



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 28, 2017
MAHS Docket No.: 17-001204
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 9, 2017, from Lansing, Michigan. Petitioner appeared and testified on her own behalf. [REDACTED] [REDACTED] (Petitioner's husband) was also present. [REDACTED] [REDACTED] Eligibility Specialist, 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 A (pages 1 through 32) is a copy of Petitioner's Assistance Application, Notice of Case Action, and Benefit Notice.

Department's Exhibit B (pages 1 through 190) 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 did not offer any exhibits into evidence.

The record was closed at the conclusion of the hearing.

ISSUE

Did the Department properly deny Petitioner's application for Medical Assistance (MA) or "Medicaid", Retro MA "Retroactive Medicaid" and 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 April 11, 2016, the Department received Petitioner's application for MA and SDA benefits alleging disability.
2. On November 26, 2016, the Medical Review Team (MRT) denied Petitioner's application.
3. On January 13, 2017, the Department caseworker sent Petitioner notice that her application was denied.
4. On January 23, 2017, Petitioner filed a request for a hearing to contest the Department's action.
5. A telephone hearing was held on March 9, 2017.
6. During the hearing, Petitioner stated that she had the following disabling impairments: severe scoliosis, seizures, gallbladder blockage, Chronic Obstructive Pulmonary Disease (COPD) with emphysema, left foot tumor, nodules on the left lung and depression. Petitioner complained of back pain due to the scoliosis.
7. Petitioner testified that she was independently capable of performing the following activities: dress/undress, bathe/shower, restroom/toilet, eat, prepare meals, squat, bend at waist, stand, reach, walk, sit, kneel, climb stairs, use hands see, remember, concentrate, complete tasks, follow instructions. Petitioner said that she does not like to be around people. Petitioner alleged that she cannot go grocery shopping, drive, or lift more than 10 lbs.
8. At the time of the hearing, Petitioner testified that she was 52 years-old with a birth date of [REDACTED]. Petitioner said that she was 5 feet 6 inches tall and weighed approximately 107 pounds. Petitioner stated that she is right-hand dominant.
9. Petitioner testified that she has a 9th grade education. She does not have any specialized vocational training, certificates or licenses.

10. Petitioner is currently unemployed and her past relevant work was as housekeeper at a hotel in 2000. Petitioner testified that working as a housekeeper required her to make beds, vacuum, clean bathrooms, take out trash and related tasks. In this capacity, Petitioner said that she spent more than 50% of the work day standing and was regularly required to lift 25 lbs.
11. Petitioner has an unskilled 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. During an appointment on [REDACTED], Petitioner was assessed with having angina, hypertension, hyperlipidemia, and palpitations. She was scheduled for a cardiac catheterization to evaluate for possible ischemic heart disease and a lower extremity arterial Doppler for peripheral vascular disease. She was recommended to quit smoking. The report indicated that Petitioner had "full range of motion of all extremities." [Dept. Exh. B, pp.65-66].
 - b. On [REDACTED], Petitioner had a lower extremity arterial ultrasound which was negative. [Dept. Exh. B, p. 75].
 - c. On [REDACTED], Petitioner was admitted to the hospital for a left heart catheterization and right radial access. The findings were that Petitioner had a "dominant right system" and "normal left ventricular function." Petitioner felt better on beta-blockers and nitrates. The notes further said, "[q]uestionable spastic component as she is a smoker." [Dept. Exh. B, pp. 73-74].
 - d. Petitioner was hospitalized from [REDACTED], to [REDACTED], with bilateral pneumonia. At discharge, Petitioner was diagnosed with COPD, hyponatremia (resolved), hypokalemia (resolved), smoking and palpitations. Her chest CT scan showed no evidence of pulmonary embolism, but she did have bilateral pneumonia. She was counseled to quit smoking. A cardiopulmonary consultation indicated that she had sinus tachycardia (117 beats per minute), left atria abnormality and poor R wave progression. She had an echocardiogram which was normal with an ejection fraction of 60-5%. She had mild mitral and tricuspid regurgitation and mild pulmonary hypertension. Petitioner was treated with IV antibiotics, IV steroids and released. [Dept. Exh. B, pp. 93-96, 119]. She had a follow up visit on [REDACTED], where she complained of knee pain. The musculoskeletal exam was normal. [Dept. Exh. B, pp. 79-80].

