



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 8, 2017
MAHS Docket No.: 16-019027
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 January 26, 2017, from Lansing, Michigan. Petitioner appeared and testified on her own behalf. [REDACTED] General Services Program Manager, and [REDACTED] Eligibility Specialist, appeared on behalf of the Department of Health and Human Services (Department).

PROCEDURAL HISTORY

The Department offered the following exhibit that was marked and admitted into evidence:

Department's Exhibit No. 1 (pages 1 through 272) is a copy of Petitioner's Request for Hearing, Notice of Case Action, Verification of Application or Appeal for SSI/RSDI, DDS Decisions/Payment Documents including Medical-Social Eligibility Certification (DHS-49-A), Medical-Social Questionnaire (DHS-49-F), Disability Determination Service records, and Petitioner's school records from the [REDACTED], Petitioner's medical records from: [REDACTED] and [REDACTED], [REDACTED].

Petitioner's Exhibit A (pages 273 through 283) is a copy of Petitioner's medical records from [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

The record was closed at the conclusion of the hearing.

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 August 17, 2016, the Department received Petitioner's application for Medical Assistance (MA) and SDA benefits alleging disability. [Department Exhibit 1, p. 9].
2. On December 9, 2016, the Medical Review Team (MRT) denied Petitioner's application. [Dept. Exh. 1, p. 15].
3. On December 15, 2016, the Department caseworker sent Petitioner notice that her application was denied because she was not disabled. [Dept. Exh. 1, pp. 4-5].
4. On December 29, 2016, Petitioner filed a request for a hearing to contest the Department's action. [Dept. Exh. 1, pp. 2-3].
5. A telephone hearing was held on January 26, 2017.
6. During the hearing, Petitioner stated that she had the following disabling impairments: back pain due to arthritis, sciatica, and herniated discs. She also said that she is disabled due to anxiety, depression, post-traumatic stress disorder (PTSD), and agoraphobia.
7. Petitioner alleged that she cannot work because she has psychological/emotional limitations including the inability to stop crying and the inability to work with other people. Petitioner also stated that she is unable to work due to the following: inability to remember (short-term memory loss), inability to concentrate, inability to follow complex instructions, and inability to work with others. With regard to her physical limitations, Petitioner also stated that she has difficulty using her right hand, and is generally able to stand, sit, walk, bend, squat, reach above the left shoulder, grip with left hand, hear, and see. Petitioner stated that she does have some difficulty completing these tasks due to pain, but that she is able to do so.
8. At the time of the hearing, Petitioner testified that she was 41 years-old with a birth date of [REDACTED]. Petitioner also said that she is 5 feet 9

inches tall and weighs approximately 230 pounds. Petitioner stated that she is left-hand dominant.

9. Petitioner testified that she has a high school education or the equivalent (diploma), but she stated that she has a learning disability. Petitioner said that when she was tested, she was reading at the 4th grade level and that she was at the 5th grade level for writing. However, Petitioner said that she is literate and is able to read, write, and understand English.
10. Petitioner said that she is currently unemployed and her past relevant work was as a line worker at a factory that assembled automobile parts in June 2016. Petitioner testified that working as a line worker, she was required to pull parts (mirrors) out of an oven, inspect the parts for damage, apply a substance on the parts and then test them on a machine. In this capacity, Petitioner said that she spent 100% of the work day standing and was regularly required to lift 10-25 lbs.
11. Petitioner testified that she also worked in sales/customer service in 2010 to 2011 until she had a traumatic experience with her ex-husband that led to a divorce. Petitioner said that she has had difficulty working with others ever since.
12. Petitioner primarily has an unskilled work history (line worker) that is transferrable to other jobs.
13. Petitioner's medical records show that she has the following medical conditions and/or treatment based on medically acceptable clinical and laboratory diagnostic techniques:
 - a. Petitioner's medical records indicate that she smokes every day (0.50 packs/day) and that she has smoked for the last 22 years. [Dept. Exh. 1, pp. 200].
 - b. Petitioner's educational documents indicated that she had a learning disability. [Dept. Exh. 1, pp. 175-190].
 - c. Petitioner's records showed that she had 6 physical therapy visits for lumbar and thoracic spine pain in April to May 2011. She was discharged on [REDACTED], because she failed to return to PT. [Dept. Exh. 1, pp. 268].
 - d. On [REDACTED], Petitioner had an MRI of the lumbar spine for low back pain. The MRI showed no evidence of lumbar vertebral body fracture or spondylolisthesis, but she had mild disc degenerative disease at L4-5 and L5-S1. [Dept. Exh. 1, pp. 264-265].

