



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 12, 2017  
MAHS Docket No.: 16-016473  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 16, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

### **ISSUE**

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

### **FINDINGS OF FACT**

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

1. Petitioner was an ongoing SDA benefit recipient.
2. Petitioner's only basis for SDA eligibility was as a disabled individual.
3. On S [REDACTED] Disability Determination Services determined that Petitioner was not a disabled individual for purposes of SDA eligibility (see Exhibit 1, pp. 2-9, 11).
4. On [REDACTED] MDHHS terminated Petitioner's eligibility for SDA benefits, effective November 2016, and mailed a Notice of Case Action informing Petitioner of the termination.

5. On [REDACTED], Petitioner requested a hearing disputing the termination of SDA benefits (see Exhibit 1, p. 1).
6. As of the date of the administrative hearing, Petitioner was a 47-year-old female.
7. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
8. Petitioner's highest education year completed was the 12<sup>th</sup> grade.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner alleged disability based on restrictions related to chronic kidney disease (CKD), hypertension (HTN), congestive heart failure (CHF), body pain, and diabetes mellitus (DM).

### **CONCLUSIONS OF LAW**

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

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (July 2015), p. 5. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.*

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (July 2015), p. 1. A person is disabled for SDA purposes if he [or she]:

- Receives other specified disability-related benefits or services..., or
  - Resides in a qualified Special Living Arrangement facility, or
  - Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; [or]
  - Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*, pp. 1-2.

Generally, state agencies such as MDDHS must use the same definition of disability as used under SSI regulations (see 42 CFR 435.540(a)). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or

which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. MDHHS adopted a functionally identical definition of disability (see BEM 260 (July 2015, p. 10)). The definition of SDA disability is identical except that only a 90 day period of disability is required.

Substantial gainful activity means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. BEM 260 (July 2015), p. 10. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

Once an individual has been found disabled for purposes of disability-related benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994.

MDHHS did not present a Notice of Case Action verifying the reason for SDA termination. It was not disputed MDHHS terminated Petitioner's SDA eligibility based on a determination that Petitioner was no longer disabled. Thus, the only issue to be determined is if MDHHS properly determined Petitioner to no longer be disabled.

In evaluating a claim for ongoing disability benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding if an individual's disability has ended, the department will develop, with the petitioner's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The below-described evaluation process is applicable for clients that have not worked during a period of disability benefit eligibility. There was no evidence suggesting that Petitioner received any wages since receiving disability benefits.

The first step in the analysis in determining the status of a petitioner's disability requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue and no further analysis is required. This consideration requires a summary and analysis of presented medical documents.

Physical therapy documents (Exhibit 1, pp. 159-160) dated [REDACTED], were presented. Range of motion in Petitioner's lumbar was noted to be as follows: extension

(75%), flexion (40%), rotation (80%- bilaterally), and side-bending (90%- bilaterally). Slight pain and difficulty were noted with transferring from sitting to standing.

Family medicine physician office visit notes (Exhibit 1, pp. 82-87) dated [REDACTED], were presented. It was noted that exercise was recommended to decrease blood sugar. Various lifestyle changes were recommended. Upper body and lumbar pain complaints were noted. Petitioner's medications were adjusted.

Family medicine physician office visit notes (Exhibit 1, pp. 78-81) dated [REDACTED], were presented. It was noted that Petitioner reported fatigue. Lower back pain was noted to be improving. A recent H. pylori diagnosis was noted, along with a recent referral to a GI specialist. It was noted Petitioner regularly walked and was following a generally healthy diet.

Family medicine physician office visit notes (Exhibit 1, pp. 76-77) dated [REDACTED], were presented. It was noted that Petitioner felt better compared to winter when she had to take insulin shots daily. Petitioner reported blood sugar levels of 110-130 over the last 3 days.

