RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[redacted]

Date Mailed: March 15, 2016
MAHS Docket No.: 15-018550
Agency No.: [redacted]
Petitioner: [redacted]

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, an in-person hearing was held on December 14, 2015, from Port Huron, Michigan. The Petitioner was represented by the Petitioner, [redacted]. The Department of Health and Human Services (Department) was represented by [redacted], Family Independence Manager (FIM).

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. The Petitioner applied for MA-P and SDA benefits on June 9, 2015.

2. The Medical Review Team denied Petitioner's request on August 26, 2015.

3. The Department sent the Petitioner a Notice of Case Action on August 26, 2015.

4. The Petitioner filed a timely hearing request on October 1, 2015.

5. An Interim Order was issued on December 10, 2014, requesting the Petitioner and the Department obtain additional medical records. Some of the medical evidence was provided.

6. The Petitioner has alleged mental disabling impairments including anxiety, depression and has been diagnosed with obsessive compulsive disorder.

7. The Petitioner has alleged physical disabling impairments including: Coronary Artery Disease with stenting, Morbid Obesity with a BMI of 45.7, cervical degenerative disease, knee pain with knee brace, and back pain with Degenerative Disc Disease, Carpal Tunnel in both wrists, IBS and limited range of motion in her shoulders.

8. The Petitioner last worked in [redacted] performing auto parts packaging. The Petitioner also worked as an activity manager for an Alzheimer's unit. The Petitioner completed a GED.

9. At the time of the hearing, the Petitioner was [redacted] years old with a [redacted] birth date. The Petitioner is now [redacted] years old. The Petitioner was 5'1" and weighed 244 pounds.

10. The Petitioner's impairments have lasted or are expected to last 90 days or more and 12 months or more.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 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 has alleged mental disabling impairments including anxiety, depression and has been diagnosed with obsessive compulsive disorder.

The Petitioner has alleged physical disabling impairments including Coronary Artery Disease with stenting, Morbid Obesity with a BMI of 45.7, Cervical Degenerative Disease, knee pain with knee brace, and degenerative disc disease in the lumbar spine with back pain, carpal tunnel in both wrists, IBS and limited range of motion in her shoulders.

A summary of the medical evidence presented follows.

The Petitioner's shoulder mass was removed on [redacted] The mass extended deep into the subcutaneous tissue. The final measurement was 4 x 2 x 1 cm. The final pathologic diagnosis was fibrolipoma.

The Petitioner's surgeon who removed a mass from the Petitioner's shoulder completed a Medical Examination Report on [redacted]. The Doctor advised that the Petitioner's condition was stable and that no limitations were imposed nor was any condition related to the Petitioner's shoulder surgery expected to last 90 days or longer.

The Petitioner was seen by her primary care treating doctor on [redacted], for follow-up after blood work and MRI. The exam notes indicate that the current MRI showed generalized Degenerative Disc Disease. No focal symptoms, no numbness or burning in the arms, no loss of power, otherwise some pain when turns the neck around which is not very severe. Patient was advised to treat neck conservatively and follow up if it gets worse.

An MRI of the cervical spine was performed on [redacted] The impression was some multi-level degenerative changes in the mid cervical spine as detailed. C2-C3 level was within normal limits. C3-C4 level show right sided uncovertebral facet degenerative changes causing mild to moderate right sided neural foraminal narrowing, spinal column is preserved. C4-C5 show uncovertebral facet degenerative changes bilaterally, left greater than right causing mild left-sided neural forminal narrowing, there is some central disc protrusion mild effacing anterior thecal sac. C5-C6 uncovertebral facet degenerative changes on the left are causing mild left sided neural forminal narrowing.