- e. Petitioner had an x-ray of the right shoulder on [REDACTED], which was normal. [Dept. Exh. 1, pp. 267].
- f. On [REDACTED], Petitioner had a physical examination for the Disability Determination Service (DDS). The examination revealed that Petitioner had a normal gait and she can walk on her heels and toes. Her standing posture was normal, but she had some tenderness on palpation of the lumbar area. Petitioner's joint stability, strength, and tone were normal. Petitioner's right and left upper extremities were normal with adequate range of motion. The overall assessment was chronic thoracic and lumbar pain. [Dept. Exh. 1, pp. 245-246].
- g. Petitioner had a mental status examination on [REDACTED]. Petitioner's Psychiatric/Psychological Medical Report indicated the following diagnoses: [Axis I] Generalized Anxiety Disorder (300.02), Nightmare Disorder (307.47), Depressive Disorder NOS (311), Cannabis Abuse (305.20), Hx Alcohol Abuse (305.00), and a Learning Disorder NOS (315.9). [Axis II]: Personality disorder. [Axis III]: Sciatica, right leg, herniated & bulging discs in lower back, cysts, irregular periods, arthritis lower back, irregular heartbeat, and pain. GAF: 45/50. [Dept. Exh. 1, pp. 236-237].
- h. On [REDACTED], Petitioner presented to [REDACTED] to establish care. Petitioner's history indicated that she had anemia, anxiety, arthritis, backache, depression, venereal disease, mitral valve prolapse, and alcohol abuse (when living in a 3 year abusive relationship). [Dept. Exh. 1, pp. 199].
- i. Petitioner had a medical examination on [REDACTED]. At this time, Petitioner's musculoskeletal system showed a normal range of motion. She had no cervical adenopathy. Petitioner's neurological assessment demonstrated that she was alert and oriented to person, place and time. Her psychiatric evaluation indicated that her speech and behavior were normal. Petitioner's mood appeared anxious, but her affect was not labile. She had no suicidal ideation and expressed no suicidal plans. Petitioner was diagnosed with fatigue, anxiety, and depression. She was referred to psychiatry and prescribed Xanax (0.5 mg). She was also told to decrease the Klonopin by ½ pill per week. [Dept. Exh. 1, pp. 200-201].
- j. Petitioner had a medical visit on [REDACTED]. Following this visit, she was diagnosed with anxiety, depression, cough, congestion of upper airway and acute pharyngitis. She was prescribed Prednisone, Augmentin, and Phenergan with Codeine syrup. [Dept. Exh. 1, pp. 204-205].

- k. Petitioner returned to the doctor on [REDACTED], complaining of chest pain, ear pain, sore throat, and shortness of breath. Petitioner was diagnosed with acute frontal sinusitis, bronchitis, cough along with anxiety and depression. She was prescribed Zithromax, and continued with Phenergan-Codeine syrup. [Dept. Exh. 1, pp. 208-209].
- l. Petitioner had a medical visit on [REDACTED], with complaints of nausea and vomiting and right foot pain. She was diagnosed with non-intractable vomiting with nausea, unspecified type, diarrhea (viral gastroenteritis versus h pylori versus bacterial intestinal infection). For her right foot pain, Petitioner was referred to a foot and ankle physician. [Dept. Exh. 1, pp. 212-213].
- m. Petitioner returned for a follow up visit on [REDACTED]. At this time, Petitioner stated that she had been feeling better. She still had some nausea, headaches and her stomach felt strange. She had difficulty sleeping. The physician felt that Petitioner may have had a viral syndrome, but noted that her overall symptoms had been improving. The diarrhea had resolved and she had no further vomiting. Her condition was monitored. [Dept. Exh. 1, pp. 216-217].
- n. Petitioner returned for a medical follow up evaluation on [REDACTED]. Petitioner's condition slowly had improved. No further vomiting and had normal bowel movements. Petitioner's labs and stool cultures were normal. She was provided with a temporary work release and there was a possibility of early diverticular disease. The medical letter cleared her to return to work on Monday, May 22, 2016, without restrictions. [Dept. Exh. 1, pp. 195, 220-221].
- o. Petitioner received a medical letter dated [REDACTED], that indicated she could return to work with reduced hours (4 hour shifts) from May 25 through May 31, 2016. [Dept. Exh. 1, pp. 194].
- p. On [REDACTED], Petitioner visited the doctor for runny nose, coughing, congestion, fever, and chills. The records indicated that Petitioner worked at [REDACTED] in the checkout and had missed work for 3 days. She was diagnosed with an upper respiratory infection with cough. She was prescribed Phenergan with Codeine syrup. [Dept. Exh. 1, pp. 224-225].
- q. Petitioner was treated for depression and anxiety at [REDACTED] in 2016. [Petitioner's Exhibit A, pp. 273-275].

