

**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.: 15-019245
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: January 21, 2016
County: Calhoun

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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, telephone hearing was held on January 21, 2016 from Lansing, Michigan. Petitioner appeared and testified on her own behalf.

[REDACTED] (Case Manager from [REDACTED]) appeared as a witness for Petitioner. [REDACTED] (Hearing Facilitator/Eligibility Specialist) and [REDACTED] (Eligibility Specialist) appeared on behalf of the Department of Health and Human Services (Department).

PROCEDURAL HISTORY

The Department offered the following exhibits that were marked into evidence:

Department's Exhibit No. 1 (pages 1 through 19) is a copy of the Hearing Summary, Request for Hearing, Application for Assistance and Notice of Case Action dated 09/29/2015.

Department's Exhibit No. 2 (pages 1 through 922) is a copy of Petitioner's medical records from [REDACTED] ([REDACTED] to 0 [REDACTED]), [REDACTED] (0 [REDACTED] to [REDACTED]) and [REDACTED] to [REDACTED]).

Petitioner did not offer any exhibits into evidence.

The record was closed at the conclusion of the hearing.

ISSUE

Did the Department properly deny Petitioner's application for State Disability Assistance (SDA) based on the finding that she was not disabled?

FINDINGS OF FACT

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

1. On July 22, 2015, Petitioner filed an application for SDA benefits alleging disability.
2. On or about September 29, 2015, the Medical Review Team (MRT) denied Petitioner's application.
3. On September 29, 2015, the Department caseworker sent Petitioner notice that her application was denied.
4. On or about October 12, 2015, Petitioner filed a request for a hearing to contest the Department's action.
5. A telephone hearing was held on January 21, 2016.
6. During the hearing, Petitioner has alleged the following disabling impairments: chronic lower back pain, arthritis (spine), loss of feeling in legs, depression, and schizophrenia.
7. At the time of the hearing, Petitioner was 49 (forty-nine) years old with a birth date of [REDACTED]; stood 5 feet 4 inches and weighed approximately 260 (two-hundred and sixty) pounds (lbs).
8. Petitioner has a high school education with an employment history as a cook in the food service industry.
9. During the relevant time period, Petitioner was taking the following medications:
 - a. Methocarbamol
 - b. Gabapentin
 - c. Mirtazapine
 - d. Wellbutrin
 - e. Cetirizine
 - f. Lisinopril
 - g. Levothyroxine
 - h. Flonase (nasal spray)
 - i. Meclizine
 - j. Aripiprazole
 - k. Meloxicam
 - l. Amitriptyline
10. During the relevant time period, the objective medical records show that Petitioner has the following medical conditions based on medically acceptable clinical and laboratory diagnostic techniques:

a. Petitioner has been diagnosed with allergies, anemia, major depressive disorder (without psychotic features), mood disorder, post-traumatic stress disorder, hyperlipidemia, hypertension, hypothyroid, migraine headaches and obesity.

b. Petitioner had emergency room visits complaining of back pain/back spasms.

c. In August, 2014, the record showed that Petitioner required the use of a cane to assist her with ambulation.

d. Petitioner was started on a physical therapy regimen for her back pain. In September, 2014, Petitioner's physician indicated that physical therapy was unsuccessful.

e. On [REDACTED], Petitioner had an MRI of her L-spine which showed congenital spinal stenosis that was mildly progressed since June, 2009.

f. In November, 2014, Petitioner had epidural steroid injections and had numbness from waist down.

g. In December, 2014, Petitioner had an office visit which showed she was compliant with her medications and her examination was within normal limits.

h. Petitioner, in February, 2015, had a medication review appointment that showed she had been to the pain clinic for chronic back pain and was still on morphine and gabapentin. There was some improvement with her back pain and that her home stress was manageable. She had lost some energy due to her back pain, but she was able to walk with a cane.

i. In March, 2015, Petitioner had an assessment of her pain disorder. It was found that her pain had both psychological factor and was based on her medical condition.

j. In May, 2015, Petitioner had a medication review appointment which showed that her judgment was fair and that she had some sleeping issues.

k. In July, 2015, Petitioner had a medication review appointment which revealed that she still had chronic back pain, walks with a cane and wears a back brace and tens unit. She had suicidal thoughts due to back pain and uses marijuana for pain. She continued to receive counseling, had poor judgment, with difficulty problem solving. She was started on Latuda and continued on Remeron, Trazadone and Wellbutrin.

l. In July, 2015, Petitioner's condition had not changed except that she developed a urinary tract infection. Her L-spine was tender to palpation. She had requested a handicapped parking permit. She had a moderate pain with range of motion in her knees.

m. In August, 2015, Petitioner continued to report a great deal of pain. She still walks with assistance (cane).

