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 6, 2017
MAHS Docket No.: 16-015211
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] Eligibility Specialist/Hearing Facilitator, 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 389) 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.

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: CT scans prior to November 16, 2016, and records from orthopedic surgeon, neurosurgeon, community mental health in [redacted] City and letter from [redacted] regarding disabled from all employment. The deadline to file the additional records was December 17, 2016.

On November 17, 2016, the Department submitted additional exhibits that were marked and admitted into evidence as the following: **Department's Exhibit No. 2** (pages 390

through 435) is a copy of Petitioner's medical records from [redacted] and Community Mental Health.

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 July 13, 2016, the Department received Petitioner's application for SDA benefits alleging disability.

2. On October 11, 2016, the Medical Review Team (MRT) denied Petitioner's application.

3. On October 11, 2016, the Department caseworker sent Petitioner notice that her application was denied.

4. On October 19, 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: herniated and bulging disc in the lumbar spine, cervical spine (facet arthritis), cervical bone spur, subarachnoid hemorrhage in 2002 which caused memory problems, forehead lesion in 2015 which resulted in sinus and cranial-facial surgeries leading to increased short-term memory loss, headaches, pain/numbness in right leg, depression, anxiety, and hypertension.

7. At the time of the hearing, Petitioner was 54 years-old with a birth date of [redacted]. Petitioner testified that she was 5 feet 9 inches tall and weighed approximately 202 lbs. Petitioner stated that she is left-hand dominant.

8. Petitioner has a post-high school education (Associate's Degree).

9. Petitioner is not engaged in substantial gainful activity (SGA). Petitioner testified that she last worked for two months as a plastic mold operator in June 2016. Petitioner's past relevant employment was as a Health Unit Coordinator, where she worked for 15 years. In this position, Petitioner said that she did computer data entry, answered phones, assisted the nursing staff, and occasionally assisted with patient transfers.

10. Petitioner has a skilled work history that is not transferrable to other jobs.

11. 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 had a subarachnoid hemorrhage due to a ruptured aneurysm in 2002, which required emergency craniotomy. [Dept. Exh. 1, p. 249].

    b. Petitioner has had depression and anxiety since as early as 2015. [Dept. Exh. 1, pp. 210-212].

    c. On [redacted], Petitioner attempted suicide by cutting her wrists. On [redacted], Petitioner attempted suicide by drowning, but reportedly was unable to keep herself under the water. Apparently, Petitioner struck herself with a hammer to knock herself out while in the tub. Petitioner was observed with bruises on her face. She had auditory hallucinations that she could hear her daughter's voice when her daughter was not there. Petitioner's medications were changed. Petitioner's Effexor was increased to 75 mg and Vistoril changed to 25 mg. Trazodone was discontinued and she was started on Remeron. Petitioner was admitted to a psychiatric hospital in July 2016. [Dept. Exh. 1, pp. 210-212].

    d. On [redacted], Petitioner had a psychiatric evaluation at Community Mental Health (CMH). Petitioner was diagnosed with major depressive disorder (recurrent episode, severe), obsessive-compulsive disorder and unspecified problem related to social environment. [Dept. Exh. 1, pp. 210-212].

    e. On [redacted], Petitioner had a medical examination performed by an internal medicine physician. The examining physician noted that Petitioner walked into the room without any difficulty. She did not use a walking device. Petitioner was able to sit in the chair. The physician noted that Petitioner was able to get up on the examination table without any difficulty. She appeared to keep her neck in the same position and tried not to move her neck. Petitioner stated that

when she moves her neck in a certain position, she avoids sharp pain. Her grip strength was 44.4 pounds on the right and 36.2 pounds on the left. She had some difficulty squatting due to low back pain and bilateral knee pain. Her cervical spine was tender on right side, but no swelling. Her range of motion was painful and limited. She did not have radiating pain or neurological or sensory changes with range of motion. There was crepitus and grinding heard with both knees. Overall, the examining physician found the following: (1) neck and low back pain, degenerative disc disease with radiculopathy (sometimes) in lower extremities; (2) right and left knee pain (degenerative arthritis); (3) headaches secondary to status post craniotomy and history of surgery with metal plate on the right side of scalp; (4) status post-surgical correction of cerebral aneurysm, no seizures; (5) anxiety and depression. The physician indicated that Petitioner's fine and gross dexterity was intact, but she was limited to carrying 15 to 20 pounds for a short time. She had some limitations sitting, standing or walking. He also recommended evaluation by a psychiatrist or psychologist. [Dept. Exh. 1, p. 187].