The Petitioner was seen by her doctor for epigastric pain, nausea and vomiting. The Petitioner also complained of excessive vomiting. The doctor notes morbid obesity of 45.7 BMI with multiple comorbid conditions. At the time of the exam on [redacted] the Petitioner still had a visible tumor on her right shoulder; and she was wearing a Left knee brace. The past history notes IBS, CT bilateral wrist, compressed disks in lower spine and neck. The Physical exam was essentially normal; however, an abnormal lab result with high glucose was reported. The assessment and plan, noted diabetes, hypertension and morbid obesity, 45.7, with an EGD and screening colonoscopy. The results of an upper endoscope noted no abnormality in the

esophagus. The colonoscopy result noted no polyps, masses or AV formations. No evidence of diverticulitis. A stomach biopsy results noted mild chronic gastritis. Acute and chronic inflammation of the gastric type glandular mucosa of the esophagus was noted with mild esophagitis.

On [redacted], an x-ray of the knee was taken. Lateral tibial plateau spurring is present, medial lateral femoral condylar spurring is present, mild narrowing of the joint spaces are present. Patellofemoral join space spurring is present. Mild to moderate degenerative changes of left knee noted. An x-ray of lumbar spine was also taken. The findings note vertebral body heights are preserved. Mild diffuse disc space narrowing is in the mid and upper lumbar spine. Mild spondylosis present and normal alignment of the vertebral bodies. No spondylolytic defects are evident. Mild facet changes are evident throughout the lumbar spine.

On [redacted], an Echo Doppler of the heart was performed. The conclusions were: borderline concentric left ventricular hypertrophy, no pericardial effusion, overall left ventricular systolic function is low-normal with an EF between 50 and 55%. There was mild aortic valve sclerosis without stenosis. Mild mitral annual calcification present, mild mitral regurgitation present with mild tricuspid regurgitation present. Right ventricular systolic pressure is normal and less than 35mmHG. No evidence of pulmonary hypertension or pulmonic regurgitation present.

The Petitioner was seen by her family practice treating physician on [redacted] for back pain and knee pain. The physical exam noted significant for tenderness of the medial side of her left knee and full flexion painful. Exam significant for mild tenderness on the left parasacral; raise leg test bilaterally negative. The notes indicate a 2 d echo reviewed which was insignificant for aortic stenosis.

The Petitioner was seen on [redacted], for an eye exam due to her diabetes mellitus; and the exam noted no evidence of retinopathy.

In [redacted], the Petitioner was reassessed and was seen for her left knee on [redacted]. The Petitioner complained of knee pain with prolonged activitiy and complaints of slipping sideways. The Petitioner injured her knee in a fall three months prior. An exam of the knee was made and noted crepitus on motion, knee motion is 0 degrees of extension and 11 degrees on flexion. X rays show tri-compartmental degenerative change with valgus deformity with osteoarthritis. A corticosteroid injection was noted as may be indicated. A hinged knee brace was prescribed.

On [redacted], the Petitioner underwent an imaging exam of the liver. The impression was mild hepatomegaly with liver length of 20.1 cm. No distension of intrahepatic biliary radicles. Normal appearance of right kidney. The exam was due to elevated lifts.

The Petitioner was seen on [redacted], for follow-up with her family practice doctor. At the time of the visit, the diagnosis was cervical radiculopathy, transaminases serum elevation, essential hypertension and hyperlipidemia. The exam was normal with offer of MRI for cervical spine. The active problems were noted as anxiety, depression and diabetes mellitus. The patient was noted as morbidly obese with a BMI or 45.2.

The Petitioner underwent a stress test on [redacted]. Baseline EKG showed a sinus rhythm, normal axis and normal intervals. Patient was given intravenous persentine and did not have chest pain; and the EKG changes are non-diagnostic. Resting heart rate was 97 beats per minute with a resting blood pressure of 185/109. Peak heart rate was 116 beats per minute and peak blood pressure was 208/98. Stress and rest tomographic images revealed a normal-sized left ventricle with normal LV function with an ejection fraction of 80%. No fixed or reversible perfusion defects noted. Impression was negative stress test by EKG criteria and normal myocardial perfusion and function.

The Petitioner had an x-ray of the cervical spine after presenting with cervical neck pain. The Findings were vertebral body height and disc interspaces are maintained. No compression deformities and prevertebral soft tissue structures are within normal limits. The Impression was Stable anterolisthesis of C3 on C4 and C4-C5, which appears stable. Narrowing of the disc space at level C3-T1 compatible with multilevel mild degenerative disc disease. Facet arthropathy greater on the left at multiple levels. Calcifications in soft tissue of the neck noted. Facet arthropathy most marked at levels C3-C7 greater on left. Consider follow-up with MRI.

