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: April 15, 2016
MAHS Docket No.: 16-001877
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on April 4, 2016, from Detroit, Michigan. Petitioner appeared and was represented by [redacted] of [redacted]. The Michigan Department of Health and Human Services (MDHHS) was represented by [redacted], medical contact worker.

ISSUE

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

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [redacted], Petitioner applied for SDA benefits.

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

3. On [redacted], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 5-12).

4. On [redacted], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action (Exhibit 1, pp. 3-4) informing Petitioner of the denial.

5. On [redacted], Petitioner requested a hearing disputing the denial of SDA benefits (see Exhibit 1, p. 2).

6. As of the date of the administrative hearing, Petitioner was a 53-year-old female.

7. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.

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

9. Petitioner has a history of no employment amounting to substantial gainful activity from the last 15 years.

10. Petitioner alleged disability based on restrictions related to right-sided pain, back pain, left leg weakness, respiratory difficulties, and various psychological problems.

CONCLUSIONS OF LAW

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

Petitioner's hearing request cited a dispute of SDA eligibility. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 3-5) indicating a termination of SDA eligibility for the reason that Petitioner is not disabled (and that Petitioner does not meet other SDA qualifying factors).

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

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

Id.

There was no evidence that any of the above circumstances apply to Petitioner. Accordingly, Petitioner may not be considered for SDA eligibility without undergoing a medical review process (see BAM 815) which determines whether Petitioner is a disabled individual. *Id*., p. 3.

Generally, state agencies such as MDHHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. SDA differs in that a 90 day period is required to establish disability.

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

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

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

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2016 monthly income limit considered SGA for non-blind individuals is $1,130.00.

Petitioner credibly denied performing current employment; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA. Accordingly, the disability analysis may proceed to the second step.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational requirement.

20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id*.

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

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

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

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

A Psychiatric Evaluation (Exhibit 1, pp. 45-47, 72-74) dated [redacted], from a treating psychiatrist was presented. It was noted Petitioner appeared for an annual evaluation. It was noted Petitioner completed drug treatment in August 2012 and was currently in the transitional program. A history of cocaine abuse was noted. Mental status examination findings were normal other than an anxious mood and limited insight. An Axis I diagnosis of depressive disorder was noted. A guarded prognosis was noted. Petitioner's GAF was noted to be 55. Prescriptions for Celexa and Seroquel were noted.

A Psychiatric Evaluation (Exhibit 1, pp. 43-44, 70-71, 108) dated [redacted], from a treating psychiatrist was presented. It was noted Petitioner reported hearing a new and distressful voice. Petitioner was noted to be attending mental health treatment four times per week. Petitioner's GAF was noted to be 45.

A rehabilitation physician letter (Exhibit 1, pp. 55-56, 98-99) dated [redacted], was presented. It was noted Petitioner presented for initial treatment for back pain and bilateral foot numbness. A history of herniated discs and scoliosis was noted. It was noted Petitioner smoked a pack of cigarettes per day. Petitioner was noted to be 5'7" while weighing 238 pounds. It was noted Petitioner walked with a cane. It was noted Petitioner was guarded with ambulation. Petitioner was noted to be "very slow" with sit-to-stand. A plan of prescribing Norco and switching from Flexeril to Cymbalta was noted.

A rehabilitation physician letter (Exhibit 1, p. 52, 97) dated [redacted], was presented. Ongoing Petitioner treatment for chronic back pain and paresthesia of the feet were noted.

A rehabilitation physician letter (Exhibit 1, p. 52, 95) dated [redacted], was presented. It was noted an EMG was negative and there was no evidence of neuropathy or radiculopathy. It was noted Petitioner needed to quit smoking to improve breathing and to reduce pain.

Physician office visit notes (Exhibit 1, pp. 48-49, 57-58, 87-92) dated [redacted], [redacted] were presented. An SpO2 of 92% of resting room air was noted. An SpO2 of 86% of exertional room air was noted. It was noted that Petitioner was hypoxic. It was noted Petitioner was a smoker. Unspecified treatments were noted to have tried and failed. A recommendation of oxygen for home use was noted.

A Mental Residual Functional Capacity Assessment (Exhibit 1, pp 105-107) dated [redacted] was presented. The form was not noteworthy because it was signed by a person with unknown credentials.

