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: March 17, 2017
MAHS Docket No.: 17-000654
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 [redacted], from [redacted] Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [redacted], medical contact worker.

ISSUE

The issue is whether MDHHS properly denied 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. On [redacted], Petitioner applied for SDA benefits.

2. Petitioner's only basis for SDA benefits was as a disabled individual.

3. On [redacted], the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 7-13).

4. On [redacted], MDHHS denied Petitioner's application for SDA benefits and mailed a Notice of Case Action informing Petitioner of the denial.

5. On [redacted], Petitioner requested a hearing disputing the denial of SDA benefits.

6. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.

7. Petitioner's combined problems of spine dysfunction and carpal-tunnel syndrome (CTS) prevent Petitioner form performing past employment, light employment, and some types of sedentary employment.

8. MDHHS did not present evidence of sedentary employment available to Petitioner.

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. 4. 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 (January 2012), p. 1. A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, 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.

Petitioner requested a hearing to dispute the denial of an SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 2-7) dated [redacted] verifying Petitioner's application was denied based on a determination that Petitioner was not disabled.

Generally, state agencies such as MDHHS must use the same definition of SSI disability as found in the federal regulations. 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 [90 days for SDA eligibility]. 20 CFR 416.905.

SGA 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. *Id*., p. 9. 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 SGA. *Id*.

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2016 monthly income limit considered SGA for non-blind individuals is $1,130.00.

Petitioner credibly denied performing current employment; no evidence was submitted to contradict Petitioner's testimony. Based on the presented evidence, it is found that Petitioner is not performing SGA. Accordingly, the disability analysis may proceed to the second step.

The second 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 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen,* 880 F2d 860, 862 (6th 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 (1st 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 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Petitioner's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented medical documentation.

Physician office visit notes (Exhibit 1, pp. 178-179) dated [redacted], were presented. It was noted Petitioner reported a recent EKG demonstrated an irregular rhythm. Ongoing chest pain was also reported. It was noted an EKG from [redacted] was benign and an echo from the past [redacted] years was normal. A diagnosis of "other chest pain" was noted.

Physician office visit notes (Exhibit 1, pp. 175-176) dated [redacted], were presented. Complaints of leg pain, ongoing for 5 days was noted. A diagnosis of sciatica was noted. A referral for PT was noted.

Medical center office visit notes (Exhibit 1, pp. 91-96, 148-156, 213-215, 318-320) dated [redacted], were presented. It was noted Petitioner complained about back pain, left shoulder pain, and headache following a work-related car accident from [redacted]. Petitioner reported pain was worse with activity. Tenderness was noted in neck and trapezius muscle. Decreased range of motion was noted. Assessments of cervical radiculopathy and cervical strain were noted. Ibuprofen was prescribed. Petitioner was taken "off work" based on the injury. PT was prescribed.

A cervical spine radiology report (Exhibit 1, p. 90) dated [redacted], was presented. An impression of degenerative changes at C6 and C7 were noted.

Physical therapy documents (Exhibit 1, pp. 102-110, 143-147, 216-217, 316-317) dated [redacted], were presented. Various cervical spine range of motion restrictions (e.g. flexion 50%, left and right rotation 25%) were noted. Decreased upper trapezius (3-/5) and deep cervical flexor strength (3-/5) was noted. A total of 6 visits were planned.

Various PT and medical center treatment documents (Exhibit 1, pp. 115-142, 211-212, 218-221, 308-309, 312-315) from [redacted] were presented. On [redacted], [redacted] it was noted Petitioner had 75% range of motion on right neck rotation, 60% of left rotation; trapezius tenderness was noted. Restrictions of no lifting and no driving were noted. A neurosurgeon consultation was planned.

Physician office visit notes (Exhibit 1, pp. 169-170) dated [redacted], were presented. Complaints of headaches, neck pain, left arm pain, ear buzzing were noted. Left arm weakness (4/5) was noted. Various medications were prescribed.

A cervical spine MRI report (Exhibit 1, pp. 111-112, 226, 244-245, 310-311) dated [redacted], was presented. Disc bulging on the left vertebral foramen was noted at C5-C6. Spine straightening was noted.

Neurologist office visit notes (Exhibit 1, pp. 237-239, 305-307) dated [redacted], were presented. Ongoing achy neck and bilateral arm pain was reported. Petitioner also reported regular headaches with blurry vision. A loss of lordotic curvature was noted. An EMG was recommended.

