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.: 15-023166
Issue No.: 4009
Agency Case No.: [redacted]
Hearing Date: February 11, 2016
County: Wayne-District 57 (Conner)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 February 11, 2016, from Detroit, Michigan. Petitioner appeared and represented herself. The Department was represented by [redacted], Eligibility Specialist.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. The documents were received and marked into evidence as Exhibits C, 1, 2, 3 and 4, as identified on the record. The record closed on February 21, 2016, and the matter is now before the undersigned for a final determination based on the evidence presented.

ISSUE

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

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

1. On May 16, 2015, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On November 24, 2015, the Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 9-12).

3. On December 2, 2015, the Department sent Petitioner a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 5-8).

4. On December 11, 2015, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 2-3).

5. Petitioner alleged disabling impairment due to back pain, left knee pain, left hand weakness, and vision problems in the left eye.

6. On the date of the hearing, Petitioner was [redacted] years old with an [redacted] birth date; she is [redacted] in height and weighs about [redacted] pounds.

7. Petitioner is a high school graduate, with some college experience.

8. Petitioner has an employment history of work as a restaurant food preparation worker and a factory worker.

9. At the time of application, Petitioner was not employed.

10. Petitioner has a pending disability claim with the Social Security Administration.

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 Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work

experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner has not engaged in SGA activity during the period for which assistance might be available. Therefore, Petitioner is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple

instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

In the present case, Petitioner alleges disabling impairment due to back pain, left knee pain, left hand weakness, and vision problems in the left eye. The medical evidence presented at the hearing was reviewed and is summarized below.

A December 2013 MRI of Petitioner's left knee showed a complete ACL tear, complex tear of the posterior horn of the medial meniscus, minor sprain grade 1 to the medial collateral ligament, superficial infrapatellar bursitis with minimal soft tissue edema about the knee. She was diagnosed with a left knee anterior cruciate ligament (ACL) tear and medial meniscal tear. (Exhibit A, pp. 83-85.)

On July 25, 2014, Petitioner was seen at the [redacted] complaining of blurry vision in the left eye that began gradually seven years earlier after her husband's assault resulted in an orbital floor fracture that was surgically treated at the time. Petitioner was diagnosed with diplopia, status post-repair of the floor fracture. The doctor noted intermittent diplopia mainly when lying supine, with Hertel's 18, 16 with base of 98 today. She was also diagnosed with blepharitis and cataracts. (Exhibit A, pp. 158-169.)

A July 14, 2014 psychiatric evaluation from the [redacted] diagnosed Petitioner with major depressive disorder, recurrent, moderate after she reported being depressed and sad, loss of interests, nervousness, worrisome, fearing for her life due to being in an abusive relationship, thinking that other people could read her mind and control her thoughts, feeling hyper most of the time, having racing thoughts, having thoughts of wanting to hurt others, and thinking that she needed to be in the hospital due to her unstable emotional state. She was assigned a global assessment of functioning (GAF) score of 50. (Exhibit A, pp. 47-51, 207-216.) August 11, 2014 and October 7, 2014 evaluation and management notes showed diagnosis of major depressive disorder although a December 30, 2014 after-visit summary document identified the diagnosis as bipolar I disorder, most recent episode depressed, severe and passive-aggressive personality (Exhibit A, pp. 170, 187-206).

On September 15, 2014, Petitioner underwent surgery to correct her left knee ACL tear and medial meniscal tear (Exhibit A, pp. 89, 95-97, 175-177). A December 11, 2014 exam showed a well-healed incision on the left knee, no signs of any gross purulence or gross infection, and a slight effusion to the left knee but no other signs of erythema, swelling, or ecchymosis. Although Petitioner complained of an episode during physical therapy when her knee popped and stated there was minimal pain from the ensuing swelling that she rated 10/10, the doctor noted that she did not appear to be in any