The Petitioner had a consultative psychological evaluation on [redacted]. After a thorough exam, the Conclusions were as follows: [redacted] is a [redacted]-year-old female who was referred for psychological evaluation pursuant to her claim for medical benefits. She has a history of psychiatric treatment and has been in outpatient mental health services in the past. [redacted] was labile and tearful throughout the evaluation. She is currently prescribed Cymbalta and Trazadone. [redacted] complained of disrupted sleep and poor appetite. She currently lives in a hoarding situation. She was alert, verbal and oriented to a three spheres. Her immediate memory was in the borderline range, but her delayed memory and fund of general information was intact. She was readily able to perform mental arithmetic. [redacted] interpretation of proverbs was superficial and her reasoning was literal and concrete. Her judgment was marginal to impaired. Diagnosis was Obsessive Compulsive Disorder and Major Depressive Disorder, Recurrent and Severe.

The Petitioner was assessed by her mental health care provider on [redacted]. At the initial intake the GAF score was 39 and diagnosis was Depression, anxiety and stress. Petitioner at the time had no suicidal ideation. At the time of intake, the clinical diagnosis was alcohol dependence, anxiety disorder and PTSD. At the time of her exam, she was assigned to group therapy and individual psychotherapy. Anger was

noted as a primary problem with anxiety secondary. At the time of intake, the prognosis was guarded. The Petitioner was not in treatment at time of the hearing.

The Petitioner had a consultative medical evaluation on [redacted]. The ranges of motion for the dorsal lumbar spine were below the normal range for flexion, 70, extension 15, right lateral flexion 15, and left lateral flexion 15. Her shoulder forward flexion was diminished to130. The conclusions noted a cardiac murmur at the examination with no findings of heart failure. Blood pressure was mildly elevated. She does appear to be actively declining and is mildly deconditioned. As regards arthropathy, patient has findings of degeneration to her knees and shoulders with complaints of neck pain but no radicular symptoms. No assistive device was required.

The Petitioner credibly testified that she could stand 10 to 15 minutes, but her knees hurt and back hurts if she stands too long. The Petitioner could sit 30 minutes maximum and has swelling in her ankles and must elevate her feet. The Petitioner has difficulty doing her laundry due to inability to pick up much weight, less than 10 pounds. The Petitioner can climb and descend stairs although sometimes has pain. She can shower and dress herself and tie her shoes and wears a knee brace. The Petitioner can drive, however, does not drive because she gets too distracted. The Petitioner can cook simple meals but does not do so because her kitchen is too messy. The Petitioner is a hoarder; and thus, she tries to remove one bag a week from her home. The Petitioner uses medical transportation as she has difficulty using public transportation due to her mental impairments related to her anxiety and depression. The Petitioner also avoids leaving the house.

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 has alleged mental disabling impairments including anxiety, depression and has been diagnosed with obsessive compulsive disorder.

The Petitioner has alleged physical disabling impairments including: Coronary Artery Disease with stenting, Morbid Obesity with a BMI of 45.7, Cervical Degenerative Disease, knee pain with knee brace and back pain, carpal tunnel in both wrists, IBS and limited range of motion in her shoulders and diabetes.

A review of List 1.04 Disorders of the spine was reviewed and was found not to be met as the necessary findings of nerve root impingement were not demonstrated by the MRI evidence available. Listing 1.02, Major of dysfunction of a joint(s) (due to any cause) was also reviewed but the required severity of the listing was not met as the dysfunction did not result in an inability to ambulate or perform fine and gross movements effectively as defined in l.00 B2 b and c.

As regards the Petitioner's Coronary Artery Disease Listing 4.0 was reviewed, specifically 4.02 chronic heart failure; however, the Petitioner's ejection fraction was 50% and, thus, did not beat the severity threshold.

