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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 30, 2017
MAHS Docket No.: 17-000687
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 March 8, 2017, from Lansing, Michigan. Petitioner appeared and testified on her own behalf. [REDACTED] Family Independence Manager, appeared on behalf of the Department of Health and Human Services (Department).

PROCEDURAL HISTORY

The Department offered the following exhibits that were marked and admitted into evidence:

Department's Exhibit No. 1 (pages 1 through 241) is a copy of Medical-Social Eligibility Certification (DHS-49-A), Medical-Social Questionnaire (DHS-49-F), Disability Determination Service records, and Petitioner's medical records.

Petitioner's Exhibit A (pages 1 through 4) is a copy of Petitioner's four (4) records from [REDACTED], and an MRI of Petitioner's left knee dated October 26, 2016.

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 July 6, 2016, the Department received Petitioner's application for SDA benefits alleging disability.
2. On December 15, 2016, the Medical Review Team (MRT) denied Petitioner's application.
3. On December 15, 2016, the Department caseworker sent Petitioner notice that her application was denied.
4. On or about January 10, 2017, Petitioner filed a request for a hearing to contest the Department's action.
5. A telephone hearing was held on March 8, 2017.
6. At the hearing, Petitioner alleged that she was previously employed as a nurse's aide. She contends that in 2014, she injured her left knee at work. She says that she had a torn left ACL and meniscus, which required surgery. Petitioner further states that she had physical therapy but that it was not successful. Petitioner also alleges that in November 2016, she fell and injured her right shoulder while attempting to lift a patient at work. Petitioner said that she felt a pop in her shoulder and had pain. She also alleges that her asthma, ADHD, and anxiety prevent her from working. [Dept. Exh. 1, p. 147].
7. As a result, Petitioner contends that she cannot work due to inability to lift more than 20 lbs., inability to squat, inability to walk long distances (due to left knee), inability to sit for more than a couple of hours and inability to climb stairs.
8. At the time of the hearing, Petitioner testified that she was 29 years-old with a birth date of [REDACTED]. Petitioner said that she was 5 feet 3 inches tall and weighed approximately 215 pounds. Petitioner stated that she is right-hand dominant.
9. Petitioner testified that she has a high school education or the equivalent (diploma). Petitioner stated that she is currently enrolled in college seeking a certificate as a registered medical assistant. Petitioner testified that she plans to work in the future when she recovers from her conditions, but says there is no guarantee that she will recover.

10. Petitioner is currently unemployed but is enrolled in college. Petitioner's past relevant work was as a patient care specialist in March 2016. Petitioner testified that working as a patient care specialist required her to assist patients with feeding, dressing, medications, bathing, laundry, meal preparation and dishes. In this capacity, Petitioner said that she spent more than 50% of the work day standing and was regularly required to lift up to 50 lbs.
11. Petitioner has a semi-skilled work history that is transferrable to other jobs.
12. 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 [REDACTED], office visit notes from her allergist show that she had congestion, sinus pressure and headaches. She was scheduled for a tonsillectomy and adenoidectomy on [REDACTED]. She had an FEV1 of 86% and her small airways were 104%. She had not used her inhaler in 2-3 weeks. She was diagnosed with increased asthma due to humidity. Her numbers were normal. She has chronic rhinitis. She had abdominal pain and bloating and is being treated for GERD. She had a history of urticaria (rash) which was controlled by Zyrtec. She was told to use Qvar 2 puffs/twice per day for four weeks. [Dept. Exh. 1, p. 171].
 - b. On [REDACTED], Petitioner had a right shoulder x-ray which was negative. [Dept. Exh. 1, p. 149].
 - c. Petitioner returned to her allergist on [REDACTED]. She had a rash that had occurred intermittently. She discontinued QVAR after two weeks because it caused more wheezing so she tried Symbicort. She was checked for gluten sensitivity, but her IgA was around 11. She had no new rhinitis or congestion issues. Some tests were ordered and she was scheduled for follow up. [Dept. Exh. 1, p. 172].
 - d. She returned to her allergist on [REDACTED]. Her asthma was characterized as "mild to moderate persistent asthma." Her Symbicort was changed and was told to use a spacer with proper technique. She was give Albuterol and Singulair. The allergist thought she may have irritable bowel syndrome (IBS) and was told to have a probiotic once per day. The Zyrtec was controlling her rash. Her sinus issues were controlled with saline rinse and the medications. [Dept. Exh. 1, p. 173].
 - e. On [REDACTED], Petitioner was assessed as having a mood disorder, which was associated with anxiety. [Dept. Exh. 1, pp. 88-92].