acute distress. (Exhibit A, pp. 86-88). On October 30, 2014, Petitioner complained of knee stiffness and ongoing pain. The doctor noted that Petitioner's left knee range of motion was 2 to 100 degrees (while the right knee was -7 to 130 degrees) and he increased her physical therapy sessions (Exhibit A, pp. 78-79). On January 22, 2015, Petitioner was noted to be improving significantly since the date of surgery after having completed two formal physical therapy sessions. Her range of motion was +5 degrees of extension with 120 degrees of flexion and muscle strength testing was 4/5 on the left compared to 5/5 on the right. There was no obvious instability with Lachman's or pivot shift and a negative McMurray's. She continued to complain of stiffness, worse in the morning, improving throughout the day. (Exhibit A, pp. 75-77).

On March 10, 2015, six-months post-surgery, the doctor noted that Petitioner was doing well overall, still in physical therapy three times weekly and taking Norco for pain control once or twice weekly and Aleve daily. Petitioner denied any numbness or paresthesias or other issue. The doctor noted that, on visual inspection of the left knee, the scar was healing well with no erythema or sign of infection; no palpable effusion and no tenderness over the lateral joint line or the medical or lateral patellar facts was noted. The doctor noted that Petitioner had minimal pain over the medical joint line. He found good patellar mobilization, although not as good as on the right. He also noted range of motion was 0 to 130 degrees on the left but -5 to 135 degrees on the right. Petitioner had a stable Lachman and a negative anterior and posterior drawer test. She also had a negative McMurray's. She was encouraged to continue to participate in physical therapy (Exhibit A, pp. 69-74.) The May 14, 2015 notes show that Petitioner was doing much better than the last visit and that physical therapy had helped tremendously with patella mobility and range of motion. There continued to be minimal tenderness along the incision site and insertion of the patella tendon, with Petitioner complaining of pain 4/10. (Exhibit A, pp. 67-69.) Petitioner's records show ongoing compliance with physical therapy (Exhibit A, pp. 101-153).

On September 17, 2015, Petitioner was referred by the Department to a licensed psychologist for a mental status examination. Petitioner reported problems with her left knee, forgetfulness, and anxiety, and racing thoughts. The psychologist concluded that Petitioner suffered from depression secondary to her general medical condition and her prognosis was fair. (Exhibit A, pp. 52-55.)

On October 9, 2015, Petitioner went to the emergency department complaining of chest pain (Exhibit C, pp. 16-17). An October 10, 2015 stress echocardiogram was negative for ischemia (Exhibit C, pp. 25-30). On November 4, 2015, Petitioner went to the emergency department complaining of pain in the left ankle and joints of the left foot (Exhibit C, p. 1).

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a

continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

It is noted that at the hearing Petitioner also presented medical documents from [redacted] and [redacted] (Exhibits 2 and 3). These documents show that Petitioner was involved in a car accident on August 6, 2015, which resulted in complaints of sleeping problems, pain behind the eyes, fatigue, tension, irritability, stiffness in the neck, confusion, nervousness, headaches, nausea, pain in the mid-back, neck pain, dizziness, and pain in the low back. According to the [redacted] initial and interim examinations from August 20, 2015 to November 23, 2015, the symptoms from the accident resulted in a recurrence of previous, similar complaints that were asymptomatic (dormant or healed) at the time of the August 2015 accident. The chiropractor concluded that the injuries described, as well as the cervical disc herniations of C5-C6 and C6-C7 and lumbar disc herniations at L4-L5 and L5-S1 shown on August 24, 2015 MRIs of the cervical and lumbar spine, were due to the motor vehicle accident. (Exhibit 3; Exhibit C, pp. 2, 4-5, 7-9; Exhibit 4). There were also notes from November 17, 2015 and December 22, 2015 doctor office visits noting decreased range of motion of the left shoulder joint and inability to lift the arm above the shoulder level and paraspinous muscle group spasms, limiting her ability to rotate the trunk to the right and left and extend and flex without pain. These injuries are attributed to the August 2015 date of injury. (Exhibit 2.) Because these medical documents reflect injuries resulting from the auto accident in August 2015, an incident that happened *after* Petitioner filed her May 10, 2015 SDA application and reflect worsening of conditions at the time of application due to an unrelated incident, these medical documents are **not** considered to assess Petitioner's impairments, and disability, at the time of her May 2015 application.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case concerning Petitioner's impairments without those resulting from the August 2015 auto accident, listings 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), 2.02 (loss of central visual acuity), 2.03 (contraction of the visual fields in the better eye), 2.04 (loss of visual efficiency), and 12.04 (affective disorders) were considered.

