RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: April 28, 2016
MAHS Docket No.: 16-000498
Agency No.: [redacted]
Petitioner: [redacted]

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 March 2, 2016, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by [redacted], Eligibility Specialist/Medical Contact Worker.

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 medical documents referenced by the Disability Determination Service (DDS) in the Disability Determination Explanation (Exhibit A, pp. 27-90) were received and marked and admitted into evidence as Exhibit C and the DHS-49D, psychiatric/psychological evaluation, and DHS-49E, mental residual functional capacity assessment, was received and marked into evidence as Exhibit E. The record closed, 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 July 17, 2015, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On November 19, 2015, the Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 23-26).

3. On December 9, 2015, the Department sent Petitioner a Benefit Notice denying the application based on MRT's finding of no disability (Exhibit A, pp. 3-6).

4. On January 15, 2016, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 3-6).

5. Petitioner alleged disabling impairment due to low back pain, high blood pressure/hypertension (HTN), thyroid issues, chest pain, depression, and mood swings.

6. On the date of the hearing, Petitioner was 40 years old with a [redacted] birth date; she is [redacted] in height and weighs about [redacted] pounds.

7. Petitioner completed the [redacted] grade. She can read and write some and do some basic math.

8. Petitioner has an employment history of work as a machine operator and caregiver.

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 Health and 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.

The Department initially denied Petitioner's April 1, 2015 SDA application for failure to provide requested information. In a Hearing Decision issued October 8, 2015, the Department's decision was reversed and the Department was ordered to reprocess the application (Exhibit D). The current hearing concerns a July 17, 2015 application submitted by Petitioner. The Department denied this application on the basis that Petitioner was not disabled (Exhibit A, pp. 2-5).

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 low back pain, HTN, thyroid issues, chest pain, depression, and mood swings. The medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below. Page references from Exhibit C are from the top left corner of the document.

On May 12, 2014, Petitioner was seen at the hospital following a motor vehicle accident. An exam showed tenderness at the right shoulder, right hip, and abdomen. Range of motion of the shoulder and hip were normal and there was no swelling, effusion, crepitus, deformity, laceration or spasm. There was no rib deformity or tenderness. X-rays were negative. (Exhibit C, pp. 208-210, 238.) On March 24, 2014; June 3, 2014; June 11, 2014; and November 3, 2014, Petitioner was seen at the emergency department complaining of chronic back and bilateral leg pain. Each time she was advised to follow up with her pain clinic. (Exhibit C, pp. 258-274, 296.)

On June 29, 2014, Petitioner went to the emergency department with left-sided facial contusion, edema and excoriations, left-side face pain, and lower back pain. A CT of the head, face, chest, abdomen, and pelvis showed old rib fractures but were otherwise normal. (Exhibit C, pp. 211-219, 239, 241-247.)

An August 15, 2014 MRI of Petitioner's right knee showed no evidence of a meniscal tear but showed anteromedial femoral condyle osteochondral fracture and defects with

regional bone marrow edema. An MRI of the left knee showed no internal derangement. (Exhibit A, p. 17; Exhibit C, pp. 446-447).

On January 7, 2015, Petitioner was seen at the emergency department complaining of back pain with spasms radiating to the bilateral lower extremities. A CT of the thoracic and lumbar spine showed vertebral body heights and alignment were maintained and no acute fracture or dislocation of the lumbar spine. There were also multilevel spondylotic changes in the lumbar spine unchanged since June 29, 2014. It was noted that at L5-S1 there was degenerative disc disease, intervertebral disc space narrowing, endplate sclerosis, and broad-based posterior calcified broad-based disc complex, facet arthropathy, and at least moderate bilateral foraminal narrowing. It was observed that a CT scan of the spine showed chronic changes but nothing new or acute. It was noted that Petitioner was able to ambulate with her cane. (Exhibit C, pp. 219-222, 248-249.)

On March 23, 2015, Petitioner was examined by the emergency department following complaints of chest pain. All lab results were within normal limits and she was discharged. (Exhibit C, pp. 222-224, 250-251.)

On May 7 and May 9, 2015, Petitioner went to the emergency department complaining of bilateral lower extremity swelling. An ultrasound showed no sonographic evidence of deep venous thrombosis in either lower extremity. (Exhibit C, pp. 275, 285-291).

On May 27, 2015, Petitioner returned to the emergency department complaining of knee pain, arm pain, and lower lumbar pain. She advised staff that she took gabapentin, norco, and flexeril for pain relief but nothing was working. A physical exam showed bilateral paraspinal tenderness and an antalgic gait. It was observed that her condition was likely uncontrolled pain as there were no red flag symptoms to indicate cauda or radiculopathy. She was provided toradol valium for symptomatic relief. (Exhibit C, pp. 225-227.)