- f. On [REDACTED], Petitioner had an office visit which indicated that her generalized anxiety disorder was well-controlled with medications (Celexa 10 mg) and “no bothersome effects.” Petitioner was referred for counseling. [Dept. Exh. 1, pp. 93-96].
- g. On [REDACTED] Petitioner had an MRI of the right shoulder which showed “minimal nonspecific edema in the distal clavicle . . . otherwise, unremarkable. . .” [Dept. Exh. 1, p. 150].
- h. Petitioner had an EMG on [REDACTED], which indicated that she had carpal tunnel syndrome that “has the potential to be managed with non-operative care.” Surgery was considered as an option if her symptoms persisted or worsened. [Dept. Exh. 1, p. 158].
- i. On [REDACTED], Petitioner visited the emergency room with complaints of low back pain radiating to her left buttocks and down her left leg. She said that she twisted wrong while attempting to move a patient. Petitioner’s urinalysis was negative. She was treated for her symptoms with Tramadol and Ibuprofen and encouraged to follow up with her primary care physician. [Dept. Exh. 1, pp. 139-141].
- j. Petitioner had a chest x-ray which was normal on [REDACTED]. [Dept. Exh. 1, p. 155].
- k. On [REDACTED], Petitioner had surgery on her left knee (partial lateral meniscectomy with debridement of anterior cruciate ligament). [Dept. Exh. 1, pp. 157-158].
- l. She returned to her orthopedic physician on [REDACTED], for her left knee. She may have had further tearing of the meniscus. She was scheduled to return for follow up. [Dept. Exh. 1, p. 146].
- m. On [REDACTED], Petitioner returned to her orthopedic physician for her right shoulder. She said she was lifting a patient at work when she felt a pop in her shoulder. She has been on a 20 lb. restriction. She has had no injections or therapy up to that time. On examination, she had pain in her AC joint, but she had full range of motion. X-rays indicated osteolysis of the distal end of the clavicle. The MRI showed that she had edema in that area as well. She was given a lidocaine injection and was scheduled for a 3 month follow up visit. [Pet. Exh. A, p. 2].
- n. Petitioner visited the ER on [REDACTED], indicating that she was sexually assaulted by two men. She did not notify the police. She also complained of left knee pain. She said that the recent incident exacerbated her pain. She had a left knee x-ray which revealed no

bony abnormalities. She had a full examination with a SANE (sexual assault) nurse. She was diagnosed with ADHD and generalized anxiety disorder. She was discharged with instructions to follow up with her primary care doctor. [Dept. Exh. 1, pp. 126-130].

- o. Petitioner had an MRI of her left knee taken on [REDACTED]. This MRI showed the following: (1) "Undersurface fraying posterior horn medical meniscus. . . . with recurrent undersurface tearing." (2) "Complete tear anterior cruciate ligament graft, intact posterior cruciate ligament." (3) "Tricompartmental chondrosis . . . lateral compartment." and (4) "Mild bone marrow edema . . . may be reactive, posttraumatic, or degenerative." [Pet. Exh. A, pp. 3-4].
 - p. On [REDACTED], Petitioner returned to the orthopedic physician's office for left knee problems. She stated that she fell about one month earlier and complains of pain in her knee. Examination revealed a mild effusion and pain in the medial and lateral joint lines. According to the MRI, it appeared as though she had re-torn her ACL and there was some tearing in the lateral meniscus area. At the time, Petitioner was pregnant so they were unable to do much. She was provided with an ACL brace to wear and was told to return after she had the baby. [Petitioner's Exhibit A, p. 1].
13. During the relevant time period, Petitioner had been taking the following medications:
- a. Alprazolam. [Dept. Exh. 1, p. 126].
 - b. Carafate. [Dept. Exh. 1, p. 126].
 - c. Cetirizine. [Dept. Exh. 1, p. 126].
 - d. Citalopram. [Dept. Exh. 1, p. 126].
 - e. Clindamycin. [Dept. Exh. 1, p. 126].
 - f. Ibuprofen. [Dept. Exh. 1, p. 126].
 - g. Miralax. [Dept. Exh. 1, p. 126].
 - h. Montelukast. [Dept. Exh. 1, p. 126].
 - i. Nystop. [Dept. Exh. 1, p. 126].
 - j. Prenatal vitamins. [Dept. Exh. 1, p. 126].
 - k. Prevacid. [Dept. Exh. 1, p. 126].
 - l. Tramadol. [Dept. Exh. 1, p. 126].
 - m. Tretinoin. [Dept. Exh. 1, p. 126].