11. Petitioner, at the time of the hearing, was not employed and last worked as a cook at a nursing home in 2004.
12. Petitioner can perform the following physical functions: walk (with assistance but with breaks), stand (for 10 minutes, sit (for 15 minutes), lift (a gallon of milk), push, pull, reach, and/or carry. Petitioner cannot squat, kneel, or drive a car.
13. Petitioner has the capacity to see, hear, and speak.
14. Petitioner can understand, carry out, and remember simple instructions.
15. Petitioner's use of judgment is impaired and she cannot respond appropriately to supervision, co-workers and usual work situations. Petitioner is unable to deal with changes in a routine work setting.
16. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA program. Under SSI, 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

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. The Petitioner's impairment must result from anatomical, physiological, or psychological

abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only the Petitioner's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the Petitioner has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Medical findings must allow a determination of: (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

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 there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

At step one, the Administrative Law Judge must determine whether the Petitioner is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he or she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he or she is not disabled regardless of how severe his or her physical or mental impairments are and regardless of his or her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the Petitioner has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the Petitioner does not have a severe medically determinable impairment or combination of impairments, he or she is not disabled.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C). First, an individual's pertinent symptoms, signs and laboratory findings are evaluated to determine whether a medically determinable mental

impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are 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. 20 CFR 416.920(a)(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 functional limitation. 20 CFR 416.920a(c)(4).

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). 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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

At step three, the Administrative Law Judge must determine whether the Petitioner's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the Petitioner's impairment or combination of impairments meets or medically equals the criteria of a listing and

meets the duration requirement (20 CFR 404.1509 and 416.909), the Petitioner is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the Petitioner's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his or her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the Petitioner's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the Petitioner has the residual functional capacity to perform the requirements of his or her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the Petitioner actually performed it or as it is generally performed in the national economy) within the last 15 (fifteen) years or 15 (fifteen) years prior to the date that disability must be established. In addition, the work must have lasted long enough for the Petitioner to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Petitioner has the residual functional capacity to do his or her past relevant work, the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the Petitioner is able to do any other work considering his or her residual functional capacity, age, education, and work experience. If the Petitioner is able to do other work, he or she is not disabled. If the Petitioner is not able to do other work and meets the duration requirements, he or she is disabled.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967. The terms are defined as follows:

Sedentary work. 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. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. 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 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.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 1, a person must be unable to engage in substantial gainful activity (SGA) to be eligible for disability benefits. On this record, Petitioner has shown that she does not work and is not engaged in SGA. Therefore, this Administrative Law Judge finds that Petitioner is not disqualified from receiving disability at Step 1.

At Step 2, Petitioner's symptoms are evaluated to see if there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce Petitioner's pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Petitioner's symptoms to determine the extent to which they limit Petitioner's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

In the present case, Petitioner alleges disability due to chronic lower back pain, arthritis (spine), loss of feeling in legs, depression, and schizophrenia. While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence. Petitioner's medical records were summarized in the above findings of fact. Accordingly, Petitioner has a medically determinable impairment that is "severe" or a combination of impairments that are "severe." Petitioner's impairments significantly limit her ability to perform basic work activities.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized in the above Findings of Fact, Petitioner has presented medical evidence establishing that she does have some limitations on the ability to perform basic work activities. The medical evidence has established that the Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on the Petitioner's basic work activities.