f. Petitioner's September 21, 2016, neurologic and orthopedic supplemental report indicated that she had the ability to perform a wide range of daily activities with the exception of tying her shoes or picking up a pencil from the floor. [Dept. Exh. 1, pp. 189-190].

g. Petitioner's September 21, 2016, range of motion (ROM) evaluation indicated decreased ROM in her cervical and lumbar spine as well as her hip. Her knee ROM was slightly below normal. The remainder of Petitioner's ROMs were normal. [Dept. Exh. 1, pp. 191-192].

h. Petitioner had a psychological assessment performed by a licensed psychologist on [redacted]. The assessment indicated that Petitioner sees a psychiatrist monthly and a therapist weekly at Community Mental Health (CMH). Petitioner was admitted to a psychiatric hospital in July 2016. She had good hygiene (polished fingernails). Petitioner's thought process was organized and she was in contact with reality. However, it was noted that Petitioner had suicidal thoughts, although she did not have a plan nor did she harbor feelings of hopelessness or helplessness. The psychologist found that Petitioner had: (1) generalized anxiety disorder; (2) major depressive disorder (recurrent) with anxious distress (moderate) and (3) unspecified neurocognitive disorder. He found that Petitioner had the ability to manage funds, but occasionally had difficulty carrying out one-step instructions. The examiner found that Petitioner "does not appear able to maintain standards of behavior or safety issues due to medical and psychiatric issues." It was recommended that Petitioner

have continued interaction with her mental health team. It was also found that psychological testing to determine Petitioner's cognitive functioning should be considered. [Dept. Exh. 1, pp. 197-198].

i. On [redacted], Petitioner was diagnosed with bilateral knee chondromalacia. [Dept. Exh. 2, p. 429].

j. On [redacted], Petitioner had a chest x-ray which revealed centrilobular emphysema and several sub centimeter pulmonary nodules in the right middle lobe along the anterior pleural surface (due to tobacco use). [Dept. Exh. 2, p. 422].

k. Petitioner's [redacted] CT of the lumbar spine showed disc bulging at L1-L2, L2-L3, L4-L5 and L5-S1 and the disc material "appears to contact the transversing S1 nerve roots." [Dept. Exh. 2, pp. 426-427].

l. Petitioner's psychotherapy progress notes dated [redacted], indicated that she had some setbacks, but she had also made progress with her coping skills. She is engaging in craft activities again and explored the option of getting a therapy dog to reduce depression and anxiety. She discussed horse therapy as well. [Dept. Exh. 2, p. 391].

12. During the relevant time period, Petitioner had been taking the following medications:

a. Percocet. [Dept. Exh. 1, p. 186].

b. Remeron. [Dept. Exh. 1, p. 186].

c. Restoril. [Dept. Exh. 1, p. 186].

d. Metoprolol. [Dept. Exh. 1, p. 186].

e. Nitrostat. [Dept. Exh. 1, p. 186].

f. Gabapentin. [Dept. Exh. 1, p. 186].

g. Lyrica. [Dept. Exh. 1, p. 186].

h. Pro Air. [Dept. Exh. 1, p. 186].

i. Ambien. [Hearing Testimony].

j. Vistaril. [Hearing Testimony].

k. Effexor. [Hearing Testimony].

l. Abilify. [Hearing Testimony].

13. The objective medical records did not contain a written opinion from a licensed health professional that Petitioner is permanently disabled. [See Dept. Exh. 2, p. 407].

CONCLUSIONS OF LAW

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).