- n. Triamcinolone acetonide. [Dept. Exh. 1, p. 126].
 - o. Zyrtec. [Dept. Exh. 1, p. 126].
14. The objective medical records did not contain a written opinion from a licensed health professional that Petitioner is permanently disabled.

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 May 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 torn left ACL and meniscus, right shoulder pain, asthma, ADHD and anxiety. 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*. In other words, the medical evidence in this record shows that Petitioner may have an impairment, or combination thereof, that has more than a *de minimis* effect on her basic work activities. However, this does not mean that Petitioner is necessarily disabled at this point in the analysis.

In addition, the individual must show that she has an impairment, or a combination of impairments, that have lasted continuously for a period of 90 days. BEM, 261 (7-1-2015), p. 1. Based on the above Findings of Fact, Petitioner has shown the presence of some physical limitations on her ability to perform basic work activities. The evidence shows that Petitioner has a medically determinable mental impairment based on documented signs, symptoms, and laboratory findings. [Dept. Exh. 1]. 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 the following medical conditions, asthma, allergies, torn meniscus in left knee, low back pain, right shoulder pain, anxiety and ADHD. [Dept. Exh. 1] Based upon the objective medical evidence, the Administrative Law Judge will consider the following listings: 1.02 Major dysfunction of a joint(s) (due to any cause), 1.03 Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, 1.04 Disorders of the spine, 3.03 Asthma, 12.06 Anxiety and obsessive-compulsive disorders. The undersigned ALJ has reviewed all of the requirements of the above listings and finds that Petitioner fails to meet any of the above. Based upon the above Findings of Fact, Petitioner's objective medical records shows that she does not meet or medically equal the requirements of a listing. [See Dept. Exh. 1]. Therefore, the medical evidence presented in this matter is not sufficient to meet the intent and severity requirements of any listing, or its equivalent.

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 problems with her back, right shoulder, left knee, and asthma, she is disabled and is unable to work. However, during the hearing, Petitioner testified that she capable of independently performing the following activities dress/undress, bathe/shower, feeding herself, driving a car, lifting a gallon of milk, bending at the waist, standing, reaching, walking short distance with left knee pain, sitting, using her hands, seeing, remembering, concentrating, completing tasks, following instructions and working with others in a normal work setting. Petitioner's testimony was that she may be able to recover from her alleged impairments, however she seeks disability in case she does not. That is not how disability works. 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 10-20 lbs. with either hand, and can stand, walk, or sit for about 6 hours with no physician-imposed limitations.

The Administrative Law Judge has reviewed all of Petitioner's alleged mental impairments as well. Based on the above Findings of Fact, Petitioner's understanding and memory is not limited, sustained concentration and persistence is not limited, social interaction is not limited, and adaptation is not limited. 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 can respond appropriately to supervision, co-workers, and usual work situations. In addition, the evidence shows that Petitioner has 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 light work on a sustained basis as defined by 20 CFR 416.967(b) without any limitations. 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 worked for as a nurse's aide. Working as a nurse's aide, as described by Petitioner at the hearing, involved demands that most closely meets the requirement for medium work. Based on the record, this Administrative Law Judge finds that Petitioner does not have the residual functional capacity to perform the requirements of her past relevant work. However, 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 29) is considered a younger individual, with a high school diploma, a semi-skilled work history that is transferrable to other jobs and is capable of light work, is not considered disabled pursuant to medical-vocational rule 202.21.

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, 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

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

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.

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.

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

disability examiner or MRT determination or hearing decision, or Michigan Rehabilitation 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]