Physical therapy discharge documents (Exhibit 1, pp. 165-168) dated [REDACTED], were presented. Improvement in lumbar flexion (75%) was noted. A good prognosis was noted. Left-sided back pain was noted as improved from 5/10 to 1/10. No pain was noted when transferring from sitting to supine.

Family medicine physician office visit notes (Exhibit 1, pp. 72-75, 311-315) dated [REDACTED], were presented. It was noted that Petitioner reported ongoing muscle pain. Fatigue and sleeping difficulty was also reported. Medications were continued, along with Vitamin D.

Infectious disease treatment documents (Exhibit 1, pp. 152-157) dated [REDACTED], were presented. A new H. pylori infection was noted. Medications were prescribed.

Family medicine physician office visit notes (Exhibit 1, pp. 69-71) dated [REDACTED], were presented. It was noted that Petitioner complained of left-lower back pain, ongoing for 3-4 weeks. Tenderness was noted on physical examination. Home stretching exercises were recommended following Petitioner's declining of PT. A lumbar x-ray (see Exhibit 1, p. 103) was negative.

Cardiologist office visit notes (Exhibit 1, pp. 145-151) dated [REDACTED], were presented. It was noted that Petitioner reported an EF around 40%. A NYHA classification of I-II was noted. Petitioner reported a stress test from 8 months earlier was normal. Mild bilateral edema was noted. A 1 month follow-up was planned.

Family medicine physician office visit notes (Exhibit 1, pp. 63-68) dated [REDACTED], were presented. It was noted that Petitioner reported stretching improved hip and back

pain. Improved muscle pain was noted after medication changes. Petitioner's nutrition was discussed.

Cardiology test results (Exhibit 1, p. 88, 301-302) dated [REDACTED], were presented. Conclusions included EF of 25-30% due to severely reduced left ventricular systolic function. Mild mitral regurgitation was also noted.

Physical therapy documents (Exhibit 1, pp. 142-144, 205-213) from July 2015 through August 2015 were presented. On [REDACTED], full muscle strength and improved lumbar motion (since [REDACTED]) was noted.

A cardiac imaging report (Exhibit 1, pp. 298-300) dated [REDACTED], was presented. Newly worsened cardiomyopathy was noted. Petitioner's EF was noted to be 25%. A NYHA class II categorization was noted. A plan of continued therapy with adjustments as needed was noted.

Family medicine physician office visit notes (Exhibit 1, pp. 59-61) dated [REDACTED] were presented. It was noted that Petitioner reported difficulty getting blood sugar below 170. Continued treatment for H. Pylori was planned in September 2016.

Family medicine physician office visit notes (Exhibit 1, pp. 54-57) dated [REDACTED], were presented. It was noted that Petitioner reported increased memory loss. Muscle and joint pain were reported. It was noted Petitioner forgot her address 2 weeks earlier. Prescribed medications were continued.

Cardiologist office visit notes (Exhibit 1, pp. 129-133) dated [REDACTED], were presented. It was noted that Petitioner reported "feeling great" and had no limitation in daily activities. ICD therapy was discussed if EF did not improve.

Family medicine physician office visit notes (Exhibit 1, pp. 51-53) dated [REDACTED] were presented. It was noted that Petitioner's DM was stable. Chronic knee swelling, ongoing for a few weeks, was noted. Generalized achiness was noted as persistent, but improved since a medication change. Assessments include knee bursitis.

Cardiologist office visit notes (Exhibit 1, pp. 135-140) dated [REDACTED], were presented. It was noted that Petitioner reported a history of CAD. EF was noted to be 20-25 with severe wall motion abnormalities. Cardiac catheterization was recommended.

Cardiologist office visit notes (Exhibit 1, pp. 356-360) dated [REDACTED], were presented. Petitioner reported "feeling great" with no restriction on daily activities. Physical examination results were unremarkable. An echocardiogram was planned.

A surgical pathology report (Exhibit 1, p. 141) dated [REDACTED], was presented. A diagnosis of chronic active gastritis was noted. H. pylori treatment continued.

