



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 5, 2017
MAHS Docket No.: 17-003683
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, an in-person hearing was held on [REDACTED], from [REDACTED], Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor, and [REDACTED], Assistance Payments Worker.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional medical records. On [REDACTED], a Medical Examination Report was received and marked into evidence as Petitioner Exhibit 3; and a document titled Pre Hearing Procedure also completed by Petitioner's doctor was also received into evidence and was marked into Evidence as Petitioner Exhibit 4. The record closed on [REDACTED]; and the matter is now before the undersigned for a final determination based upon the evidence presented.

ISSUE

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

FINDINGS OF FACT

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

1. On [REDACTED], the Petitioner submitted an application seeking cash assistance on the basis of disability SDA.

2. On [REDACTED], the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program. Exhibit A, pp. 9-15.
3. On [REDACTED], the Department issued a Notice of Case Action denying the Petitioner's application for SDA effective [REDACTED] [REDACTED] [REDACTED], based upon DDS/MRT's finding of no disability. Exhibit A, pp. 5-8.
4. On [REDACTED], the Department received Petitioner's timely written request for hearing. Exhibit A, pp. 3-4.
5. Petitioner has alleged disabling impairment due to chronic pulmonary obstruction, COPD, and chronic bronchitis resulting in shortness of breath and a retinal detachment in one eye with total loss of vision in left eye and eye weakness and strain with prolonged reading.
6. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED], birth date; she is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Petitioner earned a GED and did attend some college and received credit for business office procedures courses.
8. At the time of the application, the Petitioner was not employed.
9. The Petitioner has an employment history of work as a baggage delivery driver for the airlines, as a cashier and stocking shelves at a convenience store, as an assembly line manufacturer for [REDACTED] as a barista for [REDACTED] preparing carts for delivery for room service and room service delivery as well as and servicing beverages and replenishing stock from refrigeration rooms. The Petitioner also worked in a warehouse assembly line job preparing boxes for shipping for an ecommerce company and as a waitress.
10. Petitioner has a pending disability claim on appeal with the Social Security Administration.

CONCLUSIONS OF LAW

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

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security

Income (SSI) disability standards for at least 90 days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, she is not ineligible under Step 1; and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments.

The medical evidence presented at the hearing, *and* in response to the interim order, was reviewed and is summarized below.

In [REDACTED], the Petitioner was admitted to the hospital due to a diagnosis of pneumonia for a two day stay with the chief complaint shortness of breath. The Exam verified shortness of breath, audible bilateral wheezing and cough. The Discharge materials indicated care for pneumonia, and COPD.

The Petitioner was seen at the hospital on [REDACTED], with complaints of chest pain and shortness of breath. Complaint of chest pain resulting from any sort of exertion. Symptoms were reported by patient as ongoing for several months but due to no insurance, patient did not seek medical help. The Petitioner gave a history of COPD and hypertension. The Petitioner was admitted to the hospital to rule out any coronary artery disease. An examination noted diminished air movement and trace wheezing in lungs. Discharge diagnosis was Chest pain, accelerated hypertension, COPD need pulmonary function test.

On [REDACTED], the Petitioner's family practice doctor ordered a CT of the chest w/o contrast. The results noted moderate bullious emphysematous opacities involving left and right lung base likely scars or atelectatic lung. The results notes emphysematous changes, with change at each lung base noted mild in degree.

A spirometry test was performed to determine pulmonary function on [REDACTED] and resulted in Moderate obstruction. Exhibit A, pp. 176-178.

A Medical Examination Report was completed by the Petitioner's treating doctor. The examination was completed on [REDACTED]. The current diagnosis was Chronic Bronchitis, essential hypertension and anxiety and depression. The doctor's review of the respiratory system noted no wheezing rhonchi or rales at the exam. The doctor noted that Petitioner's condition was stable. The doctor imposed limitations that Petitioner could stand and or walk less than 2 hours in an 8-hour workday. No sitting limitations were imposed. The doctor supported the limitation based upon chronic shortness of breath. The anxiety was noted as mild and the Petitioner was capable of meeting her needs in the home.

A Residual functional capacity questionnaire was also completed by the Petitioner's treating doctor who found that Petitioner was diagnosed with COPD based upon spirometry testing in [REDACTED] which showed moderate obstruction. Symptoms identified were shortness of breath, coughing, chest tightness and wheezing with anxiety and panic attacks. The actual testing data was not provided.

