



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: October 6, 2016
MAHS Docket No.: 16-009676
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 September 6, 2016, from Lansing, Michigan. [REDACTED], the Petitioner appeared on her own behalf. [REDACTED], boyfriend, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor.

The following Exhibits were entered into the record during the hearing:

- o February 29, 2016, Assistance Application (Exhibit A, pp. 1-20)
- o Undated portion of the Medical-Social Eligibility Certification form, Medical Review Team/Disability Determination Services (MRT/DDS) determination (Exhibit B, p. 21)
- o June 7, 2016, Social Security Administration (SSA) Disability Determination Explanation (Exhibit B, pp. 22-33)
- o June 7, 2016, SSA Disability Determination Explanation (Exhibit B, pp. 34-47)
- o March 22, 2016, Medical Examination Report from [REDACTED] (Exhibit C, pp. 48-50)
- o March 10, 2016, Medical-Social Questionnaire (Exhibit D, pp. 51-54)
- o March 10, 2016, Activities of Daily Living (Exhibit E, pp. 55-59)
- o March 10, 2016, Work History Questionnaire (Exhibit F, pp. 60-65)
- o June 8, 2016, SSA Document Index (Exhibit G, p. 66)
- o May 23, 2016, consultative medical evaluation report (Exhibit G, pp. 67-73)
- o June 8, 2016, SSA Document Index (Exhibit G, pp. 74-75)
- o February 10, 2016, and March 10, 2016, application documents for SSA disability benefits (Exhibit G, pp. 76-93)

- May 16-17, 2016, documentation of notices for the May 23, 2016, consultative internal medical exam (Exhibit G, pp. 94-101)
- April 22, 2016, correspondence from Petitioner's SSA disability Claim Representative to SSA (Exhibit G, pp. 102-109)
- March 23, 2016, SSA Function Report-Adult-Third Party (Exhibit G, pp. 110-121)
- March 21, 2016, SSA Work History Report (Exhibit G, pp. 122-134)
- March 21, 2016, SSA Function Report-Adult (Exhibit G, pp. 135-147)
- March 10, 2016, Medical-Social Questionnaire (Exhibit G, pp. 148-152)
- March 10, 2016, Activities of Daily Living (Exhibit E, pp. 153-158)
- March 10, 2016, Work History Questionnaire (Exhibit F, pp. 159-165)
- February 10, 2016, and March 10, 2016, Authorizations to Release Information to the SSA (Exhibit G, pp. 166-169)
- February 29, 2016, SSA Work Activity Report-Employee (Exhibit G, pp. 170-177)
- March 17, 2016, SSA Report of SGA Determination (Exhibit G, pp. 178-181)
- March 16, 2016, correspondence from SSA to Petitioner to complete forms (Exhibit G, pp. 182-266)
- Undated SSA Disability Report-Adult (Exhibit G, pp. 267-277)
- March 10, 2016, SSA Disability Report-Field Office (Exhibit G, pp. 278-280)
- June 7, 2016, SSA Case Development Sheet (Exhibit G, pp. 281-287)
- April 2016, records from [REDACTED] (Exhibit G, pp. 288-331)
- February 2016 through March 2016, records from [REDACTED] (Exhibit G, pp. 332-340)
- July 2015 through March 2016, lab reports from [REDACTED] (Exhibit G, pp. 341-353)
- January 2016, records from [REDACTED] (Exhibit G, pp. 354-369)
- July 2015 through February 2016, imaging and testing reports from [REDACTED] (Exhibit G, pp. 370-383)
- July 2015 through February 2016, records from [REDACTED] (Exhibit G, pp. 384-428)
- February 2016, records from [REDACTED] with included older records from other medical providers (Exhibit G, pp. 429-473)
- July 2015 through March 2016, records from [REDACTED] (Exhibit G, pp. 474-492)
- October 2014, through February 2016, lab, imaging, and testing reports from [REDACTED] (Exhibit G, pp. 493-529)
- October 2014, through February 2016, records from [REDACTED] (Exhibit G, pp. 530-577)
- July 2015 through January 2016, lab, imaging, and testing reports from [REDACTED] (Exhibit G, pp. 578-588)
- June 9, 2016, Notice of Case Action (Exhibit H, pp. 589-592)

- o August 11, 2016, Physical Assessment from [REDACTED]
(Exhibit I, pp. 593-594)

ISSUE

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

FINDINGS OF FACT

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

1. On February 29, 2016, Petitioner applied for SDA. (Exhibit A, pp. 1-20)
2. On June 7, 2016, the MRT/DDS found Petitioner not disabled. (Exhibit B, pp. 21-47)
3. On June 9, 2016, the Department notified Petitioner of the MRT determination. (Exhibit H, pp. 589-592)
4. On July 18, 2016, the Department received Petitioner's timely written request for hearing. (Hearing Request)
5. Petitioner alleged disabling impairments including osteoarthritis and pinched nerves in neck and back, carpal tunnel, asthma, heart issues, breast cancer, thyroid, high blood pressure, sleep apnea, and acid reflux. (Exhibit D, pp. 51-54; Petitioner Testimony)
6. At the time of hearing, Petitioner was 55 years old with a [REDACTED], birth date; was 5' 6.5" in height; and weighed 191 pounds. (Petitioner Testimony)
7. Petitioner completed the 12th grade and has a work history including grocery store cashier, grocery store stocker, and party store clerk. (Petitioner Testimony)
8. Petitioner's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

CONCLUSIONS OF LAW

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

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

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

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed

impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Petitioner is not involved in substantial gainful activity. Therefore, Petitioner is not ineligible for disability benefits under Step 1.