Cardiologist office visit notes (Exhibit 1, pp. 124-128, 351-355) dated [REDACTED], were presented. Physical examination findings were unremarkable. An EF of 40-45% was noted (see Exhibit 1, p. 134). It was noted Petitioner was "doing very well" from a CHF standpoint. ICD therapy was noted to be unnecessary. A 3-month follow-up was planned.

Cardiac test results (Exhibit 1, p. 303-304) dated [REDACTED], were presented. An EF of 40-45% was noted.

Family medicine physician office visit notes (Exhibit 1, pp. 47-50) dated [REDACTED], were presented. It was noted that Petitioner presented for a DM check-up. Petitioner was noted to have no DM-related symptoms. Petitioner complained of ongoing achy pain in her shoulders, legs, and knees- slightly improved since a medication change.

Ophthalmologist office visit notes from 2016 (see Exhibit 1, pp. 104-113, 158) indicated no reported pain. Eye testing revealed no abnormalities relevant to Petitioner's performance of basic work abilities. No diabetic retinopathy was noted.

Physician office visit notes (Exhibit 1, pp. 114-119) dated [REDACTED], were presented. It was noted that Petitioner's most recent EF was 40-45%. Mild coronary artery disease was noted. It was noted Petitioner did aerobics twice per week for 25 minutes. No pain, edema, or palpitations were reported. Muscle strength was normal. Dilated cardiomyopathy symptoms were noted as controlled. HTN was noted as controlled. An ongoing diagnosis of chronic heart failure (Stage I-II) with controlled symptoms was noted.

Cardiologist office visit notes (Exhibit 1, pp. 345-350) dated [REDACTED], were presented. CHF was noted as stable. Various CHF symptoms were denied. It was noted Petitioner did chair aerobics twice per week. Petitioner's weight was 147 pounds (BMI of 25). Medications were continued.

GI physician office visit notes (Exhibit 1, pp. 120-123) dated [REDACTED], were presented. It was noted that Petitioner reported bloating and myalgia. Non-treatment was recommended (unless Petitioner was later diagnosed with peptic ulcer disease or gastric cancer). It was noted Petitioner wanted a second opinion.

Family medicine physician office visit notes (Exhibit 1, pp. 44-46) dated [REDACTED], were presented. It was noted that Petitioner presented for a DM check-up. It was noted Petitioner complained of left lower back pain, ongoing for a day; tenderness was noted in a physical examination. It was noted Petitioner exercised regularly (weights, treadmill, and skiing machine). Petitioner was noted to have no DM-related symptoms. Assessments of DM (type 2), acute back pain, HTN, chronic systolic heart failure, and hyperlipidemia were noted.

Cardiologist office visit notes (Exhibit 1, pp. 339-344) dated [REDACTED], were presented. CHF was noted as stable. Various CHF symptoms were denied other than mild edema, improved with elevation. Aerobic exercise was recommended. Carvedilol was increased. A 1-month follow-up was planned.

Cardiologist office visit notes (Exhibit 1, pp. 334-338) dated [REDACTED], were presented. CHF was noted as stable. Various CHF symptoms were denied. Occasional light-headedness was noted; the cause was noted to be likely related to blood pressure. Physical examination findings were unremarkable. A follow-up in 9 months was noted. A low-salt and cardiac diet was recommended. It was noted Petitioner appeared to be "doing well."

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

A listing for chronic heart failure (Listing 4.02) was considered based on Petitioner's low ejection fraction testing. The listing was rejected because of the absence of evidence of the following: inability to perform an exercise test, three or more episodes of acute congestive heart failure or a conclusion that an exercise test poses a significant risk to Petitioner's health.

Cardiac-related listings (Listing 4.00) were considered based on Petitioner's cardiac treatment history. Petitioner failed to meet any cardiac listings.

Kidney disease listings (Listings 6.00) were considered based on a diagnosis of chronic kidney disease (stage 2). The listings were rejected due to a failure to establish any of the following: hemodialysis, transplant, or other sufficient complications.

It is found Petitioner failed to establish meeting any SSA listings. Accordingly, the analysis may proceed to the second step.

The second step of the analysis considers whether medical improvement occurred. CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i).

MDHHS presented a Medical-Social Eligibility Certification (Exhibit 1, pp. 365-366) dated January 22, 2015. Petitioner was noted to be disabled beginning July 2014 and a review was scheduled for January 2016. All records dated before the determination date will be examined for the purpose of evaluating medical improvement.

An Activities of Daily Living- Third Party (Exhibit 1, pp. 374-381) dated [REDACTED] was presented. Petitioner's friend stated she witnessed Petitioner's difficulty in dressing herself or performing any activity for a long time due to falling.

Various GI treatment documents (Exhibit 1, pp. 176-187, 382-393) noted ongoing treatment for H. Pylori. On [REDACTED], Petitioner reported blood in stool and ongoing abdominal pain. On [REDACTED], Petitioner reported "feeling well" with no complaints. Abdominal pain was noted as resolved.

Various primary care physician office visit notes from 2014 (Exhibit 1, pp. 250-285, 395-431) noted complaints of constant muscle aches in upper arms and shoulders, aches in left lower leg, yeast infection, DM with blood sugars ranging up to 220, CHF, and H. pylori treated by Lipitor. Petitioner's weight was noted to be 201 pounds on [REDACTED]

Various cardiologist/cardiovascular office visit notes and cardiac testing documents from 2014 (Exhibit 1, pp. 215-238, 286-295, 433-434, 436-468) were presented. Petitioner's EF ranged from 38%-39% down to 25%-30% along with mild mitral regurgitation. A diagnosis of Stage II kidney disease was noted.

Presented records verified improvement in Petitioner's EF. Improvement in lumbar motion range was also verified. Petitioner's abdominal problems complaints also appear to be improved.

It is found Petitioner is medically improved since the finding of disability. Accordingly, the analysis may proceed to the third step.

The third step of the analysis considers medical improvement and its effect on the ability to perform SGA. Medical improvement is not related to the ability to work if there has been a decrease in the severity of the impairment(s) present at the time of the most recent favorable medical decision, but *no* increase in functional capacity to do basic work activities. 20 CFR 416.994(b)(1)(ii). If there has been any medical improvement, but it is not related to the ability to do work and none of the exceptions applies, benefits will be continued. *Id.* If medical improvement is related to the ability to do work, the process moves to step five.

As noted in the second step of the analysis, Petitioner has experienced cardiac, musculoskeletal, and gastro-intestinal improvements. The improvements should improve Petitioner's abilities to ambulate and lift/carry. The improvements would also reduce any non-exertional restrictions such as concentration.

It is found Petitioner's medical improvement relates to the ability to work. Accordingly, the analysis proceeds directly to the fifth step.



The fifth step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the durational requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

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

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

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

Ongoing treatment for CHF, chronic kidney disease, upper body myalgia were verified. A degree of restriction to Petitioner's ability to lift/carry can be inferred from presented medical records. Degrees of bending and stooping restrictions can also be inferred based on Petitioner's ongoing lumbar pain.

It is found Petitioner has ongoing restrictions to the performance of basic work activities. Accordingly, the disability analysis may proceed.

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

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

Petitioner testified she was an industrial cleaner for 3½ years. Petitioner testified she quit her job after experiencing chest pains. Petitioner testified her job required too much bending and work on her knees for her to return to work.

Petitioner testified she worked in a factory from 1992-2001. Petitioner testified her job title was a production worker. Petitioner testified the job was on an assembly line and her duties included welding. Petitioner testified the job required up to 50 pounds of lifting.

Petitioner testified she also worked as a part-time job coach for persons with disabilities. Petitioner testified her earnings did not approach SGA income limits; for this reason, the job will not be considered further in the analysis.

Presented evidence sufficiently verified Petitioner is unable to return to her employment as a factory worker or industrial cleaner. Accordingly, the disability analysis may proceed to the final step.

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

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

sedentary if walking and standing are required occasionally and other sedentary criteria are met.

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

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

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

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

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

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

Given Petitioner's age, education and employment history a determination of disability is dependent on Petitioner's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

A Physical Residual Functional Capacity Assessment (Exhibit 1, pp. 193-200) dated [REDACTED], was presented. The assessment was completed by a physician as part of Petitioner's SSA application process. Petitioner was assessed as capable of sitting 6 hours in an 8 hours workday, frequent carrying of 10 pounds, occasional climbing and stooping, no visual limitations, and no manipulative limitations. The assessment was indicative that Petitioner can perform sedentary employment.

Petitioner testified she walks without an assistance device. Petitioner testified she has no walking restrictions. Petitioner testified she worries about her feet swelling if she sits longer than 2 hours. Petitioner testified her standing is restricted to 60 minutes before her leg muscles hurt. Petitioner testified her lifting/carrying is restricted to 10 pounds. Petitioner testified gripping/grasping is sometimes difficult if her arms hurt; this occurs every other day. Petitioner's testimony was consistent with an ability to perform the duties of sedentary employment.

Petitioner testified she sometimes has difficulty getting up from the bathtub. Petitioner testified she has no difficulties with dressing or grooming. Petitioner testified she is able to independently complete housework, though it takes longer than it used to take her. Petitioner testified she does her own laundry, but limits carrying laundry to 1 load. Petitioner testified she has no difficulties with shopping. Petitioner's testimony concerning daily activities was consistent with an ability to perform the duties of sedentary employment.

When Petitioner was asked if she could perform office-type employment, Petitioner's first response was that she lacks the skills for the employment. Petitioner's testimony was not indicative of exertional or non-exertional impairments to performing sedentary employment.

Petitioner's most recent EF of 40-45% was noted as "below normal" (see Exhibit 1, p. 134), however, it is not disturbingly so. This is consistent with a follow-up of 9 months after Petitioner's most recent cardiac appointment. The conclusion is also consistent with a NYHA classification of Stage I-II.

Petitioner testified she has ongoing upper body myalgia and lumbar pain. Petitioner testified she would be unable to perform repetitive assembly line work. Presented evidence verified complaints of myalgia, though there was no apparent basis for the complaint. Petitioner testified her pain is likely caused by use of Lipitor, to which she is allergic. Lumbar radiology was negative. PT verified some lumbar range restrictions, however, improvement was noted. The evidence was insufficient to support restrictions affecting the ability to perform sedentary employment.

Significant treatment for DM was noted. Presented records verified few complications. Presented records validated Petitioner as a patient who complies with her physician's recommendations. Petitioner faithfully attended physician appointments, lost significant weight, and saw her blood sugar and blood pressure controlled. Evidence of current restrictions related to DM or HTN was not apparent.

Petitioner certainly has various medical problems justifying continued medical treatment. The medical problems are not found to impair Petitioner's ability to perform sedentary employment. It is found Petitioner can perform a full base of sedentary employment.

Consideration was given to restrictions related to kidney disease. Petitioner testified she is not treated by a specialist; this is indicative of non-impairment. Petitioner's stable symptoms are further support for finding no related impairments.

Based on Petitioner's exertional work level (sedentary), age (younger individual), education (less than high school but literate and able to communicate in English), employment history (unskilled), Medical-Vocational Rule 201.24 is found to apply. This rule dictates a finding that Petitioner is not disabled. Accordingly, MDHHS properly found Petitioner to be not disabled for purposes of continued SDA eligibility.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's SDA eligibility, effective November 2016. The actions taken by MDHHS are **AFFIRMED**.

CG/hw



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**Christian Gardocki**

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

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

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

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

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

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

DHHS

[REDACTED]

[REDACTED]

[REDACTED]