 level. No significant spinal canal stenosis. Mild stenosis of bilateral L5-S1 neural foramina without evidence of exiting nerve root compression. The notes indicate that patient reported smoking marijuana daily. Due to pain, no straight leg raising could be performed; however, the patient was positive for Patrick's (faber) test and elicited pain on left posteriorly. Gait was noted as antalgic, and lean towards right using cane support. An MRI of the brain stem was also noted, noting mass in the left cerebellopontine most like representing Meningioma. A further MRI was recommended. At the conclusion of the exam, the recommendations were: MRI CT brain/stem to evaluate any progression of the mass, follow up with orthopedic regarding back pain issues, follow up with PT, patient encouraged to continue weight loss and regular exercise.

The patient was seen by her [REDACTED] for an exam on [REDACTED], with thigh and hip pain, as well as headache. The Petitioner's weight was 249 pounds and height was 5' 4" with a BMI of 42.74. The Petitioner was referred to physical therapy, and pain management, as well as psychiatry for evaluation and follow up.

On [REDACTED], a consultative examination was performed. At the time of the exam, the Petitioner was 5' 3" and weighed 260 pounds, (BMI 47). The examining doctor noted a slight limp on the left side. At the time of the exam, the Petitioner was wearing a left-ankle splint, removed for exam. Heel toe walk and tandem walk was done slowly. Petitioner was able to squat 70 percent and bend 75 percent of the distance. Straight leg raising while lying 0-50 and 0-90 while sitting. The exam noted that the Petitioner complained of pain while standing and performing a squat. The impression was: asthma history and currently using inhalers, hypertension, blood pressure is elevated on exam today. Obesity: Petitioner weighs 260 pounds and is 5' 3". Gout, chronic back pain, and arthritis, uses a cane for support, benign brain tumor with no surgical intervention. Ulcers, but not being followed by a GI specialist. Sleep apnea, with testing but not on a CPAP machine.

The Petitioner was seen on [REDACTED], at the [REDACTED] for a follow up for shortness of breath, dizziness and left-hip pain. The physical exam noted BMI of 41.9, and review of systems were essentially normal. The assessment

and plan noted peripheral vascular occlusive disease, coronary atherosclerosis of native coronary artery, essential hypertension, vertigo, meningioma, sarcoidosis, osteoarthritis in him left, lumbar disc disease, and obstructive sleep apnea. The assessment noted nonobstructive CAD, without chest pain. Grade 2 diastolic dysfunction, LVEF of 55-60 percent, Carotid Artery Stenosis showed 50 percent stenosis bi-laterally, palpitations holter monitor showed no heart palpitations and sudoscan showed possible early signs of peripheral neuropathy without numbness and tingling and osteoarthritis left hip. There was to be a follow-up with neurology for cerebral meningioma, lumbar disc herniation with follow-up with primary care physician and follow-up with pulmonologist due to sleep apnea. The Doctor recommended a 2 D Echo.

A Medical Examination Report was completed by the Petitioner's treating doctor on [REDACTED]. The current diagnosis was degenerative disc disease of lumbar spine. The patient's clinical impressions noted the Petitioner was stable, and limitations were imposed. The Petitioner could lift 10 pounds occasionally, and could not push or pull with hands or arms. No limitations regarding standing or walking or sitting were noted. The evaluation was based on MRI of lumbar spine and neurology consult.

As previously noted, the Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Petitioner has presented objective medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. Accordingly, the Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on the Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Petitioner is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Petitioner alleges physical disabling impairments due to chronic severe back pain and Diabetes Type I.

Listing 1.04 Disorders of the spine was reviewed in light of the medical evidence submitted regarding the Petitioner's chronic back pain. The listing requires demonstration of the following documented medical conditions:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful

dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

- C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

A review of the MRI submitted and referenced above does not demonstrate the severity requirement necessary as no finding of nerve root compression was found and no positive straight leg raising was noted in the consultative exam of the Petitioner.

Ultimately, it is found that the Petitioner suffers from some medical conditions; however, the Petitioner's impairments do not meet the intent and severity requirement of Listing 1.04 based upon the available medical evidence.

Therefore, the Petitioner cannot be found disabled, nor not disabled, at Step 3. Accordingly, the Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

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 he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). 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 are 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.

