



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: January 9, 2017  
MAHS Docket No.: 16-014661  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** C. Adam Purnell

### **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 November 16, 2016, from Lansing, Michigan. Petitioner appeared and testified on her own behalf. [REDACTED] Intern at [REDACTED], appeared as a witness for Petitioner. [REDACTED] Eligibility Specialist, and [REDACTED] Family Independence Manager, appeared on behalf of the Department of Health and Human Services (Department).

### **PROCEDURAL HISTORY**

The Department offered the following exhibits that were marked and admitted into evidence:

**Department's Exhibit No. 1** (pages 1 through 369) is a copy of Medical-Social Eligibility Certification (DHS-49-A), Medical-Social Questionnaire (DHS-49-F), Disability Determination Service records, and Petitioner's medical records from: [REDACTED], and Community Mental Health (CMH) of Central Michigan.

During the hearing, Petitioner waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. On November 17, 2016, the Administrative Law Judge issued an Interim Order which extended the record an additional 30 days for the submission of the following additional records: [REDACTED] (November 2015 to November 2016) and [REDACTED]. The deadline to file the additional records was December 17, 2016.

On or about December 5, 2016, the Department submitted the following additional exhibits: [REDACTED] (November 2015 to November 2016) and [REDACTED].

The additional exhibits were marked and admitted into evidence as:

**Department's Exhibit No. 2** (pages 370 through 391).

The record was closed following the expiration of the Interim Order period, which was December 17, 2016.

### **ISSUE**

Did the Department properly deny Petitioner's application for State Disability Assistance (SDA) based on the finding that she was not disabled?

### **FINDINGS OF FACT**

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

1. On March 9, 2016, the Department received Petitioner's application for SDA benefits alleging disability. [Dept. Exh. 1, p. 2].
2. On March 24, 2016, the Medical Review Team (MRT) denied Petitioner's application. [Dept. Exh. 1, p. 31].
3. On or about September 6, 2016, the Department caseworker sent Petitioner notice that her application was denied. [Dept. Exh. 1, pp. 65-68].
4. On October 6, 2016, Petitioner filed a request for a hearing to contest the Department's action.
5. A telephone hearing was held on November 16, 2016. During the hearing, Petitioner indicated that she had additional records and/or additional medical appointments that were relevant. The Administrative Law Judge held the record open to allow for Petitioner's additional records to be submitted. Petitioner consented and agreed to waive the time periods.
6. During the hearing, Petitioner stated that she had the following disabling impairments: fibromyalgia, chronic pain, general arthritis, agoraphobia, depression, anxiety, and bipolar disorder.
7. Petitioner alleged that she has pain everywhere including back, shoulder, hands, legs, feet and muscles, memory problems, inability to concentrate and mood swings. Petitioner stated that she cannot work due to the following: inability to stand, needs to sit, and that she does not care to be around people.

8. At the time of the hearing, Petitioner testified that she was 53 years-old with a birth date of [REDACTED]. Petitioner said that she was 4 feet 11 inches tall and weighed approximately 119 pounds. Petitioner stated that she is right-hand dominant.
9. At the time of the hearing, Petitioner stated that she lived in a shelter.
10. Petitioner stated during the hearing that she had her driver's license revoked in 2008 due to repeated convictions for drunk or impaired driving.
11. Petitioner testified that she has a high school education or the equivalent, but that she has a learning disability.
12. Petitioner is currently unemployed and testified that she did not have any significant past relevant work.
13. Petitioner's medical records show that she has the following medical conditions and/or treatment based on medically acceptable clinical and laboratory diagnostic techniques:
  - a. Petitioner's records showed that she had counseling and therapy through Community Mental Health (CMH) from October 2015 through April 2016 for mental health issues (depression, suicidal thoughts, and bipolar disorder). [Dept. Exh. 1, pp. 207-321].
  - b. On [REDACTED], Petitioner reportedly had right shoulder and neck pain. Petitioner had a pre-operative appointment for a right rotator cuff tear. [Dept. Exh. 1, pp. 145-147]. Petitioner had a right shoulder x-ray which showed some degenerative changes without evidence of bony abnormality. However, Petitioner was diagnosed with a torn right rotator cuff. [Dept. Exh. 1, pp. 199-200]. Petitioner had surgery to repair her rotator cuff on December 15, 2015. [Dept. Exh. 1, p. 204-206].
  - c. Petitioner had a follow up visit on [REDACTED], which revealed that she did not have any problems concerning suicidal thoughts, but that she did have right shoulder pain. She says that she ran out of hydrocodone. There was a concern about refilling a new prescription based on her history of cocaine use. Petitioner's medicines were increased: Prozac, Latuda, Toradol, and Protonix. [Dept. Exh. 1, pp. 111-115].
  - d. On [REDACTED], Petitioner had a mental status examination for the Disability Determination Services (DSS). The examining psychologist diagnosed bipolar disorder, depressed with psychotic features, alcohol use disorder (in full reported remission), and cocaine use disorder (in