The objective clinical evidence shows that Petitioner has physical and mental impairments 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. Petitioner's impairments have lasted, or can be expected to last, continuously for twelve months; therefore, she is not disqualified at Step 2. The objective medical evidence in this matter also reveals that Petitioner has a mental and/or emotional impairment that can fairly be characterized as "severe" for purposes of the Step 2 analysis. This evidence shows that

Petitioner has have a medically determinable mental impairment based on documented signs, symptoms, and laboratory findings.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Petitioner's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The following listings were considered in light of the objective evidence: 1.00 Musculoskeletal System, 11.00 Neurological, and 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Petitioner cannot be found disabled, or not disabled, at Step 3; therefore, the Petitioner's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before Step 4, the Administrative Law Judge must determine Petitioner's residual functional capacity to perform the requirements of her past relevant work. Petitioner's past relevant work was as a cook/food service worker. Petitioner testified that she was required to lift at least 50 lbs. in the course of her job duties. Working as a cook, as described by Petitioner at hearing, would be considered medium work.

During the hearing, Petitioner testified that she has several physical and mental limitations. The objective findings do not show any physician imposed limitations. However, the objective findings show that Petitioner's testimony regarding her limitations is supported by the medical evidence and found to be credible. After review of the entire record, the Administrative Law Judge finds that Petitioner does not maintain the residual functional capacity to perform medium work as defined by 20 CFR 416.967(b) on a sustained basis.

After review of the entire record, including Petitioner's testimony, this Administrative Law Judge finds that Petitioner is not able to maintain the physical and mental demands necessary to perform medium work as defined by 20 CFR 416.967(a). Petitioner cannot work as a cook. This Administrative Law Judge finds sufficient evidence in this record that demonstrates Petitioner is unable to perform her past relevant work. Because the record evidence shows that Petitioner is unable to do any past relevant work, the analysis proceeds to the fifth and final step.

In Step 5, an assessment of Petitioner's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Petitioner was 49 years old and, thus, considered to be a younger individual for disability purposes. Petitioner completed high school and worked as a cook. 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 finds that Petitioner is unable to adjust to other work. She is unable to do even sedentary work due to her continued psychological problems. As noted above, Petitioner does not maintain the residual functional capacity to perform even limited non-exertional sedentary employment as defined by 20 CFR 416.967(b) on a sustained basis. Petitioner is disabled at Step 5.

This Administrative Law Judge finds that Petitioner has satisfied the burden of proof to show by competent, material and substantial evidence that she has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Petitioner's exertional and non-exertional impairments render her unable to engage in a full range of sedentary work activities on a regular and continuing basis. Petitioner's testimony regarding her limitations and/or inability to freely sit, stand, walk, lift, and carry is credible and supported by the objective medical evidence. Petitioner's assertion that her alleged impairments are severe enough to reach the criteria and definition of disability. This Administrative Law Judge finds that the objective medical evidence on the record shows that Petitioner has no residual functional capacity. Petitioner has established by objective medical evidence that she cannot perform sedentary work even with her impairments. Therefore, Petitioner is disabled for purposes of the MA program.

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

With regard to Petitioner's request for disability under the State Disability Assistance (SDA) program, it should be noted that the Department's Bridges Eligibility Manual (BEM) contains policy statements and instructions for caseworkers regarding the SDA program. In order to receive SDA, "a person must be disabled, caring for a disabled person or age 65 or older." BEM, 261 (7-1-2015), p 1.

As indicated above, Petitioner meets the definition of disabled under the MA program and the evidence of record shows that Petitioner is unable to work for a period exceeding 90 (ninety) days. This Administrative Law Judge finds that Petitioner is disabled for purposes of the SDA program.

The Department has not established by the necessary competent, material and substantial evidence on the record that it acted in compliance with Department policy when it determined that Petitioner was not eligible to receive SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has not appropriately established on the record that

it acted in compliance with Department policy when it denied Petitioner's application for SDA benefits.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Petitioner's SDA, and shall award her all the benefits she may be entitled to receive, but only if she meets the remaining financial and non-financial eligibility factors.
2. The Department shall initiate a review Petitioner's medical condition for improvement in February, 2017, unless she has a pending Social Security Administration disability application that is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.
4. The Department shall supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: 2/10/2016

CAP/las

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