Neurologist office visit notes (Exhibit 1, pp. 236, 249-251, 298-302, 336-341, 344-349) dated [redacted], was presented. Reduced bilateral hand sensation was noted. It was noted Petitioner underwent electrodiagnostic testing of upper bilateral extremities. An impression of left-sided C5-C6 radiculopathy was noted; right-sided radiculopathy was noted to be questionable. Mild bilateral CTS was also noted. Continuance of treatment was recommended, with a surgical option dependent on an upcoming MRI of the cervical spine. Recommendations included continuance of PT and use of a TENS unit

Physical therapy notes (Exhibit 1, pp. 242-243, 303-304, 325-326, 328-333) from [redacted] were presented. Cervical spine spasms were noted. On [redacted] [redacted] it was noted Petitioner's pain level was 3-4/10 and mobility was improved.

Neurologist office visit notes (Exhibit 1, pp. 240-241, 296-297) dated [redacted], were presented. Petitioner reported an ability to be active for 2 hours before excruciating pain prevents further activity. Mild left-sided global weakness was noted.

Straight-leg-raising was noted to be bilaterally positive. A “behavioral component” to disability was suspected; a referral was made to a rehabilitation physician.

Cardiologist office visit notes (Exhibit 1, pp. 271-273) dated [redacted], were presented. A history of atypical chest pain, HTN, and palpitations was noted. It was noted Petitioner reported improvement of palpitation with medications. Fatigue, ongoing for 2 weeks, was reported. A normal gait was noted. Medications were adjusted. A follow-up in 6 months was planned.

A neurosurgeon letter (Exhibit 1, pp. 252-264, 352-364) dated [redacted], was presented. It was noted Petitioner presented for an independent medical examination. Petitioner reported ongoing neck pain, which also affects her arms and hands; recurrent headaches were also noted. Petitioner reported her daughter assists with ADLs. Petitioner reported PT worsened her pain. Moderate neck ranges of motion in all directions were restricted. Right-sided Tinel’s sign was positive. Lumbar ranges of motion were noted to be unrestricted. A normal gait was noted. Cervical radiculopathy was noted to be caused by Petitioner’s motor vehicle accident. Continued treatment was recommended.

Neurosurgeon office visit notes (Exhibit 1, p. 294-295) dated [redacted] was presented. Ongoing complaints of neck pain were noted. Radiating bilateral arm pain, hand numbness was also noted. Physical examination findings included limited range of neck motion. An impression of a cervical spine injury, with a psycho-physiologic aspect was noted. A recommendation of behavioral therapy was noted.

A neurosurgeon letter (Exhibit 1, pp. 194-197, 365-368) dated [redacted], was presented. It was noted Petitioner was examined and no objective evidence of cervical radiculopathy was found. The neurosurgeon examined a previous MRI and found left-sided disc herniation at C5-C6 and C6-C7 with left-sided neuroforaminal stenosis. The neurosurgeon concluded Petitioner was a candidate for conservative treatment rather than surgical intervention. The conclusion was noted to be partially based on Petitioner’s relatively little need for pain meds (3 times per week) and clinical findings.

Neurosurgeon office visit notes (Exhibit 1, p. 293) dated [redacted], was presented. Physical examination findings included limited range of neck motion. A plan of follow-up following functional recovery program was noted.

Rehabilitation physician office visit notes (Exhibit 1, pp. 246-247) dated [redacted] were presented. Ongoing diagnoses of neck pain, lumbar pain, hand numbness, and enthesopathy were noted.

Orthopedic surgeon notes (Exhibit 1, pp. 201-210) dated [redacted], were presented. It was noted Petitioner reported little neck relief following PT. Trigger point injections were completed on unspecified later dates. Petitioner reported ongoing stable neck pain (6/10), neck stiffness, occasional radiation of pain, wrist pain, worsening

lumbar pain, and headaches. Tenderness to palpation was noted along the cervical spine. Neck range of motion was noted to be unrestricted other than left rotation which was limited by 30 degrees. Shoulder range of motion was noted to be full. Lumbar flexion was noted as limited by 20 degrees. Straight-leg-raising was negative bilaterally. A cervical spine MRI was noted to be typical for someone of Petitioner's age. Electrodiagnostic testing was recommended.

Hospital emergency room documents (Exhibit 1, pp. 265-269) dated [redacted], were presented. A complaint of nausea with vomiting was noted. Radiology was negative. A diagnosis of abdominal pain was noted.