Documentation showed that Petitioner participated in physical therapy for back and right leg pain from January 3, 2015 to July 2015. She reported pain with prolonged standing and headaches. (Exhibit C, pp. 125-194.)

A February 20, 2015 psychiatric evaluation found that Petitioner's presentation was unremarkable; her emotional state was appropriate though she reported being depressed, irritable and having sleep disturbance; her speech was unremarkable; her stream of mental activity was normal, her thought processes was unremarkable, her thought content was unremarkable, her concentration was normal; her memory was intact; and her judgment was fair. She denied any hallucinations. She was diagnosed with major depressive disorder, recurrent, severe without psychosis and assigned a global assessment function (GAF) score of 55. It was noted that Petitioner's compliance with her treatment had been intermittent, with missed appointments and failure to consistently take prescribed medications. Her prognosis was identified as good/fair with treatment. (Exhibit A, pp. 389-395.) Petitioner's medical record includes

progress notes from August 2014 to October 2015 from her therapy sessions at her mental health provider (Exhibit A, p. 19; Exhibit C, pp. 329-388, 405-441).

On October 17, 2015, a licensed psychologist examined Petitioner at the Department's request and prepared a mental status examination report. The doctor noted that Petitioner had a labile affect, depressed mood, and low self-esteem. Her thought process was spontaneous and mostly logical. She was anxious and fidgety. She was oriented to time, date, person, and place. She had no significant problems with immediate recall or with recent and remote memory or with simple mental calculations. The psychologist diagnosed her with major depressive disorder, mild, recurrent episode. He concluded as follows:

> Based upon today's examination it is determined that [Petitioner] exhibits at least slight deficits in basic vocabulary, general information, judgment, and abstract thinking. Her ability to perform simple mental calculations is intact. She should be able to perform work that involves following simple verbal directions with sufficient supervision. However, [Petitioner] exhibits symptoms of a psychiatric disorder that is only moderately well controlled at this time. Her ability to work will be impacted by her ability to manage these symptoms as well as any physical or medical limitations.

The psychologist also concluded that Petitioner would have no significant difficulty managing available benefit funds independently. (Exhibit C, pp. 115-120.)

On March 17, 2016, Petitioner's psychiatrist completed a psychiatric/psychological examination report, DHS-49D, diagnosing Petitioner with major depression without psychosis and assigned her a general assessment of functioning (GAF) score of 55. The doctor noted that Petitioner was oriented to person, place and time but had slight issues with memory and she had a depressed mood, sleep problems, a lack of worthiness since children, irritability, and concentration problems. (Exhibit E.)

Petitioner's psychiatrist also completed a mental residual functional capacity assessment, DHS-49-E, on March 17, 2016 regarding Petitioner's mental impairments and how they affected her activities. The psychiatrist concluded that Petitioner had **no, or no significant,** limitations regarding her ability to ask simple questions or request assistance; maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; and be aware of normal hazards and take appropriate precautions. The psychiatrist concluded that Petitioner had **moderate** limitations regarding her ability to interact appropriately with the general public; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; travel in unfamiliar places or use public transportation; and set realistic goals or make plans independently of others. The psychiatrist concluded that Petitioner had **marked** limitations regarding her ability to remember locations and work-like procedures; understand and remember one or two-step instructions; understand and remember detailed instructions; carry out simple one or two step instructions; carry out detailed

instructions; maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; sustain an ordinary routine without supervision; work in coordination with or proximity of others without being distracted by them; make simple work-related decision; complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods; accept instructions and respond appropriately to criticisms from supervisors; and respond appropriately to change in the work setting. The doctor noted that Petitioner needed assistance understanding things because she got confused and could be irritable and misread other people and start yelling. He added that her depressed mood and stress interfered with her ability to complete tasks. (Exhibit E.)

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.

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, listings 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), 9.00 (endocrine disorders), 4.04 (ischemic heart disease), and 12.04 (affective disorders) were considered. 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. Therefore, 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).

In this case, Petitioner alleged exertional limitations due to her condition. She testified that her back and leg pain had gotten worse since her 2014 car accident and she wore a knee brace, back brace and used a cane to walk. She admitted that medications helped with her back pain but she needed to go to the emergency department for an injection when the medication did not work. She could sit for about an hour and could stand though she sometimes lost her balance. She could lift about ten pounds without difficulty. Sometimes her hands swelled, affecting her ability to grip and grasp. Her thyroid problems affected her appetite. She lived with her grandmother. Her sister and aunt helped her get in and out of the tub and with household chores though she admitted she could do some chores, like washing dishes or preparing simple meals. She could shop, although it depended on the day.