A rehabilitation physician letter (Exhibit 1, p. 53, 96) dated [redacted], was presented. It was noted Petitioner reported paresthesia improved with Cymbalta. A switch from Norco to Percocet was noted to reduce pain. It was noted Petitioner used a cane and was guarded with back mobility. It was noted Petitioner was supposed to always use oxygen when leaving the home, but she did not always use it.

A Medical Summary Report (Exhibit 1, pp. 61-67, 80-86) from Petitioner's AHR was presented. Petitioner's AHR is also a specialist from Petitioner's treating mental health agency. Petitioner's AHR noted Petitioner was homeless for 5 years, until she moved into transitional housing for 23 months. Petitioner was noted to have moved into her own residence with the assistance of government subsidy. It was noted Petitioner reported recurring back pain, restless sleep due to audio hallucinations, leg tremors, and limited mobility. It was noted Petitioner reported her parents made her gamble and

drink alcohol when she was only 7 years old. It was noted Petitioner reported she used to see visions of a screaming white woman; it was noted the hallucination stopped once her pastor blessed her apartment.

Rehabilitation physician office visit notes (Exhibit 1, pp. 50-51, 93-94) dated [redacted], [redacted] was presented. It was noted Petitioner was currently undergoing physical therapy related to back pain and paresthesia. It was noted Petitioner had difficulty with ambulation. It was noted Petitioner was not performing recommended daily exercises. It was noted Petitioner needed a weight loss program. Strength was noted to be 4+/5. Curvature of the spine was noted. Bilateral crepitus was noted in Petitioner's knees. Impressions of back pain (with stenotic type picture) and scoliosis were noted. A specialized crutch to help Petitioner stand up straighter was noted as provided.

A Psychiatric/Psychological Examination Report (Exhibit 1, pp. 22-24) was presented. The report was undated but is presumed to have been completed shortly after [redacted], the creation date of the MDHHS form. The form was signed by a social worker and psychiatrist with an unstated history of treating Petitioner. A diagnosis of schizoaffective disorder was noted. Petitioner's GAF was noted to be 45.

A Mental Residual Functional Capacity Assessment (Exhibit 1, pp. 25-26) was presented. The assessment was noted as completed by a treating psychiatrist on [redacted], based on an examination completed on [redacted]. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". It was noted that Petitioner was markedly restricted in the following abilities:

- Remembering locations and other work-like procedures
- Understanding and remembering detailed instructions
- Carrying out simple 1-2 step directions.
- Maintaining concentration and attention for extended periods
- Sustaining an ordinary routine without supervision
- Making simple work-related decisions
- Interacting appropriately with the general public
- Asking simple questions or requesting assistance
- Accepting instructions and responding appropriately to criticism
- Getting along with others without exhibiting behavioral extremes
- Maintaining socially appropriate behavior and adhering to general cleanliness standards
- Being aware of normal hazards and taking appropriate precautions

Two pages of a Medical Examination Report (Exhibit 1, pp. 27-28, 33-34) dated [redacted], [redacted] was presented; the second page of the form was not presented. The form was completed by an internal medicine physician with an approximate 20-month history of treating Petitioner. Petitioner's physician listed diagnoses of back pain and joint pain. It

was noted that Petitioner can meet household needs. It was noted that unstated exertional restrictions were justified based on Petitioner's history of kyphosis/scoliosis.

A Psychiatric Evaluation (Exhibit 1, pp. 41-42, 68-69) dated [redacted], from a treating psychiatrist was presented. Petitioner was noted to be attending mental health treatment four times per week. It was noted Petitioner reported hearing a new and distressful voice. Poor sleep was also reported. An Axis I diagnosis of schizoaffective disorder was noted. Petitioner's GAF was noted to be 48.

A mental status examination report (Exhibit 1, pp. 35-39) dated [redacted], was presented. The report was noted as completed by a consultative licensed psychologist and a limited licensed psychologist. Petitioner reported a history of "serious" crack cocaine addiction. Petitioner reported she lived on the streets for many years. Petitioner reported that she was raped while homeless. It was noted Petitioner reported being clean of drugs for 3-4 years. Petitioner reported she has a recurring hallucination of a white woman named Beth who tells Petitioner what to do. It was noted Petitioner was unable to answer questions because of voices she was hearing. Petitioner was noted to be a poor historian.

Petitioner alleged disability, in part, due to knee dysfunction and pain. Petitioner testified she received injections in her left knee every 3 months. Petitioner testified the injections alleviate her pain only for a day. Petitioner testified pain medications of Percocet and Soma help to reduce pain.