The Medical Exam Report also noted that the Petitioner had acute asthma attacks with upper respiratory infection and with exercise and emotional upset and stress. The symptoms were described as severe and feels like she can't catch her breath. The Doctor answered "No" to the question is she a malingerer? "Yes" to the question do emotional factors contribute to the severity of your patient's symptoms and functional limitations. The doctor noted that during a typical workday the patient's physical impairments plus any emotional impairments are reasonably consistent with the symptoms and functional limitations described in the evaluation. The doctor also noted that the patient's pain or other symptoms were severe enough to interfere frequently with attention and concentration needed to perform simple work tasks.

Prescriptions prescribed by the treating doctor were BuSpar, Celexa, Symbicort, Ventolin, HFA, Lisinopril and Lopressor. Prognosis was Fair.

As a result of the impairments, the doctor's evaluation indicated that the Petitioner can walk without rest about half a block to one block. The patient could sit more than 2 hours before needed to get up. The Petitioner could stand at one time 5 minutes before needing to sit down. Petitioner could sit 6 hours but stand/walk less than 2 hours. Also noted was Petitioner's need to take unscheduled breaks during an 8-hour working day to sit quietly. The Petitioner could rarely lift 10 pounds never 20 or 50 pounds. The patient could never climb ladders, or stairs, rarely crouch/squat and occasionally twist and stoop (bend). The environmental restrictions to avoid even moderate exposure

included extreme cold or heat, cigarette smoke, perfumes, soldering fluxes, solvents/cleaners, fumes, odors, and gases, dust, and chemicals. The doctor opined that the patient was on average likely to be absent more than four (4) days per month. The doctor also noted that the patient has severe anxiety and frequent panic attacks.

The Petitioner also was treated for total retinal detachment in the left eye and retinal tear without detachment in the right eye and required an operation to repair the retinal problems in her right eye. One week post op, the retinal consultant noted blurred vision on right eye, floaters were improving. There was severe loss of central vision in left eye. The doctor's notes indicate that the disease is progressive.

An Internal Medical Examination (Consultative) was conducted on [REDACTED], at the request of the Department. Chief complaints were blindness and COPD. No medical records were available at the time of the exam. The exam noted no vision in left eye and 20/40 in right eye with corrective lenses. Exam of the chest notes rhonchi present. The examiner found that work related activities such as bending, stooping, lifting walking, crawling, squatting carrying and traveling as well as pushing and pulling heavy objects is not impaired due to the objective findings described above.

Petitioner was hospitalized for one day, [REDACTED], for pneumonia of right lung due to infectious organism. The Petitioner was discharged with drug treatment.

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 3.02 Chronic Respiratory Disorders and 2.02 Loss of Central Visual Acuity were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration as the spirometry testing results did not establish that the Listing for Chronic Respiratory disorders was met. As regards Listing 2.02, Loss of Central Visual Acuity the listing requires remaining vision in the better eye after best correction is 20/200 or less; Petitioner's better eye best correction was 20/40. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). *This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities.* 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 20 CFR 416.967(a). 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 the light 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 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). 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). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have

only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions 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 (i.e., unable to 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). *For mental disorders, functional limitation(s) is 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. Id.; 20 CFR 416.920a(c)(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 (understand, remember, or apply information; interact with others; concentrate, persist, or maintain pace; and adapt or manage oneself) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five-point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four-point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. Id. The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. Id.*

In this case, Petitioner alleges predominantly exertional limitations. Although the Petitioner has anxiety and panic attacks which are considered nonexertional limitations it appears from the medical evidence that these symptoms are controlled by medications and are mild. Petitioner also does not receive psychiatric or therapeutic treatment for her anxiety and panic attacks. Petitioner testified that she could stand a couple of hours, sit and read but experienced eye strain and headaches. The Petitioner also testified that she often has to sit after standing 20 minutes. The Petitioner could lift 10 pounds but not on a continual basis. She could climb stairs, but experienced shortness of breath and physical fatigue and that she climbs stairs very slowly. The Petitioner could walk one block and then require rest. She uses a cart when grocery shopping and does so very slowly. The Petitioner can grasp objects without difficulty. The Petitioner experiences shortness of breath and dizziness when bending or when making her bed. She can do small loads of laundry and can cook with breaks from standing. The Petitioner can sweep the floor with rest breaks and does no outside work. The Petitioner can read for 30 to 45 minutes and gets headaches from reading and looking at a computer screen and finds it difficult to look at numbers. In addition, the Petitioner cannot drive at night.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