- r. In early 2016, Petitioner was employed and was a resident of the [REDACTED] [Pet. Exh. A, pp. 276].
 - s. On [REDACTED], a nurse practitioner wrote a letter To Whom It May Concern that indicated that Petitioner was seen in the office and that she suffers from severe anxiety and social anxiety “and may have times that she is not able to work in contact with others.” [Pet. Exh. A, pp. 277].
 - t. On [REDACTED], a nurse practitioner wrote a letter To Whom It May Concern that indicated that Petitioner had severe social anxiety and is in the process of starting medication and counseling to treat her condition with a referral to psychiatry that was pending. The letter requested that Petitioner be allowed to remain in her room alone during the day. [Pet. Exh. A, pp. 278].
 - u. The records contained a letter from a physician dated November 28, 2016, that indicated Petitioner may return to work on November 30, 2016. [Pet. Exh. A, pp. 279].
 - v. On November 28, 2016, a nurse practitioner wrote a letter To Whom It May Concern that indicated that Petitioner had “acute and chronic back pain and should avoid work that requires bending, pushing, pulling, lifting or twisting.” [Pet. Exh. A, pp. 280].
14. During the relevant time period, Petitioner had been taking the following medications:
- a. Gabapentin. [Hearing Testimony].
 - b. Flexeril. [Hrg. Test.]
 - c. Tramadol. [Hrg. Test.]
 - d. Celexa. [Dept. Exh. 1, p. 198]
 - e. Xanax. [Dept. Exh. 1, p. 198]
 - f. Klonopin. [Dept. Exh. 1, p. 198]
 - g. Phenergan with Codeine. [Dept. Exh. 1, p. 198]
15. The objective medical records did not contain a written opinion from a licensed health professional that Petitioner is permanently disabled. There were letters from a nurse practitioner, but not from a physician (M.D., D.O., Ph.D., etc.) that definitively indicated disability from all work. [Dept. Exh. 1, p. 277-280].

CONCLUSIONS OF LAW

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

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA program. Under SSI, “disability” is defined as:

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905. [Emphasis added].

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

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

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

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that

an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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

...Medical reports should include –

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

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

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

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting.

See 20 CFR 416.921(b).

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

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

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

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

At the time of the hearing, Petitioner provided credible testimony that she is currently unemployed and last worked in August 2016. Therefore, Petitioner is not engaged in SGA and is not disqualified from receiving disability at step one. The analysis proceeds to step two.

At step two, the Administrative Law Judge must determine whether the individual has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of

impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the person does not have a severe medically determinable impairment or combination of impairments, he or she is not disabled.

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

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C). First, an individual’s pertinent symptoms, signs and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual’s significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are assessed based upon the extent to which the impairment(s) interferes with an individual’s ability to function independently, appropriately, effectively and on a sustained basis. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings, medication and other treatment, and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual’s degree of functional limitation. 20 CFR 416.920a(c)(4).