Petitioner testified she is schizophrenic. Petitioner testified she hears "all kind of" voices. Petitioner testified that there are so many voices in her head she is unsure what any of them are saying.

Petitioner testified she has back pain. Petitioner testified it is related to scoliosis. Petitioner testified she began noticing back pain in the 1980s. Petitioner testified her pain is also related to a 2012 incident when she fell out of a transportation van.

Petitioner testified she's had ongoing breathing difficulties. Petitioner testified she's been on oxygen for the past year. Petitioner testified she is an ongoing cigarette smoker despite her physician's recommendations to quit.

Petitioner established a variety of exertional and non-exertional restrictions. Presented documents sufficiently established a degree of concentration, lifting/carrying, and ambulation restrictions which have lasted longer than 90 days. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

The third step of the sequential analysis requires determining whether the Petitioner's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a petitioner's impairments are listed and deemed to meet the durational requirement, then the petitioner is deemed disabled. If

the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

Petitioner alleged disability, in part, based on schizoaffective disorder and related symptoms. The applicable disorder reads as follows:

> **12.03** ***Schizophrenic, paranoid and other psychotic disorders***: Characterized by the onset of psychotic features with deterioration from a previous level of functioning.
> The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.
> A. Medically documented persistence, either continuous or intermittent, of one or more of the following:
> 1. Delusions or hallucinations; or
> 2. Catatonic or other grossly disorganized behavior; or
> 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
> a. Blunt affect; or
> b. Flat affect; or
> c. Inappropriate affect; OR
> 4. Emotional withdrawal and/or isolation;
> AND
> B. Resulting in at least two of the following:
> 1. Marked restriction of activities of daily living; or
> 2. Marked difficulties in maintaining social functioning; or
> 3. Marked difficulties in maintaining concentration, persistence, or pace; or
> 4. Repeated episodes of decompensation, each of extended duration;
> OR
> C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
> 1. Repeated episodes of decompensation, each of extended duration; or
> 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
> 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Treatment records indicated marked restrictions to performing numerous work abilities, a GAF indicative of disability, and reported symptoms that would make any type of employment improbable. Petitioner's reported family history included a sister who reportedly died from hearing voices (see Exhibit 1, p. 46). Presented psychological treatment records and testimony were highly suggestive that Petitioner's psychological symptoms amount to marked restrictions in social function, concentration and/or ADL performance. The consultative examination report from December 2015 suggested very differently.

The psychological examiner opined that Petitioner was "greatly exaggerating" her symptoms and hallucinations because she would suddenly stop behaving as if she was hearing voices. The examiner also noted Petitioner was not behaving in an unusual manner while waiting in the lobby or following the interview. It was also noted Petitioner had not been psychiatrically hospitalized. The examiner stated that a diagnosis of schizoaffective disorder was unsupported. The examiner stated that Petitioner was minimally capable of following simple tasks in a structured work environment. A diagnosis of adjustment disorder was noted.

Petitioner's AHR presented arguments to undermine the examiner's conclusions. For example, Petitioner's AHR alleged the mental status report stated Petitioner used public transportation. Petitioner denied making such a statement to the examiner. Petitioner's AHR argued that Petitioner would never utilize public transportation. Based on what he was told by Petitioner, Petitioner's AHR contended the examiner understated Petitioner's symptoms, essentially based on some spiteful reason.

There are questionable characteristics of Petitioner's illness. For example, Petitioner alleged a slew of psychological symptoms, yet has no history of psychological hospitalizations. It is hard to imagine if Petitioner's hallucinations are as vivid and violent as Petitioner claims, at least one hospitalization would have been necessary.

There were no established hospitalizations or doctor visits even tangential to psychological disorders. For example, the way Petitioner described her fights with her hallucinations, it would be reasonable for Petitioner to sustain some type of injury. No such injuries were documented within medical records.

It is also unusual for Petitioner to claim to have frequent hallucinations despite several years of treatment. Essentially, Petitioner alleged that medications and treatment have done little to reduce her hallucinations. Petitioner's AHR presented a possible explanation. Petitioner's AHR stated Petitioner was more heavily medicated in the past (presumably eliminating or reducing hallucinations) but she was so lethargic that her medication was reduced.

Petitioner's living situation is not particularly compatible with frequent hallucinations. Petitioner lives alone. She stated she receives help with ADLs though this seems to be due to exertional restrictions and not due to psychological problems.

During the hearing, Petitioner had to pause because of the reported many voices in her head. Similar to what the examiner noted, Petitioner displayed no apparent difficulties with speaking or listening outside of the brief pause.