- e. Petitioner saw an oncologist on [REDACTED], for her cytopenia and pulmonary nodule. Petitioner was diagnosed with anemia, thrombocytosis (likely reactive), oligoclonal bands, seizure history, shortness of breath, and elevated ferritin. She was referred to a pulmonologist. [Dept. Exh. B, pp. 87-88].
 - f. On [REDACTED], Petitioner had mental status examination performed by a licensed psychologist. The psychologist diagnosed Petitioner with major depression (single episode), PTSD and social anxiety disorder. The psychologist indicated in his report that Petitioner's medical problems will likely limit her ability to do many manual labor jobs. He further found that "[h]er social anxieties will make it difficult for her to work in groups of people." He indicated that Petitioner's depression leaves her tired and lacking in motivation. Petitioner's prognosis was guarded and he felt that she could manage her benefits. [Dept. Exh. B, p. 53].
 - g. Petitioner had an independent medical examination (IME) on [REDACTED]. Petitioner's IME report indicated that she had a history of depression since 1996. At the time of the IME, Petitioner had a two nodules on her left lung, which was being explored for possible malignancy. The IME report indicated that Petitioner had minimal scoliosis of the dorsal spine, which is not significantly limiting her activities. Petitioner had an L1 fracture with vertebroplasty in the past without significant problems. The report noted that Petitioner had chronic back pain radiating to the legs as a result of degenerative arthritis of the lumbar spine. [Dept. Exh. B, pp. 35-38].
 - h. On [REDACTED], Petitioner had a pulmonary function test (PFT) which indicated the following: Forced Vital Capacity test results (2.87, 2.82, 2.70). Petitioner's Forced Expiratory Volume at 1 second (FEV1) tests yielded the following results: 2.08, 2.01, 1.94. Then minutes after Petitioner was administered a bronchodilator, her second FEV1 results were: 2.89, 2.85, and 2.77. Petitioner follow up FEV1 results were: 2.12, 2.08, 2.07. [Dept. Exh. B, p. 41].
13. During the relevant time period, Petitioner had been taking the following medications:
- a. Albuterol [Dept. Exh. B, p. 77].
 - b. Drisdol. [Dept. Exh. B, p. 77].
 - c. Guaifenesin-Codeine. [Dept. Exh. B, p. 77].
 - d. Ipratropium-Albuterol. [Dept. Exh. B, p. 77].

- e. Claritin [Dept. Exh. B, p. 77].
 - f. Requip [Dept. Exh. B, p. 77].
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 2000. 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 severe scoliosis, seizures, gallbladder blockage, Chronic Obstructive Pulmonary Disease (COPD) with emphysema, left foot tumor, nodules on the left lung and depression. 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*. 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.

For purposes of MA, the individual must show that she has an impairment, or a combination of impairments, that have lasted continuously for a period of 12 (twelve) months. 20 CFR 416.913(d). For SDA purposes, Petitioner must show the presence of an impairment for at least 90 days. BEM, 261 (7-1-2015), 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 depression, angina, hypertension, hyperlipidemia, and palpitations since at least 2015. [Dept. Exh. B, pp. 53, 65-66]. This evidence shows that Petitioner has a medically determinable mental impairment based on documented signs, symptoms, and laboratory findings. Thus, this Administrative Law Judge finds that Petitioner has some impairments that have lasted continuously for 12 (twelve) months and; therefore, is not disqualified from receiving MA or SDA benefits (90 days) 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 angina, hypertension, hyperlipidemia, and heart palpitations. [Dept. Exh. B, pp. 65-66]. She was also diagnosed with COPD, hyponatremia (resolved), and hypokalemia (resolved). She is/was a dedicated, smoker and was repeated advised by medical professionals to quit.