In the present case, Petitioner alleges disability due to back pain due to arthritis, sciatica, and herniated discs. She also said that she is disabled due to anxiety, depression, post-traumatic stress disorder (PTSD), and agoraphobia. 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*. As indicated in the Findings of Fact above, the objective medical records did not contain a written opinion from a licensed health professional (M.D., D.O.), psychologist, or psychiatrist that Petitioner is permanently disabled from work. [Dept. Exh. 1, p. 277-280]. To the extent that Petitioner has letters from a nurse practitioner regarding the inability to work, the letters are not definitive and do not consist of a formal opinion that Petitioner is disabled from all work activities. [Dept. Exh. 1, p. 277-280]. Nevertheless, the objective 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, 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 lower lumbar pain, depression and anxiety since at least 2015. [Dept. Exh. 1, pp. 199-201]. This evidence shows that Petitioner has a medically determinable mental impairment based on documented signs, symptoms, and laboratory findings. [Dept. Exh. 1, pp. 199-201]. 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 arthritis, sciatica, and herniated discs. She also said that she is disabled due to anxiety, depression, post-traumatic stress disorder (PTSD), and agoraphobia. [Hrg. Test.] The objective medical evidence shows that Petitioner has been diagnosed with mild disc degenerative disease at L4-L5 and L5-S1, as well as depression and anxiety. [Dept. Exh. 1, pp. 236-237, 264-265]. Based upon the objective medical evidence, the Administrative Law Judge will

consider the following listings: 1.04 Disorders of the spine, 12.04 Depressive, bipolar and related disorders, and 12.06 Anxiety and obsessive-compulsive disorders.

Listing 1.04 requires that an individual have a disorder of the spine (degenerative disc disease) with (1) “[e]vidence 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 (2) “[s]pinal 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 (3) “[l]umbar 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. . .” Based upon the above Findings of Fact, Petitioner’s objective medical records does not show that she meets or medically equals listing 1.04. There is no evidence of nerve root compression and she has not provided testimonial or other evidence to show that she has conditions that requires the need for changes in position every two hours. Finally, Petitioner has not shown the presence of spinal disorders such that she has the inability to ambulate effectively.

Listing 12.04 requires an individual to have a depressive disorder with five or more of the following: “Depressed mood, diminished interest in almost all activities, appetite disturbance with change in weight, sleep disturbance, observable psychomotor agitation or retardation, decreased energy, feelings of guilt or worthlessness, difficulty concentrating or thinking, or thoughts of death or suicide.” In addition, for Listing 12.04 the individual must also have: “Extreme limitation of one, or marked limitation of two, of the following areas of mental functioning: understand, remember, or apply information; interact with others; concentrate, persist, or maintain pace; and adapt or manage oneself.” Alternatively, the individual must have “a mental disorder that is ‘serious and persistent;’ that is, there must be a medically documented history of the existence of the disorder over a period of at least 2 years, and there is evidence of both: (1) medical treatment, mental health therapy, psychosocial support(s), or a highly structured setting(s) that is ongoing and that diminishes the symptoms and signs of your mental disorder; and (2) marginal adjustment, that is, you have minimal capacity to adapt to changes in your environment or to demands that are not already part of your daily life.” Based upon the above Findings of Fact, Petitioner’s objective medical records shows that she does not meet or medically equal the requirements of listing 12.04.

Finally, in order to meet listing 12.06, the individual must have an anxiety disorder characterized by three or more of the following: “restlessness, easily fatigued, difficulty concentrating, irritability, muscle tension or sleep disturbance. In addition, the individual must have extreme limitation of one or marked limitation of two of the following areas of mental functioning: understand, remember or apply information; interact with others; concentrate persist or maintain pace; or adapt or manage oneself.” Alternatively, the

individual must have a mental disorder that is 'serious and persistent' which is a documented history of having the disorder for more than 2 years and medical, mental health therapy, psychosocial support or highly structured settings that is ongoing and that diminishes the signs and symptoms of the disorder. The individual may also have marginal adjustment or minimal capacity to adapt to changes in environment or to demands that are not already part of the daily life." Based upon the above Findings of Fact, Petitioner's objective medical records shows that she does not meet or medically equal the requirements of listing 12.06.

Overall, the medical evidence presented in this matter is not sufficient to meet the intent and severity requirements of any listing, or its equivalent. The analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the individual's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his or her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the individual's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

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. The terms are defined as follows:

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).

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).

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).

Here, Petitioner alleges that due to her disability, she is unable to work because she cries a lot and suffers from back pain. Petitioner's alleged impairments are partially credible. Following a review of all of Petitioner's alleged impairments, coupled with the objective medical evidence, this Administrative Law Judge finds that she can lift/carry at least 10 lbs., and can stand, walk or sit for less than 2 hours. Petitioner would require the accommodation to sit or stand. However, with this accommodation, Petitioner would not have a physical disability that would prevent her from all work. Therefore, this Administrative Law Judge finds that Petitioner has the residual functional capacity to perform sedentary work on a sustained basis as defined by 20 CFR 416.967(b) on a non-exertional level.