It was also curious that Petitioner testified she does not attend therapy. It is difficult to appreciate why someone experiencing frequent hallucination would not attend therapy. One possible explanation was provided in the mental status examination report which stated Petitioner was not attending therapy so she can deal with her medical problems. Based on the numerous atypical patterns in Petitioner's psychological claims, it is found Petitioner does not meet schizoaffective disorder listing requirements.

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

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

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

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

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

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Petitioner testified she last worked in 2011. Petitioner testified that her job lasted 4 hours before she quit due to body pain.

Petitioner testified she also tried working in 2007. Petitioner testified her job lasted 2 days.

Petitioner testified she worked for several years as a self-employed hair stylist. Petitioner testimony was not indicative that the self-employment income amounted to SGA earnings. A report from Petitioner's AHR stated that Petitioner reported earnings of $250/week from 2001-2010. If the report is accurate, Petitioner's earnings would qualify as SGA.

Hair stylist is classified by the Dictionary of Occupational Titles as light employment. The determination as to whether Petitioner can perform light employment will be reserved for the final step of the analysis.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id*.

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered non-exertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Petitioner's age, education and employment history a determination of disability is dependent on Petitioner's ability to perform light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

Petitioner testified she can only walk 7-8 feet before losing her breath. Petitioner testified she is capable of standing for 5 minutes before back and left-leg pain prevent further standing. Petitioner testified she can only sit for 15 minutes before needing to lie on her right side (Petitioner stated this after sitting for 37 minutes in the hearing). Petitioner testified she uses a cane, though she needs a specialized cane which she cannot afford.

Petitioner testified she is unable to take a bath because she cannot get out of the tub. Petitioner testified she can dress herself but her blouses must be loose or have buttons, otherwise she cannot get them over her head. Petitioner testified she is unable to clean or shop due to medical conditions and her family does it for her. Petitioner testified she can cook, but does it while sitting. Petitioner's testimony was highly indicative of exertional restrictions preventing the performance of light employment.

Physician statements of Petitioner restrictions were not presented. Restrictions can be inferred based on presented documents.

It was verified Petitioner requires the use of supplemental oxygen. Loss of strength was verified. A need for physical therapy and a diagnosis for scoliosis were noted; spinal stenosis was not verified but was suggested. Treatment for bilateral foot numbness was verified. Treatment for knee pain and crepitus were verified.

Presented documents were highly indicative that Petitioner was not capable of performing light employment. Before a disability finding is finalized, Petitioner's contributions to her restrictions must be considered.

Petitioner conceded she was a smoker. At the time of hearing, Petitioner weighed 257 pounds; her physiatrist recommended Petitioner attend a weight loss program, which there is no record of occurring. Petitioner reportedly did not utilize supplemental oxygen when she left the home. Petitioner did not attend ongoing therapy despite allegedly persistent hallucinations. Petitioner was reportedly also not performing recommended motion exercises.

Petitioner's medical history was rampant with noncompliance. Despite Petitioner's seeming unwillingness to improve her physical conditions, Petitioner's conditions appear to be numerous and severe to support finding Petitioner is potentially capable of performing light employment. If Petitioner quit smoking, Petitioner's breathing would likely improve. If Petitioner regularly attended a weight loss program, ambulation would likely improve. If Petitioner performed recommended exercises, Petitioner's back pain may reduce. None of the improvements would directly improve Petitioner's knee function. None of the improvements would likely allow Petitioner to perform 6 hours a day of standing in a work setting. It is found Petitioner is restricted to performing sedentary employment.

Based on Petitioner's exertional work level (sedentary), age (approaching advanced age), education (high school equivalency with no direct entry into skilled work), employment history (unskilled), Medical-Vocational Rule 201.12 is found to apply. This rule dictates a finding that Petitioner is disabled. Accordingly, it is found that MDHHS improperly found Petitioner to be not disabled for purposes of SDA benefits.

DECISION AND ORDER

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

(1) reinstate Petitioner's SDA benefit application dated [redacted];

(2) evaluate Petitioner's eligibility subject to the finding that Petitioner is a disabled individual;
(3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
(4) schedule a review of benefits in one year from the date of this administrative decision, if Petitioner is found eligible for future benefits.

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

CG/hw

Christian Gardocki
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

Authorized Hearing Rep. [redacted]

DHHS [redacted]

[redacted]

Petitioner [redacted]