The severity of the Petitioner's alleged impairment(s) is considered under Step 2. The Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;

4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Petitioner's age, education, or work experience, the impairment would not affect the Petitioner's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleged disabling impairments including osteoarthritis and pinched nerves in neck and back, carpal tunnel, asthma, heart issues, breast cancer, thyroid, high blood pressure, sleep apnea, and acid reflux. (Exhibit D, pp. 51-54; Petitioner Testimony)

October 2014 through February 2016, records from [REDACTED] document diagnosis and treatment of multiple conditions, including carpal tunnel syndrome, hypertension, obesity, hypothyroidism, low back pain, sciatica, chest tightness or pressure, nocturnal hypoxia, snoring, hyperlipidemia, cervicalgia, and left breast cancer. (Exhibit G, pp. 535-577) A July 28, 2015, record documents decreased flexion in the cervical spine and spine. (Exhibit G, p. 562-564) A September 29, 2015, records shows that after review of the radiology reports, Petitioner was referred for physical therapy for cervicalgia and low back pain. (Exhibit G, pp. 565-566)

[REDACTED], cervical and lumbar spine x-rays showed: moderate bilateral neuroforaminal narrowing at C5-C6 and mild to moderate bilateral neuroforaminal narrowing at C6-C7; and mild to moderate degenerative changes on the lumbosacral spine, worst in the lower lumbar spine. (Exhibit G, pp. 377-378 and 491-492)

[REDACTED], MRI of the cervical spine showed: broad based disc osteophyte complexes effacing the anterior CSF space at C5-6 and C6-7 levels without significant spinal stenosis, mild left neuroforaminal narrowing at C6-7 level; and small disc osteophyte complexes at C3-4 and C4-5 levels effacing the anterior CSF space. (Exhibit G, p. 517 and 583)

An [REDACTED], MRI of the lumbar spine showed: circumferential disc osteophyte complex with superimposed central disc extrusion causing deformity of the thecal sac at

L4-5 level; right paracentral disc protrusion at L2-3 level causing mild right neuroforaminal narrowing; and nonspecific edema in the subcutaneous fat. (Exhibit G, p. 519 and 584)

July 2015 through February 2016, records from the heart and vascular specialist document treatment for heart disease, including cardiac testing, the cardiac catheterization with stent placement in January 2016, and pre-operative clearance consideration for breast cancer treatment. (Exhibit G, pp. 390-428) The need to wait three months for breast surgery after the stent placement was noted in a [REDACTED], letter. (Exhibit G, pp. 393-394)

On [REDACTED], Petitioner underwent a left breast biopsy. (Exhibit G, pp. 357-369) The final diagnosis on the Surgical Pathology Report documented an invasive component in addition to the in-situ ductal carcinoma. (Exhibit G, pp. 357-358 and 481-485)

On [REDACTED], Petitioner underwent cardiac catheterization with stent placement in the diagonal branch for a 90% stenosis. (Exhibit G, pp. 355-356)

February 2016, records from [REDACTED] document diagnosis and the planned treatment for an early stage left breast cancer. (Exhibit G, pp. 435-473)

February and March 2016, records from [REDACTED] document diagnosis and treatment of breast cancer, working stage IA. (Exhibit G, pp. 33-340) A [REDACTED], record, in part, notes that Petitioner had been diagnosed on [REDACTED], with biopsy performed [REDACTED]. Due to recent cardiac stenting, Petitioner was unable to undergo surgery for several months. (Exhibit G, p. 333)

On March 22, 2016, a Medical Examination Report was completed by [REDACTED]. Diagnoses of hypertension, coronary artery disease, breast cancer, and neck and back pain were listed. The physical limitations section was partially completed. The marked limitations were lifting less than 10 pounds occasionally and never any greater weight, unable to use hands/arms for pushing/pulling and fine manipulating, and unable to use feet/legs for operating foot/leg controls. (Exhibit C, pp. 48-50)

An [REDACTED], stress EKG recommended a relook catheterization before planned breast surgery. (Exhibit G, p. 305-331)

An [REDACTED], cardiac catheterization showed a patent stent in the diagonal branch and moderate stenosis in the LAD best left to medical therapy. It was stated that Petitioner could proceed with the planned surgery. (Exhibit G, pp. 292-304)