Petitioner also alleges that she is completely unable to work due to her disabilities. Specifically, Petitioner contends that she is disabled because she cannot work around people and that she cries a lot. The Administrative Law Judge has reviewed all of Petitioner's alleged impairments as well as the objective medical evidence in this case. Based on the above Findings of Fact, Petitioner's understanding and memory is not limited; her sustained concentration and persistence is moderately limited; social interaction is markedly limited; and adaptation is moderately limited. Nevertheless, the objective evidence shows that Petitioner has the ability to do physical and mental work activities on a sustained basis. The evidence also demonstrates that Petitioner can concentrate such that she can tolerate the mental demands associated with competitive work. Petitioner possesses the ability to function in a structured setting. She also has the ability to understand, carry out, and remember simple instructions. Accordingly, Petitioner's use of judgment is not impaired. Petitioner may have some difficulty responding appropriately at all times to supervision, co-workers, and usual work situations. However, the evidence shows that Petitioner should possess the ability to deal with normal changes in a routine work setting. Therefore, this Administrative Law Judge finds that Petitioner has the residual functional capacity to perform sedentary work on a sustained basis as defined by 20 CFR 416.967(b) on a non-exertional level. The analysis proceeds to step four.

At step four, the Administrative Law Judge must determine whether the individual has the residual functional capacity to perform the requirements of his or her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the individual actually performed it or as it is generally performed in the national economy) within the last 15 (fifteen) years or 15 (fifteen) years prior to the date that disability must be established. In addition, the work must have lasted long enough for the individual to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the individual has the residual functional capacity to do his or her past relevant work, he or she is not disabled. If the

individual is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

During the hearing, Petitioner testified that she had a learning disability in school and that she has worked customer service for a siding company for about five years and she worked for one (1) month as a cashier. Working as a cashier or in customer service, as described by Petitioner at the hearing, involved regular contact with the public. This Administrative Law Judge finds that Petitioner does not have the residual functional capacity to perform the requirements of her past relevant work. The analysis proceeds to the final step.

At the fifth and final step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g), the Administrative Law Judge must determine whether the individual is able to do any other work considering his or her residual functional capacity, age, education, and work experience. 20 CFR 416.920(4)(v). At this point in the analysis, the burden shifts from the individual applicant to the Department to present proof that the individual has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). If the individual is able to do other work, he or she is not disabled. If the individual is not able to do other work and meets the duration requirements, he or she is disabled.

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 for the Department to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The medical vocational guidelines can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Based upon the above-referenced medical-vocational guidelines, Petitioner (age 41) is considered a younger individual, with a limited education or less (7th grade through 11th grade or less), a semi-skilled work history that is transferrable to other jobs and is capable of sedentary work, is not considered disabled pursuant to medical-vocational rule 201.26.

This Administrative Law Judge finds that Petitioner has not 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). The evidence shows that Petitioner is capable of performing other work. Although Petitioner has cited medical problems, there is insufficient objective medical evidence to substantiate Petitioner's assertion that her alleged impairments are severe enough to reach the criteria and definition of

disability. Accordingly, this Administrative Law Judge concludes that Petitioner does not meet the definition of disabled based upon the requirements of the MA program.

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

With regard to Petitioner's request for disability under the SDA program, it should be noted that the Department's BEMs contain policy statements and instructions for caseworkers regarding eligibility for SDA. In order to receive SDA, "a person must be disabled, caring for a disabled person or age 65 or older." BEM, 261 (7-1-2015), p. 1.

A person is disabled for SDA purposes if he or she: (1) receives other specified disability-related benefits or services¹; 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 does not meet the definition of disabled under the MA program and the evidence of record does not show that Petitioner is unable to work for a period exceeding 90 (ninety) days. In addition, this record does not show that Petitioner has met any of the requirements under BEM 261. Accordingly, this Administrative Law Judge finds that Petitioner is not disabled for purposes of the SDA program.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it acted in compliance with Department policy when it denied Petitioner's application for SDA.

¹Retirement, 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.

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

IT IS SO ORDERED.



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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]