A listing under 1.02 requires gross anatomical deformity and chronic joint pain and stiffness with signs of limitation of motion and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankyloses of the affected joint with involvement of one major peripheral weight-bearing joint resulting in

an inability to ambulate effectively or involvement of one major peripheral joint in each upper extremity resulting in an inability to perform fine and gross movements effectively. A listing under 1.04 requires evidence of nerve root compression, spinal arachnoiditis, or lumbar spinal stenosis resulting in pseudoclaudication established by findings on appropriate medically acceptable imaging and resulting in an inability to ambulate effectively. The medical evidence does not support a finding that Petitioner's impairments meet or equal a listing under 1.02 or 1.04.

To evaluate a visual disorder, the record must include an eye examination that includes measurements of the best-corrected central visual acuity or the extent of visual fields. 2.00A.4. An individual meets a listing under 2.02 if the remaining vision in the better eye after best correction is 20/200 or less. An individual meets a listing under 2.03 if there is contraction of the visual field in the better eye. An individual meets a listing under 2.04 for loss of visual efficiency, or visual impairment, if in the better eye she has (A) a visual efficiency percentage of 20 or less after best correction or (B) a visual impairment value of 1.00 or greater after best correction. In this case, Petitioner's better eye has a distance visual acuity of 20/50 and there is no evidence of contraction of the visual field in this eye. Therefore, Petitioner's visual disorder does not meet or equal a listing under 2.02, 2.03, or 2.04.

A listing under 12.04 requires either (i) medically documented persistence of depressive, manic, or bipolar syndrome resulting in marked limitations in functioning or (ii) medically documented history of a chronic affective disorder of at least two years' duration that has caused more than a minimal limitation of ability to do basic work activities with either repeated episodes of decompensation, residual disease process, or one or more years' current inability to function outside a highly supportive living arrangement. The evidence does not show that Petitioner's mental condition met or equaled a listing under 12.04.

Because the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical

examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in 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 involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).

In this case, Petitioner alleges both exertional and nonexertional limitations due to her medical condition. Petitioner testified that she used a cane and could barely walk a block, could not sit for more than 45 minutes before experiencing back pain, and could only stand if she could hold on to something. She could lift less than 10 pounds and

had weakness in her left hand that limited her ability to grip and grasp using that hand. She had problems with her vision that also caused headaches. An August 2015 car accident also resulted in slurred speech. The Department worker noted that redness was visible in Petitioner's left eye, Petitioner used a cane, and it took her a few minutes to work her way to the hearing room.

Petitioner testified that she lived with her son. She needed assistance with getting in and out of the tub and dressing. Although she could make simple meals like cereal or a microwave dish, her brother did her housekeeping. At the store, she rode an electric scooter and had trouble when she had to reach for items. She could not drive because her leg stiffened.

Petitioner's medical record shows that Petitioner underwent surgery to correct her left knee ACL tear and medial meniscal tear. After completing two rounds of physical therapy, Petitioner's orthopedic surgery noted in notes from a January 22, 2015 office visit that Petitioner's condition had significantly improved since the date of surgery, with range of motion +5 degrees of extension and 120 degrees of flexion, muscle strength testing at 4/5 on the left (compared to 5/5 on the right), no obvious instability with Lachman's or pivot shift, and a negative McMurray's. At the March 10, 2015 visit, six-months post-surgery, the doctor noted that Petitioner was doing well overall, still in physical therapy three times weekly and taking Norco for pain control once or twice weekly and [redacted] daily. Petitioner denied any numbness or paresthesias or other issue. The doctor found good patellar mobilization, although not as good as on the right, range of motion of 0 to 130 degrees on the left compared to -5 to 135 degrees on the right, a stable Lachman and a negative anterior and posterior drawer test and a negative McMurrays. At the May 14, 2015 visit, the doctor noted that Petitioner was doing much better than the last visit and that physical therapy had helped tremendously with patella mobility and range of motion although there continued to be minimal tenderness along the incision site and insertion of the patella tendon, with Petitioner complaining of pain 4/10.