Orthopedic surgeon notes (Exhibit 1, pp. 198-200) dated [redacted], were presented. It was noted electrodiagnostic testing (see Exhibit 1, p. 222) demonstrated right-sided CTS with focal demyelination of sensory and motor fibers.

Physician office visit notes (Exhibit 1, pp. 169-170) dated [redacted] were presented. Ongoing neck pain was reported. Petitioner reported 2 courses of PT provided little relief. Left arm and bilateral hand numbness was reported. Bilateral foot pain was also reported. Various medications were continued.

Physician office visit notes (Exhibit 1, pp. 167-168) dated [redacted], were presented. A 20% improvement in cervical spine pain was reported, along with increased energy and improved sleep was noted. Bilateral hand numbness was reported. Physical examination findings included decreased left arm flexion. Various medications were prescribed.

Physician office visit notes (Exhibit 1, pp. 165-166) dated [redacted], were presented. It was noted that Petitioner was "doing well" with "no current complaints", though left foot burning was noted. Left-sided cervical spine tenderness was noted. Decreased left arm motion was noted. Motor strength in upper extremities was noted to be 4/5 and 5/5 in lower extremities. Recommendations included walking four times per week with 2 pound weights to increase strength. Various meds were continued.

A cervical spine MRI report (Exhibit A, p. 2-4) dated [redacted], was presented. An impression of loss of normal cervical lordosis was noted. Mild-to-moderate right-sided and moderate left-sided neural foraminal narrowing was noted at C6-C7. Mild hypertrophy with nerve root abutment was noted.

A letter from a physician (Exhibit A, p. 1) dated [redacted], was presented. The physician stated Petitioner's MVA markedly affected the quality of Petitioner's life.

Petitioner testified she tried PT many times, but with little improvement in function. Petitioner testified she is currently trying pool therapy. Petitioner testified she once tried a pain injection, but it provided no relief. Petitioner testified her physician advised her not to bother with further injections.

Petitioner testified she was diagnosed with a heart valve disease. Petitioner testified the disease is stable and that she has no restrictions as long as she complies with prescribed medication.

Presented medical records generally verified a medical treatment history consistent with degrees of exertional restrictions to lifting/carrying, ambulation, and standing. Restrictions to concentration and hand manipulation were also verified. A treatment history consistent with restrictions was established to have lasted at least 90 days and at least since Petitioner's date of SDA application. Accordingly, it is found that Petitioner established having a severe impairment and the disability analysis may proceed to Step 3.

The third step of the sequential analysis requires determining whether the Petitioner's impairment, or combination of impairments, is listed in 20 CFR Part 404, Subpart P, appendix 1. 20 CFR 416.920 (a)(4)(iii). If a petitioner's impairments are listed and deemed to meet the durational requirement, then the petitioner is deemed disabled. If the impairment is unlisted or impairments do not meet listing level requirements, then the analysis proceeds to the next step.

A listing for joint dysfunction (Listing 1.02) was considered based on Petitioner's complaints of hip and shoulder pain. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively or that Petitioner is unable to perform fine and gross movements with upper extremities.

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.

It is found that Petitioner failed to establish meeting (or equaling) an SSA listing. Accordingly, the analysis moves to the fourth step.

The fourth 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 most recently employed as a school bus driver. Petitioner testified she is unable to return to this employment until she has full range of neck motion. Petitioner also testified that hand numbness and headaches would preclude performance of employment as a bus driver.

Petitioner testified she previously worked as a full-time day care provider. Petitioner testified she was licensed to care for 6 children. Presumably, Petitioner's work involved smaller children as she stated she is not able to return to the employment because she can no longer lift the children.

Petitioner testified she worked for a bank as a "check marker." Petitioner testified her job was preparing checks for data entry processing. As an example of one of her duties, Petitioner testified she would examine the checks to ensure they were properly completed. Petitioner testified right-hand numbness and dysfunction would prevent the performance of this employment. Petitioner also testified the job no longer exists, presumably due to technology.

Petitioner testified she worked briefly as a customer service representative for a public school district. Petitioner testified her primary job was to answer telephone calls from parents and assigning routes. Petitioner testified her job required work on a computer. Petitioner testified she has difficulty holding a telephone. Petitioner also testified she no longer has the required disposition to handle the level of customer service needed for the job.

Presented medical documents verified ongoing cervical and lumbar spine range of motion restrictions, CTS contributing to right-hand numbness, and loss of upper extremity strength. Ongoing cervical and lumbar spine pain would reasonably restrict Petitioner's concentration and/or disposition from employment heavily reliant on customer service, driving, and complex jobs. The restrictions would preclude Petitioner from performance of all past employment. Accordingly, the disability analysis may proceed to the final step.