Petitioner had episodes of bilateral pneumonia, but it was treated. Petitioner was diagnosed with depression. She also had sinus tachycardia (117 beats per minute), left atria abnormality and poor R wave progression. She had an echocardiogram which was normal with an ejection fraction of 60-65%. She had mild mitral and tricuspid regurgitation and mild pulmonary hypertension. Petitioner was treated with IV antibiotics, IV steroids and released from the hospital. [Dept. Exh. B, pp. 53, 79-80]. Petitioner was diagnosed with minimal scoliosis of the dorsal spine, which is not significantly limiting her activities. [Dept. Exh. B, pp. 35-38].

Based upon the objective medical evidence, the Administrative Law Judge will consider the following listings: 1.04 Disorders of the spine, 4.04 Ischemic heart disease, 3.02 Chronic Respiratory Disorders, and 12.04 Depressive, bipolar and related disorders. Based upon the above Findings of Fact, Petitioner's objective medical records shows that she does not meet or medically equal the requirements of listings 1.04, 4.04, 3.02 or 12.04 or any other listing. Therefore, the medical evidence presented in this matter is not sufficient to show that Petitioner meets the intent and severity requirements of any listing, or its equivalent. The analysis must proceed.

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 impairments she is unable to work. Specifically, Petitioner said that she cannot be around people. Petitioner alleged that she cannot go grocery shopping, drive or lift more than 10 lbs. due to pain in her back and hands. 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. or more, stand, walk or sit for at least 2 hours, with no limitations. Petitioner's mental impairments and fear of working around others are not so severe that she is not capable of performing any work whatsoever. 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.

Petitioner testified that she worked for a hotel as a housekeeper. Working as a housekeeper, as described by Petitioner at the hearing, most closely meets the requirement for light work, but this Administrative Law Judge finds that Petitioner is capable of sedentary work. Accordingly, 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 52) is considered a person closely approaching advanced age, with a limited education or less (7th grade through 11th grade or less), an unskilled work history that is transferrable to other jobs and is capable of sedentary work, is considered disabled pursuant to medical-vocational rule 201.09.

This Administrative Law Judge finds that Petitioner has 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). Based upon the above grid analysis, Petitioner's exertional and non-exertional impairments render her unable to engage in a full range of work activities on a regular and continuing basis. Petitioner's testimony regarding her limitations and inability to perform work-related activities on a consistent basis is credible and supported by the objective medical evidence. Petitioner's assertion that her alleged impairments are severe enough to reach the criteria and definition of disability. Therefore, Petitioner is disabled for purposes of the MA program.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

Petitioner's testimony and the information indicate that she has a history of tobacco, drug, and alcohol abuse. Applicable law is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that Petitioner's tobacco use is not material to her alleged impairment and alleged disability.

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.

As indicated in the above analysis, Petitioner meets the definition of disabled under the MA program and the evidence of record shows that Petitioner is unable to work for a period exceeding 90 (ninety) days. In addition, this record shows that Petitioner has met any of the requirements under BEM 261. Accordingly, this Administrative Law Judge finds that Petitioner is disabled for purposes of the SDA program.

The Department has not 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 MA and SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has not appropriately established on the record that it acted in compliance with Department policy when it denied Petitioner's application for MA and SDA.

Accordingly, the Department's decision is **REVERSED**, and it is ORDERED that:

1. The Department shall process Petitioner's application for MA and SDA, and shall award her all the benefits she may be entitled to receive, as long as she meets the remaining financial and non-financial eligibility factors.

2. The Department shall initiate a review of Petitioner's medical condition for improvement in March, 2018.
3. The Department shall obtain updated medical evidence from Petitioner's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress, and prognosis at review.
4. The Department shall supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.

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]

Petitioner

[REDACTED]