Petitioner's record also included an August 24, 2015 lumbar spine MRI that showed central disc herniations at L4-L5 and L5-S1 with superimposed annular tear within the disc at L5-S1 and disc approximating the foraminal nerve on the right at L4-L5, and a cervical spine MRI that showed disc herniation at C5-C6 and C6-C7 contributing to a mild encroachment of the respective epidural spaces and straightening of the normal lordotic curve. There was no medical evidence of any left hand weakness as alleged by Petitioner prior to the August 2015 auto accident.

Petitioner, who reported a height of [redacted] and weight of [redacted], has a body mass index (BMI) of [redacted] putting her in the obese range. Obesity is often associated with disturbance of the musculoskeletal system, and the combined effects of obesity with musculoskeletal impairments can be greater than the effect of each of the impairments considered separately. Listing 1.00.O.

The medical evidence, coupled with Petitioner's obesity, supports exertional limitations. However, while the evidence presented was sufficient to support Petitioner's testimony that she experienced back and left knee pain, it is found that Petitioner's testimony concerning the extent of limitations caused by her back and knee pain, and **not** a consequence of the August 2015 auto accident, is not supported by the evidence. With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(b).

Petitioner also alleged nonexertional limitations due to vision problems, which caused headaches, and depression. While Petitioner was diagnosed with diplopia on July 25, 2014, the doctor noted intermittent diplopia mainly while Petitioner was lying supine. Based on the medical record, Petitioner's vision issues would minimally affect her ability to perform basic work activities. The medical records show that Petitioner was diagnosed with major depressive disorder, recurrent, moderate in a July 14, 2014 psychiatric evaluation and was assigned a GAF score of 50. The licensed psychologist who examined Petitioner's mental status at the Department's request on September 17, 2015 concluded that Petitioner suffered from depression secondary to her general medical condition and her prognosis was fair. Based on the medical record presented, as well as Petitioner's testimony, Petitioner has mild limitations on her mental ability to perform basic work activities.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id*.; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a restaurant food preparation worker and a factory worker. Both jobs involve medium work. Based on the RFC analysis above, Petitioner is limited to no more than light work activities and she has mild limitations in her mental capacity to perform basic work activities. Because Petitioner lacks the exertional RFC to perform past relevant work, she cannot be found disabled, or not disabled, at Step 4. Accordingly, the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Petitioner's RFC 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). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). However, 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). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was [redacted] years old at the time of application and [redacted] years old at the time of hearing and, thus, considered to be a younger individual (age [redacted]) for purposes of Appendix 2. She is a high school graduate with some college experience. She has a history of unskilled, and therefore nontransferable, work experience. As discussed above, based on the conditions at the time of her May 10, 2015 SDA application, without consideration of the impact of the August 2015 auto accident on her condition, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform light work activities and has mild limitations on her mental ability to perform basic work activities and minimal limitations due to her vision problems.

In this case, the Medical-Vocational Guidelines, 202.20, result in a finding that Petitioner is not disabled based on exertional limitations. Petitioner's nonexertional RFC does not affect her ability to perform basic work-related activities.

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 **not disabled** for purposes of the SDA benefit program.

DECISION AND ORDER

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

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

Date Signed: **3/9/2016**

Date Mailed: **3/9/2016**

ACE / tlf

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

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

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

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

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

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

Attention: MAHS Rehearing/Reconsideration Request

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

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

cc: [redacted]