As regards the Petitioner's mental disabling impairments, while the medical evidence has demonstrated some of the factors, overall, the medical evidence available does not support satisfying the requirements of Listing 12.04 affective disorders or 12.06 anxiety related disorders. These listings require that symptoms be medically documented to establish and support the severity of the symptoms presented. Some, but not all of the required aspects of these listings were demonstrated; however the most current consultative exam while noting that Petitioner's judgment is marginal to impaired does not demonstrate that the severity requirements of either of the listings have been met.

As the Petitioner has not been found disabled nor not disabled at Step 3, the analysis will proceed to Step 4.

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 includes working performing auto parts packaging. The Petitioner also worked as an activity manager for an Alzheimer's unit. The Petitioner last worked in 2013. The Petitioner completed a GED. In light of the Petitioner's testimony and records, and in consideration of the Occupational Code, the Petitioner's prior work is classified as semi-skilled light. It is determined that the Petitioner can no longer do such work as the Petitioner's ability to walk and/or stand for prolonged periods would preclude the level of activity required for either job. It is also noted that when sitting, the Petitioner has swelling of the lower extremities. The Petitioner left the Activity Manager job as she could not keep pace or perform the physical requirements and activity of that job. The independent consultative exam also documents limitations in range of motion in knees and the ranges of motion for the dorsal lumbar spine were below the normal range for flexion, 70, extension 15, right lateral flexion 15, and left lateral flexion 15. Her shoulder forward flexion was diminished to 130. The conclusions noted a cardiac murmur at the examination with no findings of heart failure. Blood pressure was mildly elevated. She does appear to be actively declining and is mildly deconditioned. As regards arthropathy, patient has findings of degeneration to her knees and shoulders with complaints of neck pain but no radicular symptoms. These findings also support the Petitioner's testimony with respect to her physical limitations and noted Morbid Obesity with a BMI of 45.7.

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. Because Petitioner's past work involved light exertion, Petitioner does not maintain the RFC to perform past relevant work. 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. Thus, the fifth step in the sequential analysis is required.

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 58 years old and, thus, is considered to be a person of advanced age for MA purposes. The Petitioner has a GED. 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).

In this case, the evidence reveals that the Petitioner has a medical impairment due to Morbid Obesity, with a BMI of 45.7, Cervical Degenerative Disease, knee pain with knee

brace and back pain, carpal tunnel in both wrists, IBS and limited range of motion in her shoulders. Petitioner's impairments, coupled with her significant obesity, which would also support limitations of function, result in a finding that she maintains the physical capacity to perform sedentary work as defined in 20 CFR 416.967(a). Petitioner's RFC to perform sedentary exertional work is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g). At the time of hearing in this case, Petitioner was [redacted] years old at the time of application and [redacted] years old at the time of hearing, (Petitioner is currently [redacted] (advanced age) for purposes of Appendix 2. She has a GED with a history of unskilled and semi-skilled work experience. As discussed above, she maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities. Based on her age, education, work experience, and exertional RFC, the Medical-Vocational Guidelines, 201.12, result in a finding that Petitioner is disabled based on her exertional limitations.

This Administrative Law Judge does take into account Petitioner's complaints of pain and that the diagnoses do support the claims. 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. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529[redacted] 416.929. Also considered is the impact of Petitioner's obesity. Petitioner, at 5'1" and 244 pounds, had a body mass index of 45.7, which places her at Level III, or Morbid Obesity. See Social Security Ruling (SSR) 02-1p. The medical records reference Petitioner's obesity among her diagnoses. Petitioner's obesity is a consideration made in assessing her impairments.

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. In addition, it is determined that her skills as an activity manager are not transferable. 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 disabled for purposes of the MA-P program at Step 5 pursuant to Rule 201.04.

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

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS

HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall process the Petitioner's MA-P and SDA application dated June 9, 2015, to determine whether all non-medical eligibility requirements are met.

2. The Department shall supplement the Petitioner for any SDA benefits she is otherwise entitled to receive in accordance with Department policy.

3. A review of this case shall be conducted in March 2017.

LMF/jaf

Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[redacted]

Petitioner

[redacted]

cc: [redacted]