In the fifth 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).

Petitioner turned [redacted] years old in [redacted]. Thus, Petitioner was under [redacted] years of age as of the date of her SDA application. As of the date of SDA application (and subsequent 6 months) 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.

Petitioner testified she is capable of only walking 1 block before leg and foot pain prevent further walking. Petitioner testified she does not require a walking assistance device. Petitioner testified stairs are particularly difficult and that she sometimes stays home due to having to travel down stairs in order to leave her residence.

Petitioner testified she is limited to 15-20 minutes of standing. Petitioner could not estimate a sitting restriction, though she stated she had to stand up once during the hearing (presumably due to lower back pain) at approximately the 34:00 mark.

Petitioner testified her physician limited her lifting/carrying to 10 pounds. Petitioner testified her arms are always in pain (5/10) and the pan worsens when she moves her arms.

Petitioner testified she can bathe herself. Petitioner testified she can dress herself, though she sometimes has difficulty tying shoes. Petitioner testified she cannot style her hair because of an inability to raise arms. Petitioner testified she can cook small meals and occasionally wash dishes, but is unable to perform other housework. Petitioner testified she can shop, though was unable to complete a shopping trip in the week before the hearing. Petitioner testified she can drive only for short distances.

Petitioner testified she is constantly in pain. Petitioner testified she has nerve damage throughout her entire body. Petitioner testified she experiences neck, bilateral shoulder, bilateral hand, bilateral leg, and bilateral foot pains. Petitioner testified her pain is constant.

Petitioner testified she has bilateral hand restrictions, worse in her dominant hand (her right). As an example, Petitioner testified she is unable to open a can of pop. Petitioner testified she often drops items due to hand weakness. Petitioner testified she noticed her writing is progressively sloppier and that typing causes her fingers to numb.

Petitioner's testimony was indicative of an ability to perform some duties of sedentary employment, though not necessarily all duties. Petitioner's testimony was consistent with presented statements of restriction from physicians.

In a letter dated [redacted], a neurosurgeon treating Petitioner for neck pain recommended that Petitioner not yet return to full-time work as a bus driver. The neurosurgeon also noted Petitioner could possibly work a desk job with a sitting/standing option, and no lifting exceeding 15 pounds. The statement was indicative that Petitioner could possibly perform some types of sedentary employment.

Subsequent treatment records tended to verify a degree of improvement. On [redacted], Petitioner reported a reduction is spasms after completing a functional recovery program in the summer of [redacted] though the program reportedly did little to control ongoing pain (see Exhibit 1, p. 206); ongoing pain (6/10) was also noted. A lack of improvement is also consistent with reduced upper extremity strength, cervical spine lordosis, and continued range of motion restrictions.

Most notably, medical records verified bilateral hand dysfunction. CTS was verified by electrodiagnostic testing. Hand numbness and weakness was verified. The restriction would reasonably preclude Petitioner's performance heavily reliant on hand function. This would apply to employment requiring typing.

Overall, Petitioner might be capable of performing the sitting and lifting required of sedentary employment. Petitioner's ongoing pain would reasonably limit Petitioner's concentration level and limit her to performance of non-complex employment. Petitioner's neck restrictions would prevent her from sedentary employment involving driving. CTS would preclude performance involving typing.

It is possible that ample employment exists within Petitioner's capabilities. The burden to establish the existence of such employment is on MDHHS. MDHHS presented no evidence of the availability of such employment. Petitioner's restrictions are significant enough that it cannot be presumed that such employment can be assumed to exist. In lieu of such evidence, it must be assumed that employment suitable for Petitioner's abilities does not exist.

Based on presented evidence, it is found that Petitioner is not capable of performing any exertional level of employment due to combined exertional and non-exertional restrictions. This finding justifies a finding of disability from the date of SDA application. Accordingly, the denial of Petitioner's SDA application is found to be improper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly denied Petitioner's application for SDA benefits. It

is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

(1) reinstate Petitioner's SDA benefit application dated [redacted];
(2) evaluate Petitioner's eligibility subject to the finding that Petitioner is a disabled individual;
(3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
(4) schedule a review of benefits in one year from the date of this administrative decision, if Petitioner is found eligible for future benefits.

The actions taken by MDHHS are **REVERSED**.

CG/hw

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]

Petitioner

[redacted]