The medical evidence included a January 7, 2015 CT scan of Petitioner's lumbar spine showed spondylotic changes with of note at L5-S1, degenerative disc disease, intervertebral disc space narrowing, endplate sclerosis, and broad-based posterior calcified broad-based disc complex, facet arthropathy, and at least moderate bilateral foraminal narrowing. Petitioner was engaged in physical therapy for her back and right leg pain. At [redacted] and [redacted] pounds, Petitioner has a body mass index (BMI) of [redacted]

putting her in the obese BMI range. Petitioner's obesity negatively impacts her musculoskeletal impairments and further supports Petitioner's testimony concerning her back and leg pain. However, as Petitioner admitted, her medications help with her pain level. She is also able to do some activities of daily living without assistance.

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 sedentary work as defined by 20 CFR 416.967(a).

Petitioner also alleged nonexertional limitations. When 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 addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. Id. The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. Id.

In this case, Petitioner testified that she suffered from depression and mood swings that caused loss of concentration, scattered thoughts, and crying spells. She got together with her family but did not like to be in public.

The record shows that in a February 20, 2015 psychiatric evaluation, Petitioner was diagnosed with major depressive disorder, recurrent, severe without psychosis. The psychologist noted that Petitioner reported being depressed, irritable and having sleep disturbance, but he observed that she had normal stream of mental activity, unremarkable thought processes and content; normal concentration; intact memory; and fair judgment. She denied any hallucinations. There was concern that her compliance with treatment was intermittent and medication compliance was not

consistent. In the October 17, 2015 mental status examination by the consulting psychologist diagnosed Petitioner with major depressive disorder, mild, recurrent episode, finding that her thought process was spontaneous and mostly logical; she was oriented to time, date, person, and place; and she had no significant problems with immediate recall or with recent and remote memory or with simple mental calculations.

In contrast to the independent medical consultant, Petitioner's psychiatrist concluded that Petitioner had marked limitations in her understanding and memory and her sustained concentration and persistence, even in understanding, remembering, and carrying out simple one and two step instructions. He also indicated that she had marked limitations in abilities necessary in a work environment such as performing activities within a schedule, sustaining an ordinary routine without supervision, working in proximity to others, and completing a normal workday without interruptions from psychologically based symptoms. Because Petitioner's psychiatrist is a treating source, it is entitled to great weight. SSR 96-2p. It is noted that even the independent medical examiner found that Petitioner had at least slight deficits in basic vocabulary, general information, judgment, and abstract thinking and exhibited symptoms of a psychiatric disorder that was only moderately well-controlled and he concluded that Petitioner's ability to work would be impacted by her ability to manage her symptoms as well as any physical or medical limitations. At the hearing, there were limitations apparent in Petitioner's ability to understand and engage in conversation.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner's has nonexertional limitations due to her mental condition that result in mild limitations on her activities of daily living; moderate limitations on her social functioning; and marked limitations on her concentration, persistence or pace. There are no episodes of decompression identified on the record.

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 machine operator and caregiver. Petitioner's employment as a caregiver involved lifting up to 100 pounds and, as such, is properly categorized as heavy work. Her

employment as a machine operator involved standing eight hours daily and regularly lifting up to 20 pounds and is properly categorized as light work. Based on the RFC analysis above, Petitioner's exertional RFC limits her to sedentary work activities. Based on her exertional limitations, Petitioner is unable to perform past relevant work. Accordingly, Petitioner cannot be found disabled, or not disabled, at Step 4 and 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). 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).*

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 and at the time of hearing, and thus considered to be a younger individual (age 18-44) for purposes of Appendix 2. She completed the [redacted] grade and has some limitations on her ability to read, write and do basic math. Her prior relevant work involved unskilled labor. As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities. In this case, the Medical-Vocational Guidelines, 201.24, result in a finding that Petitioner is not disabled based on exertional limitations.

However, Petitioner also has nonexertional limitations due to her mental condition that result in mild limitations on her activities of daily living; moderate limitations on her social functioning; and marked limitations on her concentration, persistence or pace. Petitioner's nonexertional RFC of marked limitations in concentration, persistence and pace precludes her from engaging in in basic work activities on a sustained basis. Therefore, Petitioner is not able to adjust to other work due to her nonexertional limitations. Accordingly, based on her mental RFC, Petitioner is found disabled at Step 5 for purposes of the SDA benefit program.

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 SDA benefit program.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING 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. Reregister and process Petitioner's July 17, 2015 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;

2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;

3. Review Petitioner's continued eligibility in October 2016.

ACE/tlf

Alice C. Elkin
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

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]