On [REDACTED], Petitioner attended a consultative medical evaluation. Petitioner was noted to have mild difficulty with heel and toe walking, partially squatting and arising, balancing, and tandem walking. (Exhibit G, pp. 67-73) The report concludes "this 55-

year-old female is likely experiencing mechanical neck and back pain. She complained of back pain with straight leg raising. No evidence of nerve root irritation was appreciated. Limited motion in her left shoulder appears to be related to surgery performed on her left breast 10 days ago, and is expected to improve with time. She avoids certain positions and activities as a result of her pain. She did not require the use of an assistive device to ambulate. Digital dexterity loss was not appreciated.” (Exhibit G, p. 71)

On August 11, 2016, a Physical Assessment was completed by [REDACTED]. Listed diagnoses were cervical and lumbar radiculopathy. Limitations included: Petitioner’s symptoms would interfere with the attention and concentration required to perform simple work-related tasks constantly; Petitioner would need to recline or lie down during a typical 8 hour work day in excess of the typical 15 minute break in the morning, 30-60 minute lunch, and 15 minute break in the afternoon; Petitioner could sit up to 1 hour total and stand/walk 1 hour total in an 8 hour work day; Petitioner would need to take 4-6 unscheduled breaks of 25-30 minutes during an 8 hour work day; Petitioner is limited to lifting less than 10 pounds occasionally; and Petitioner would be estimated to be absent from work more than 4 times per month. (Exhibit I, pp. 593-594)

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented medical evidence establishing that she does have some limitations on the ability to perform basic work activities. The medical evidence has established that the Petitioner has an impairment, or combination thereof, that has more than a de minimis effect on the Petitioner’s basic work activities. Further, the impairments have lasted, or can be expected to last, continuously for 90 days; therefore, the Petitioner is not disqualified from receipt of SDA benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Petitioner’s impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The evidence confirms recent diagnosis and treatment of multiple conditions, including left breast cancer, coronary artery disease, cervicalgia, low back pain, radiculopathy, and hypertension.

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System, 4.00 Cardiovascular System, and 13.00 Cancer. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Petitioner cannot be found disabled, or not disabled, at Step 3; therefore, the Petitioner’s eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual’s residual functional capacity (“RFC”) is made. 20 CFR 416.945. An individual’s RFC is the most he/she can still do on a sustained basis despite the

limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are 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 (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional

aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The evidence confirms recent diagnosis and treatment of multiple conditions, including left breast cancer, coronary artery disease, cervicalgia, low back pain, radiculopathy, and hypertension. Petitioner's testimony indicated she can walk 20 minutes, stand 5 minutes, sit 10-20 minutes, and would have some difficulties lifting a full gallon of milk. Petitioner's testimony regarding her limitations is mostly supported by the medical evidence from the treating family practice provider and is found mostly credible. On both the March 22, 2016, Medical Examination Report and the August 11, 2016, Physical Assessment, limitations that would preclude performing the full range of sedentary work activities were indicated. For example, both indicate Petitioner is limited to lifting less than 10 pounds occasionally and never lifting 10 pounds or more. (Exhibit G, pp. 48-50 and 593-594) The nurse practitioner's opinion regarding the severity of Petitioner's impairments and how it affects her ability to function is supported by the evidence from the acceptable medical sources. After review of the entire record it is found, at this point, that Petitioner does not maintain the residual functional capacity to perform the full range of sedentary work activities as defined by 20 CFR 416.967(a) on a sustained basis.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is considered. 20 CFR 416.960(b)(3).

Petitioner has a work history including grocery store cashier, grocery store stocker, and party store clerk. In light of the entire record and Petitioner's RFC (see above), it is found that Petitioner is not able to perform her past relevant work. Accordingly, the Petitioner cannot be found disabled, or not disabled, at Step 4; therefore, the Petitioner's eligibility is considered under Step 5. 20 CFR 416.905(a).

In Step 5, an assessment of Petitioner's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, Petitioner was 55 years old and, thus, considered to be advanced age for disability purposes. Petitioner completed the 12th grade and has a work history including grocery store cashier, grocery store stocker, and party store clerk. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the

Petitioner to the Department to present proof that the Petitioner has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

The evidence confirms recent diagnosis and treatment of multiple conditions, including left breast cancer, coronary artery disease, cervicalgia, low back pain, radiculopathy, and hypertension. As noted above, Petitioner does not maintain the residual functional capacity to perform the full range of sedentary work activities as defined by 20 CFR 416.967(a) on a sustained basis.

After review of the entire record, and in consideration of the Petitioner's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, Petitioner is found disabled at Step 5.

In this case, the Petitioner is found disabled for purposes of SDA benefits as the objective medical evidence does establish a physical or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Petitioner's impairments did preclude work at the above stated level for at least 90 days.

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

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.

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Initiate a review of the application dated February 29, 2016, for SDA, if not done previously, to determine Petitioner's non-medical eligibility. The Department shall inform Petitioner of the determination in writing. The Department shall supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy. A review of this case shall be set for January 2017.

CL/mc



Colleen Lack

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

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

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

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

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

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

DHHS

[REDACTED]

Petitioner

[REDACTED]