full reported remission). The report indicated that Petitioner had a significant drug use history (crack cocaine) and arrest history with incarceration in both jail and prison. The assessment indicated that Petitioner has pain, difficulties with several physical tasks, including difficulty focusing and with sleep. Petitioner had demonstrated adequate understanding of both simple and complex instructions. She had limited ability to interact appropriately with others. Petitioner's prognosis for improved psychological and adaptive functioning was poor. [Dept. Exh. 1, pp. 71-75].

- e. Petitioner had an independent medical evaluation performed by a medical doctor (M.D.) on [REDACTED]. The doctor noted that Petitioner has had depression since age 19 and had been hospitalized three times for "nervous breakdown and suicidal thoughts." Petitioner was noted to have lower back pain for 15 years and her x-rays indicated degenerative arthritis with bulging disc. Petitioner had no limitation of motion, no radiculopathy in either leg and does not use a cane or walker. The evaluator indicated that her clinical examination showed limited findings. There were no trigger spots on her spine or shoulders. She was able to walk ¼ mile without difficulty. [Dept. Exh. 1, pp. 32-94].
- f. Petitioner was voluntarily admitted to the Mid-Michigan Medical Center's mental health unit on [REDACTED]. The record indicated that Petitioner's chief complaint was, "I wanted to kill myself." Petitioner reportedly felt sad, angry, irritable, and frustrated. Petitioner stated that she was compliant with her medications, but that nothing was working. Petitioner stated that she had sleeping problems. She reported that she would sleep for 18 hours per day in a week and then not sleep at all. Psychologist, [REDACTED] reported that Petitioner indicated she had a cocaine relapse a month earlier, but that it was only a two day relapse. Petitioner did not believe it was the cause of her recent problems. Petitioner stated that she would sell her boyfriend's belongings to buy the cocaine. Petitioner's drug screens were negative for opiates, which showed that she was not compliant with medications. Petitioner responded that she "doubled up" on her medications and then just ran out. During her hospital stay, Petitioner reported that she was in pain and requested Norco. [REDACTED] noted that Petitioner was able to ambulate and get in and out of chairs without pain, limping or grimacing. She was diagnosed with major depression (recurrent moderate without psychotic features), mood disorder, history of bipolar disorder, substance abuse disorder (severe with alcohol, cocaine and opiates), fibromyalgia, chronic pain syndrome (reportedly), dyslipidemia, hypertension, gastric reflux. GAF on admission: 20. GAF at discharge was 40. [REDACTED] instructed

that Petitioner discontinue opiates, but Petitioner was resistant to the idea. Petitioner was discharged on September 12, 2016. [Dept. Exh. 2, pp. 370-375].

14. During the relevant time period, Petitioner had been taking the following medications:
  - a. Alprazolam. [Dept. Exh. 1, p. 135].
  - b. Benadryl. [Dept. Exh. 1, p. 135].
  - c. Fluoxetine. [Dept. Exh. 1, p. 135].
  - d. Fluticasone Propionate. [Dept. Exh. 1, p. 135].
  - e. Gabapentin. [Dept. Exh. 1, p. 135].
  - f. Hydrocodone-Acetaminophen. [Dept. Exh. 1, p. 135].
  - g. Ketorlorac Tromethamine. [Dept. Exh. 1, p. 135].
  - h. Latuda. [Dept. Exh. 1, p. 135].
  - i. Lyrica. [Dept. Exh. 1, p. 135].
  - j. Omeprazole. [Dept. Exh. 1, p. 135].
  - k. ProAir. [Dept. Exh. 1, p. 135].
  - l. Prozac. [Dept. Exh. 1, p. 135].
  - m. Ovar. [Dept. Exh. 1, p. 135].
  - n. Remeron. [Dept. Exh. 1, p. 135].
  - o. Vistaril. [Dept. Exh. 1, p. 135].
  
15. The objective medical records did not contain a written opinion from a licensed health professional that Petitioner is permanently disabled.

### **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA program. Under SSI, "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. [Emphasis added].

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. The individual's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only the individual's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the individual has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Medical findings must allow a determination of: (1) the nature and limiting effects of the impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including the individual's symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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.

There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.

- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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.

See 20 CFR 416.921(b).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

At step one, the Administrative Law Judge must determine whether the individual is engaging in substantial gainful activity (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he or she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he or she is not disabled regardless of how severe his or her physical or mental impairments are and regardless of his or her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At the time of the hearing, Petitioner provided credible testimony that she is currently unemployed and does not have any measurable work history. Petitioner's testimony that she has never held a job for more than six months is credible. Therefore, Petitioner is not engaged in SGA and is not disqualified from receiving disability at step one. The analysis proceeds to step two.

At step two, the Administrative Law Judge must determine whether the individual has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the person does not have a severe medically determinable impairment or combination of impairments, he or she is not disabled.

At this step, the Administrative Law Judge must also evaluate the individual's symptoms to see if there is an underlying medically determinable physical or mental impairment



that could reasonably be expected to produce pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of the individual's symptoms to determine the extent to which they limit his or her ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C). First, an individual's pertinent symptoms, signs and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are 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. 20 CFR 416.920(a)(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 functional limitation. 20 CFR 416.920a(c)(4).

In the present case, Petitioner alleges disability due to having pain in her back, shoulder, hands, legs, feet and muscles. Petitioner also states that she has memory problems, inability to concentrate and mood swings. Petitioner stated that she cannot work due to the following: inability to stand, needs to sit, and that she does not care to be around people. As summarized in the above Findings of Fact, Petitioner has presented objective medical evidence establishing that she does have some limitations on the ability to perform basic work activities. Petitioner's records show that she has been diagnosed with bipolar disorder, depression with psychotic features, substance abuse disorder (alcohol and cocaine), suicidal ideation, and right rotator cuff tear surgery. Here, Petitioner has presented sufficient evidence to survive dismissal of her disability claim based on the absence of medical merit. See *Higgs, supra*. The objective medical records did not contain a written opinion from a licensed health professional, psychologist, or psychiatrist that Petitioner is permanently disabled from work. In other words, the medical evidence in this record shows that Petitioner may have an impairment, or combination thereof, that has more than a *de minimis* effect on her basic

work activities. However, this does not mean that Petitioner is necessarily disabled at this point in the analysis.

In addition, the individual must show that she has an impairment, or a combination of impairments, that have lasted continuously for a period of 90 days. BEM, 261 (7-1-2015), p. 1. Based on the above Findings of Fact, Petitioner has shown the presence of some mental limitations on her ability to perform basic work activities. According to the medical records, Petitioner has had symptoms and/or pain associated with the above listed diagnoses since at least 2015. This evidence shows that Petitioner has a medically determinable mental impairment based on documented signs, symptoms, and laboratory findings. Thus, this Administrative Law Judge finds that Petitioner has some impairments that have lasted continuously for 90 days and; therefore, is not disqualified from receiving SDA benefits due to lack of duration. However, Petitioner is not considered disabled at this step and the analysis must proceed to step three.

As indicated above, after an individual has shown the presence of an underlying physical or mental impairment, she must also show that the impairment, or impairments, possess the requisite intensity, persistence, and limiting effects such that it would limit her ability to do basic work activities. In order to assist with this determination, the analysis shall proceed to the next step.

At step three, the Administrative Law Judge must determine whether the individual's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the individual's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the individual is disabled. If it does not, the analysis proceeds to the next step.

Based upon the Petitioner's diagnosed conditions contained in the objective medical evidence, the Administrative Law Judge will consider the following listings: 12.04 Affective Disorders and 12.09 Substance Abuse Addition Disorders.

12.04 (Affective Disorders) is characterized as a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for 12.04 (affective disorders) is met when the requirements in both A and B (below) are satisfied, or when the requirements in C (below) are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
  - b. Appetite disturbance with change in weight; or
  - c. Sleep disturbance; or
  - d. Psychomotor agitation or retardation; or
  - e. Decreased energy; or
  - f. Feelings of guilt or worthlessness; or
  - g. Difficulty concentrating or thinking; or
  - h. Thoughts of suicide; or
  - i. Hallucinations, delusions, or paranoid thinking; or
2. Manic syndrome characterized by at least three of the following:
- a. Hyperactivity; or
  - b. Pressure of speech; or
  - c. Flight of ideas; or
  - d. Inflated self-esteem; or
  - e. Decreased need for sleep; or
  - f. Easy distractibility; or
  - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
  - h. Hallucinations, delusions or paranoid thinking; or
3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

**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 affective 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.

With regard to 12.04, the Administrative Law Judge finds that Petitioner meets, or equals, the requirements of C above. Specifically, Petitioner has had chronic affective disorder (depression) for most of her adult life. The medical records show that she has not had any appreciable work history, due to her inability to do basic work activities. Petitioner has suffered from prolonged depression for an extended duration. However, the objective medical records also show that Petitioner, despite medications and counseling, has had repeated suicidal ideations.