The Petitioner's spirometry testing yielded moderate results, thus, verifying that her lung capacity was affected by her COPD, chronic bronchitis and support her symptoms of shortness of breath on exertion. Her doctor who has treated her for several years also imposed limitations with notes that she could stand and or walk for less than two hours in an 8-hour workday with no limitations on sitting. The doctor evaluated the Petitioner's condition as stable and that she could expect to continue to have limitations for more than 90 days. Also consistent with the doctors medical exam report was a Pulmonary Residual Functional Capacity Questionnaire completed [REDACTED], diagnosing COPD. The pertinent questions demonstrating limitations included never climbing ladders or stairs and to avoid even moderate environmental exposure to cold, heat, cigarette smoke, perfumes, soldering fluxes, solvents and cleaners, fumes, odors, gases, dust, and chemicals. Also the Petitioner's recent retinal re attachment although successful, limits the amount of time she can read. However, the Petitioner is blind in her left eye.

With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a) due to her COPD and emphysema.

Although a DDS consultative exam conducted by a doctor of internal medicine notes that scattered generalized rhonchi were present, the examiner concluded that Petitioner was capable of bending, stooping, lifting, walking, crawling, squatting carrying and traveling as well as pushing and pulling heavy objects and that these functions were not impaired. The examining doctor did not have the benefits of the pulmonary function test results or any medical records. Thus, this exam is given less weight than the Petitioner's treating doctor's assessment.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a baggage delivery driver for the airlines lifting bags weighing between 25-50 pounds and included night driving. The Petitioner also worked as a cashier and stocking shelves at a convenience store. This job required standing all day and lifting frequently 10-20

pounds. The Petitioner worked as an assembly line worker for manufacturer [REDACTED] assembling, backhoes, front loader skid plates, hoses and using cranes to lift the heavier parts and required walking most of day and lifting up to 50 pounds. The Petitioner worked as a barista for [REDACTED] preparing carts for delivery of room service orders and delivering same and servicing beverages and replenishing stock from refrigeration rooms. The work required frequently lifting of 10 pounds and walking and being on her feet all day. The Petitioner also worked in a warehouse assembly line packaging and preparing boxes for shipping for an ecommerce company which required constant lifting of 5 to 10 pound objects. The Petitioner also worked as a waitress for a small restaurant which required carrying of trays and heavy plates of food. The Petitioner last worked in a retail store as a cashier and stocker helping to unload deliveries and sweeping the store. The job required standing and walking and lifting much of the day.

Based on the RFC analysis above, Petitioner's exertional RFC limits her to no more than sedentary work activities. As such, Petitioner is incapable of performing past relevant work. In light of the entire record, it is found that Petitioner's exertional RFC prohibits her from performing past relevant work.

Because Petitioner is unable to perform past relevant work, Petitioner cannot be found disabled, or not disabled, at Step 4, and the assessment continues to Step 5.

Step 5

If an individual is incapable of performing past relevant work, Step 5 requires an assessment of the individual's RFC and age, education, and work experience to determine whether an adjustment to other work can be made. 20 CFR 416.920(a)(4)(v); 20 CFR 416.920(c). If the individual can adjust to other work, then there is no disability; if the individual cannot adjust to other work, then there is a disability. 20 CFR 416.920(a)(4)(v).

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(c)(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 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). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations

provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969 a(d).

In this case, Petitioner was [redacted] years old at the time of application, and [redacted] years old at the time of hearing, and, thus is considered to be advanced age (age [redacted] and over) for purposes of Appendix 2. She is a high school graduate with some college courses with a history of work experience as unskilled work. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities. Based on her exertional RFC, age, education, and lack of transferrable skills, the Medical-Vocational Guidelines, 201.04, result in a finding that Petitioner **is** disabled.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled/not disabled for purposes of the MA and/or the SDA benefit program.

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Reregister and process the Petitioner's [redacted], application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any that Petitioner was otherwise entitled to receive if eligible and qualified.
3. The Department shall review this case in [redacted].

LMF/jaf



Lynn M. Ferris
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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]