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 was unemployed and last worked in June 2016 as a plastic mold operator for a period of two months. Petitioner is not engaged in SGA. Therefore, Petitioner is not disqualified from receiving disability at step one and 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 and individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

In the present case, Petitioner alleges disability due to herniated and bulging disc in the lumbar spine, cervical spine (facet arthritis), cervical bone spur, subarachnoid hemorrhage in 2002 which caused memory problems, forehead lesion in 2015 which resulted in sinus and cranial-facial surgeries leading to increased short-term memory loss, headaches, pain/numbness in right leg, depression, anxiety and hypertension. While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence. 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. Here, Petitioner has presented sufficient evidence to survive dismissal of her disability claim based on the absence of medical merit. See *Higgs, supra.*

Although Petitioner contends that she has a physician letter indicating that she is disabled, 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. A close review of this document indicates that the letter is from a nurse practitioner. Despite the absence of a qualified letter, 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 physical and mental limitations on her ability to perform basic work activities. According to the medical records, Petitioner has had symptoms and/or pain associated with depression and anxiety since at least 2015 and through her hospitalization in July 2016 [Dept. Exh. 1, pp. 210-212]. 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. 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.

In the instant matter, Petitioner has been diagnosed with disc bulging at L1-L2, L2-L3, L4-L5 and L5-S1 with some contact with the S1 nerve roots. [Dept. Exh. 2, pp. 426-427] Based upon the objective medical evidence, the Administrative Law Judge will consider the following listings: 1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. In order to meet or equal listing 1.04, Petitioner must also have (a) evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or (b) spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or (c) lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. Based upon the above Findings of Fact, Petitioner's objective medical records shows that she does not meet or equal listing 1.04 because, despite her disc bulging with some nerve root contact, she possesses the ability to ambulate effectively.

Petitioner also has been diagnosed with major depressive disorder (recurrent episode, severe), obsessive-compulsive disorder and unspecified problem related to social environment. [Dept. Exh. 1, pp. 210-212]. In this regard, the Administrative Law Judge has considered listing: 12.04 Affective disorders. This listing is characterized by 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 these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

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

[Emphasis added].

Here, the objective medical records indicate that Petitioner meets or medically equals listing 12.04. It was significant that Petitioner's psychiatric examination indicated that Petitioner "does not appear able to maintain standards of behavior or safety issues due to medical and psychiatric issues." The examiner recommended that Petitioner have continued interaction with her mental health team and that she needed psychological testing to determine cognitive functioning. [Dept. Exh. 1, pp. 197-198]. Petitioner's psychiatric records demonstrated severe suicidal thoughts and a more than one attempt. The records also showed that Petitioner performed poorly on memory testing, concentration and social functioning. Petitioner recorded hearing her daughter's voice (auditory hallucinations). These records all demonstrated that Petitioner's emotional and/or psychological impairments had deteriorated such that gainful employment is not possible at this point.

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.

In addition, the objective evidence shows that Petitioner's social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work are all significantly impaired. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C). Petitioner's depression and anxiety results in functional limitations such that it interferes with her ability to function independently, appropriately, effectively and on a sustained basis. 20 CFR 416.920(a)(2). Petitioner's chronic mental disorders adversely affect her ability to function in a structured setting despite medication and other treatment. 20 CFR 416.920a(c)(1). In addition, Petitioner's records show that after consideration of the four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation), her functional limitation is such that gainful employment is not possible at this time. 20 CFR 416.920a(c)(4).

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 as it is 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 based on the record evidence. Therefore, Petitioner meets the definition of disabled for purposes of the MA program.

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[1]; 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].

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. Accordingly, this record shows that Petitioner has

[1]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.

also met the requirements for disability under BEM 261. Accordingly, this Administrative Law Judge finds that Petitioner is disabled for purposes of the SDA program.

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**.

3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, psychiatrists/psychologists, physical therapists, pain clinic notes, etc., regarding her continued treatment, progress and prognosis at review.

4. The Department shall inform Petitioner of the determination in writing.

IT IS SO ORDERED.

C Adam Purnell

CAP/mc

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]