The listing for 12.09 Substance Addiction Disorders, requires the presence of behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

The required level of severity for these disorders is met when the requirements in any of the following (A through I) are satisfied.

- A. Organic mental disorders. Evaluate under 12.02.
- B. Depressive syndrome. Evaluate under 12.04.
- C. Anxiety disorders. Evaluate under 12.06.
- D. Personality disorders. Evaluate under 12.08.
- E. Peripheral neuropathy. Evaluate under 11.14.
- F. Liver damage. Evaluate under 5.05.

G. Gastritis. Evaluate under 5.00.

H. Pancreatitis. Evaluate under 5.08.

I. Seizures. Evaluate under 11.02. [Emphasis added].

Here, the medical evidence does show that Petitioner has been battling with alcohol and cocaine abuse, but it does not appear from these records that her substance abuse is regular. It appears as though she has periods of use and periods of remission, but it cannot be said, based on these records, that she has regular use of substances as defined by 12.09. Accordingly, this Administrative Law Judge does not find that Petitioner meets or equals 12.09.

However, the objective medical evidence presented in this record is sufficient to show that Petitioner meets 12.04 of the listings. Therefore, the medical evidence presented in this matter is sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, this Administrative Law Judge finds that Petitioner is disabled at step three because she met or medically equaled the criteria of a listing and has met the duration requirement.

This Administrative Law Judge finds that Petitioner has satisfied the burden of proof to show by competent, material and substantial evidence that she has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Petitioner's impairments render her unable to engage in a full range of work activities on a regular and continuing basis. Petitioner's testimony regarding her limitations is credible and supported by the objective medical evidence. Petitioner's assertion that her alleged impairments are severe enough to reach the criteria and definition of disability is also credible. Petitioner has established by objective medical evidence that she cannot perform even sedentary work with her impairments. Therefore, Petitioner meets the definition of disabled for purposes of the MA program.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Petitioner's testimony and the information indicates that she has a history of drug (cocaine) and alcohol abuse. The applicable law is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Petitioner's drug and alcohol abuse is not material to her alleged impairments and alleged disability.

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

With regard to Petitioner's request for disability under the SDA program, it should be noted that the Department's BEMs contain policy statements and instructions for caseworkers regarding eligibility for SDA. In order to receive SDA, "a person must be disabled, caring for a disabled person or age 65 or older." BEM, 261, p. 1.

A person is disabled for SDA purposes if he or she: (1) receives other specified disability-related benefits or services<sup>1</sup>; or (2) resides in a qualified Special Living Arrangement facility; or (3) is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or (4) is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS). BEM 261, pp. 1-2. [Emphasis added].

In addition, a person receiving post-residential substance abuse treatment meets SDA disability criteria for 30 days following discharge from the SATC. To qualify, the person must:

- Have received SDA while residing in the SATC, **and**
- Continue outpatient substance abuse treatment immediately following discharge.

**Note:** If a client states they have a plan and a scheduled date to continue outpatient substance abuse treatment, then they would be eligible for the 30 days post treatment SDA. BEM 261, pp 3-4.

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<sup>1</sup>Retirement, Survivors and Disability Insurance (RSDI) due to disability/blindness, Supplemental Security Income (SSI) due to disability/blindness, Medicaid as blind/disabled based on a disability examiner or MRT determination or hearing decision, or Michigan Rehabilitation Services.

As indicated in the above analysis, Petitioner meets the definition of disabled under the MA program and the evidence of record shows that Petitioner is unable to work for a period exceeding 90 (ninety) days. In addition, this record appears to show that Petitioner, based on her testimony, may have met the requirements of BEM 261, p. 3 as she is living in a SATC or shelter. However, even if the shelter does not meet the definition of an SATC, this Administrative Law Judge finds that Petitioner is disabled for purposes of the SDA program.

Accordingly, the Department has not established by the necessary competent, material and substantial evidence on the record that it acted in compliance with Department policy when it determined that Petitioner was not eligible to receive SDA.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has not appropriately established on the record that it acted in compliance with Department policy when it denied Petitioner's application for SDA benefits.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Petitioner's application for SDA, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.
2. The Department shall initiate a review Petitioner's medical condition for improvement in January 2018, unless her pending Social Security Administration disability application is approved by that time.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.
4. Following the medical review, the Department shall inform Petitioner of its decision in writing in accordance with Department policy.

IT IS SO ORDERED.

CAP/mc



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**C. Adam Purnell**  
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]