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 additional 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, e.g., 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 to the demands of past relevant work must be made. *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 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 (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.*

The Petitioner's prior work history consists of employment performing work as a sales associate and clerk at a department store and childcare provider for four (4) children. The sales associate job required walking and standing much of the day and carrying clothes and stocking merchandise and opening and closing the cash register. It also required stooping and bending to pick items off the floor. The job also required lifting various merchandise weighing between 10 and 50 pounds. In light of the Petitioner's testimony and records, and in consideration of the Occupational Code, the Petitioner's prior work is classified as unskilled and semi-skilled light work and medium work.

At the hearing, the Petitioner credibly testified that she can prepare simple meals and does so 3 times a day taking between 20 and 30 minutes to do so. She can do dishes and does only light house work and cannot do laundry due to having to climb stairs. She is taken to grocery shop and uses her cane. She testified that she does not drive and cannot take public transportation due to dizziness and standing. The Petitioner

credibly testified that she cannot stand for more than 20 minutes and could sit for 40 minutes. Petitioner stated that she is capable of walking only short distances and uses a cane and experiences shortness of breath on walking around 25 feet; however, her medical records note she can walk a block and then experiences shortness of breath. Petitioner also experiences pain in her left hip and has to lift her left leg due to weakness. The Petitioner is capable of showering with a shower chair and cannot tie her shoes or touch her toes. The Petitioner thought she could carry between 5 and 8 pounds but also was limited due to use of a cane.

At Step 4, Petitioner's RFC is considered in determining whether she is capable of past relevant employment. 20 CFR 416.920(a)(4)(iv). 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. Because Petitioner's past work involved light or medium exertion, Petitioner does not maintain the RFC to perform past relevant work.

If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Petitioner's testimony, medical records, and current limitations, it is found that the Petitioner is not able to return to past relevant work; due in large part the standing and walking and stooping requirements of those jobs and her ability to walk any significant distance.

In Step 5, 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). The Petitioner is 47 years old, and thus, is considered to be an individual of younger age for MA purposes. The Petitioner also completed high school. 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).

This Administrative Law Judge does take into account Petitioner's complaints of pain in that the diagnosis of chronic back pain does support such a claim based upon medical pain management, limitations imposed and the MRI provided. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a Petitioner's limitations. Also considered was the Petitioner's testimony that her pain level with pain medication was a 6, thus, demonstrating that the pain medications are somewhat effective in alleviating pain. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529-416.929.

Petitioner, at 5' 3" and currently weighs around 240 pounds and has weighed up to 260 pounds, had a BMI of between 42 and 47, which places her at level III, or extreme, obesity. See Social Security Ruling (SSR) 02-1p. The medical records reference Petitioner's obesity among her diagnoses. Petitioner's obesity is a consideration in assessing her impairments. Petitioner's obesity is a consideration in assessing her impairments under listing 1.04 musculoskeletal diagnosis and MRI results for the lumbar spine and 1.00(Q); 3.00 (I) recognizes that obesity is a medically determinable impairment often associated with disturbances of the musculoskeletal and respiratory systems and the cumulative effects of obesity must be considered both with respect to whether the client has a listing-level impairment and in assessing the individual's RFC. 1.00(Q); 3.00(I).

1.00(Q). Effects of obesity. Obesity is a medically determinable impairment that is often associated with disturbance of the musculoskeletal system, and disturbance of this system can be a major cause of disability in individuals with obesity. The combined effects of obesity with musculoskeletal impairments can be greater than the effects of each of the impairments considered separately. Therefore, when determining whether an individual with obesity has a listing-level impairment or combination of impairments, and when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity, adjudicators must consider any additional and cumulative effects of obesity. SSR 02-1p.

Based upon the foregoing objective medical evidence, there is insufficient evidence to demonstrate that the Petitioner would have difficulty performing unskilled work while sitting. She also has the use of her hands for cooking, bathing and dressing. Sedentary work requires lifting 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. The Medical Examination Report that was completed noted that Petitioner had no limitations with regard to sitting or standing.

After a review of the Petitioner's medical records, hospital reports, MRI, treating physician's evaluations and Petitioner's own testimony, Petitioner has failed to establish limitations which would compromise her ability to perform sedentary work activities on a regular and continuing basis.

In consideration of the foregoing and in light of the objective limitations, it is found that the Petitioner does retain the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform sedentary work. After review of the entire record, the Findings of Fact and Conclusions of Law, and in consideration of the Petitioner's age, education, work experience and residual functional capacity, it is found that the Petitioner is not disabled for purposes of the MA-P program at Step 5.

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 the Petitioner not disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.



Lynn M. Ferris

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: **12/29/2015**

LMF/jaf

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:

