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: February 6, 2017
MAHS Docket No.: 16-015460
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 30, 2016, from Lansing, Michigan. The Petitioner was represented by herself and her mother, [redacted]. The Department of Health and Human Services (Department) was represented by [redacted] Medical Contact Specialist. The record was left open for additional medical records that were received on January 6, 2017, and the record was closed.

ISSUE

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

FINDINGS OF FACT

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

1. On September 28, 2015, the Petitioner applied for SDA.

2. On September 16, 2016, the Medical Review Team (MRT) denied the Petitioner's application for SDA is denied per BEM 261 because the nature and severity of the Petitioner's impairments would not preclude work activity at the above stated level for 90 days and is capable of performing other work under Medical Vocation Grid Rule 203.28 per 20 CFR 416.920(f).

3. On September 21, 2016, the Department Caseworker sent Petitioner a notice that her application was denied.

4. On October 13, 2016, the Department received a hearing request from Petitioner, contesting the Department's negative action.

5. Petitioner is a 44 year-old woman whose date of birth is [redacted]. Petitioner is 5' 4" tall and weighs 304-306 pounds. Petitioner completed the 11th grade of High School. Petitioner can read and write and do basic math. Petitioner was last employed as a driver at [redacted] on September 2, 2013, where she had to quit because she could not see to drive. She was also employed as a cashier and driver testing new cars.

6. Petitioner's alleged impairments are chronic pain, arthritis in feet and neck, myopia, oversized spleen, right shoulder surgery from a car accident in 2010, left shoulder physical therapy, blurred vision, degenerative disc disease, depression, hernia, and macular denervation.

7. Petitioner had umbilical hernia surgery on [redacted], at [redacted] She underwent laparoscopic hernia repair with mesh. She tolerated the procedure well. Department Exhibit 1, pgs. 59-61.

8. On [redacted], Petitioner underwent an independent mental status evaluation at [redacted]. She was diagnosed with an unspecified depressive disorder. Petitioner claims to be in mental health treatment. Her ability to relate to others is mildly impaired. She was able to form a rapport with the examiner. Her ability to understand, remember, and carry out task was mildly impaired. She was able to perform simple repetitive tasks. Petitioner is capable of handling more complex tasks. Her ability to perform multiple step tasks is likely to be minimal. She was moderately impaired in her ability to withstand stress and pressure associated with day to day work activities and to maintain attention, concentration, persistence, pace, and effort. Self-esteem was diminished. There was no evidence of a serious thought disorder or risk factors. Petitioner was capable of managing her benefit funds. Department Exhibit 1, pgs.177-182.

9. On [redacted], Petitioner's treating therapist completed a Mental Residual Functional Capacity Assessment, DHS 49E, on behalf of Petitioner based on an examination on November 3, 2016. She was markedly limited in 12 areas and moderately limited in 8 areas. Petitioner Exhibit 1, pgs. a-b.

10. Petitioner's treating psychiatrist submitted a Psychiatric/psychological Examination Report, DHS 49D, signed on December 9, 2016, based on an examination on [redacted], and the treating therapist signed on December 7, 2016, based on an examination on [redacted]. She was diagnosed with major depressive disorder. She had low motivation and low self-esteem that would make working challenging. Her judgment, functioning, and insight were fair. Her memory was impaired. She was given a GAF of 55 compared to 60 last

year. Petitioner is capable of managing her own benefit funds. Petitioner Exhibit 1, pgs. c-e.

11. On [redacted], Petitioner underwent an x-ray of the lumbar sacral spine at [redacted]. The radiologist's clinical impression was lumbar spondylosis. She had mild intervertebral disc space narrowing thought the lumbar spine most prominent at L4-5 with facet arthropathy. Petitioner Exhibit 1, pg. i.

12. On December 12, 2016, Petitioner's ophthalmologist completed an Eye Examination Report, DHS 49, on behalf of Petitioner. She had cataracts on the left eye. Petitioner already had surgery on the right eye. She had normal vision in the right eye and in the left eye 20/400 distance and 20/800 near. Visual fields were not constricted. She needs surgery with significant astigmatism. She did have good depth perception now. Petitioner Exhibit 1, pgs. g-h.

CONCLUSIONS OF LAW

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

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

The Department conforms to State statute in administering the SDA program.

> 2000 PA 294, Sec. 604, of the statute states:
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> Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:
>
> (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.

> (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability. 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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

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, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of 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; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Petitioner does not have a severe medically determinable impairment or combination of impairments, the Petitioner is not disabled. If the Petitioner has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Petitioner's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his ability to do physical and mental work activities on a sustained basis despite limitations from his impairments. In making this finding, the trier must consider all of the Petitioner's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Petitioner has the residual functional capacity to perform the requirements of his past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the Petitioner actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Petitioner

has the residual functional capacity to do past relevant work, then the Petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Petitioner has satisfied requirements as set forth in steps one and two of the sequential evaluation. However, Petitioner's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for step 3. Therefore, vocational factors will be considered to determine Petitioner's residual functional capacity to do relevant work and past relevant work.

In the present case, Petitioner had umbilical hernia surgery on [redacted], at [redacted] [redacted] She underwent laparoscopic hernia repair with mesh. She tolerated the procedure well. Department Exhibit 1, pgs. 59-61.

On [redacted], Petitioner underwent an independent mental status evaluation at [redacted]. She was diagnosed with an unspecified depressive disorder. Petitioner claims to be in mental health treatment. Her ability to relate to others is mildly impaired. She was able to form a rapport with the examiner. Her ability to understand, remember, and carry out task was mildly impaired. She was able to perform simple repetitive tasks. Petitioner is capable of handling more complex tasks. Her ability to perform multiple step tasks is likely to be minimal. She was moderately impaired in her ability to withstand stress and pressure associated with day to day work activities and to maintain attention, concentration, persistence, pace, and effort. Self-esteem was diminished. There was no evidence of a serious thought disorder or risk factors. Petitioner was capable of managing her benefit funds. Department Exhibit 1, pgs.177-182.

On [redacted] Petitioner's treating therapist completed a Mental Residual Functional Capacity Assessment, DHS 49E, on behalf of Petitioner based on an examination on [redacted]. She was markedly limited in 12 areas and moderately limited in 8 areas. Petitioner Exhibit 1, pgs. a-b.

Petitioner's treating psychiatrist submitted a Psychiatric/psychological Examination Report, DHS 49D, signed on December 9, 2016, based on an examination on [redacted], and the treating therapist signed on December 7, 2016, based on an examination on [redacted]. She was diagnosed with major depressive disorder. She had low motivation and low self-esteem that would make working challenging. Here judgment, functioning, and insight were fair. Her memory was impaired. She was given a GAF of 55 compared to 60 last year. Petitioner is capable of managing her own benefit funds. Petitioner Exhibit 1, pgs. c-e.

On [redacted], Petitioner underwent an x-ray of the lumbar sacral spine at [redacted]. The radiologist's clinical impression was lumbar spondylosis. She had mild intervertebral disc space narrowing thought the lumbar spine most prominent at L4-5 with facet arthropathy. Petitioner Exhibit 1, pg. i.

On [redacted], Petitioner's ophthalmologist completed an Eye Examination Report, DHS 49, on behalf of Petitioner. She had cataracts on the left eye. Petitioner already had surgery on the right eye. She had normal vision in the right eye and in the left eye 20/400 distance and 20/800 near. Visual fields were not constricted. She needs surgery with significant astigmatism. She did have good depth perception now. Petitioner Exhibit 1, pgs. g-h.

This Administrative Law Judge finds that Petitioner is physically limited. She is in therapy and taking medications for her mental impairments. There was no evidence a severe thought disorder or risk factors. She had hernia surgery in October of 2015 and her objective medical records does not document any complications after surgery. She had surgery on her right eye for cataracts, which was successful and her vision is not impaired. Petitioner is scheduled to have surgery on her left eye due to cataracts and astigmatism. She has low back pain, which is mildly limited except for flare ups, which require her to utilize the emergency room. She should be capable of performing light work.

It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical, and psychological findings that Petitioner testified that she does perform some of her daily living activities. Petitioner stated that she does have mental impairments where she is taking medication and in therapy. Petitioner does not smoke cigarettes. She drinks socially. She does not use illegal and illicit drugs. Petitioner did not feel there was any work she could do.

At Step 4, this Administrative Law Judge finds that Petitioner has not established that she cannot perform any of her prior work. She was previously employed as a driver at [redacted] on September 2, 2013, where she had to quit because she could not see to drive. She was also employed as a cashier and driver testing new cars. Petitioner is taking medication and in therapy for her mental impairments. She is physically limited with her back. Therefore, Petitioner is disqualified from receiving disability at Step 4. Petitioner is capable of performing her past work at the light level of a cashier. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether Petitioner has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

The objective medical evidence on the record is insufficient that Petitioner lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. Petitioner's testimony as to her limitation indicates her limitations are non-exertional and exertional.

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).

In the instant case, Petitioner testified that she has depression. Petitioner is taking medication and in therapy for her mental impairments. See MA analysis step 2. There was no evidence of a serious thought disorder or risk factors. Based on the independent psychiatric evaluation, she should be able to perform simple, unskilled, repetitive work and maybe more detailed work. Her treating therapist and psychiatrist would limit her to simple and unskilled work. She was given a GAF of 55, which is moderate symptoms or moderate difficulty in social, occupational, or school functioning.

In the final step of the analysis, the trier of fact must determine if Petitioner's impairment(s) prevent Petitioner from doing other work. 20 CFR 416.920(f). This determination is based upon Petitioner's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Petitioner could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

> Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

> Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little; a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).
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> Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).
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> Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, Petitioner can meet the physical requirements of light work, based upon Petitioner's physical abilities. Under the Medical-Vocational guidelines, a younger aged individual with a limited education, and an unskilled work history, who is limited to light work, is considered not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.17. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to Petitioner's mental and physical impairments, the Administrative Law Judge finds that Petitioner could perform simple and unskilled, light work and that Petitioner does not meet the definition of disabled under the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner not disabled for purposes of the SDA benefit program. Petitioner could perform simple and unskilled, light work and Petitioner does not meet the definition of disabled under the SDA program.

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

Carmen G. Fahie

CF/mc

Carmen G. Fahie
for Suzanne Harris
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]