



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 26, 2018
MAHS Docket No.: 18-000564
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on March 19, 2018, from Warren, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

ISSUE

The issue is whether MDHHS properly denied Petitioner's State Disability Assistance (SDA) eligibility for the reason that Petitioner is not a disabled individual.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On September 27, 2017, Petitioner applied for SDA benefits (see Exhibit A, pp. 46-59).
2. Petitioner's only basis for SDA benefits was as a disabled individual.
3. On December 28, 2017, the Disability Determination Service determined that Petitioner was not a disabled individual (see Exhibit A, pp. 1-45).
4. On January 8, 2018, MDHHS denied Petitioner's application for SDA benefits.
5. On January 17, 2018, Petitioner requested a hearing disputing the denial of SDA benefits.

6. As of the date of the administrative hearing, Petitioner did not have employment earnings amounting to substantial gainful activity.
7. As of the date of SDA application, Petitioner was a ■-year-old female.
8. Petitioner's highest education year completed was the 12th grade.
9. Petitioner has a history of unskilled employment, with no known transferrable job skills.
10. Petitioner has restrictions which preclude the performance of light employment.

CONCLUSIONS OF LAW

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

Petitioner's hearing request indicated a dispute concerning Family Independence Program (FIP) benefits. Petitioner testified a dispute of cash assistance based on disability (i.e. SDA) was intended. MDHHS was not confused by Petitioner's error and prepared for an SDA dispute. MDHHS had no objections to proceeding with a hearing to resolve the SDA dispute and the hearing was conducted accordingly.

Petitioner's hearing request included a response to a question about special accommodations. During the hearing, Petitioner was asked if any special arrangements were needed. Petitioner replied that she sometimes required explanations to statements made to her. Petitioner was advised she could ask for an explanation and the hearing was conducted accordingly.

Petitioner requested a hearing to dispute the denial of a SDA application. Petitioner claimed an inability to work for 90 days due to mental and/or physical disabilities. MDHHS presented a Notice of Case Action (Exhibit A, pp. 60-63) dated January 17, 2018, verifying Petitioner's application was denied, in part, based on a determination that Petitioner was not disabled.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (April 2017), p. 5. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.*

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (April 2017), p. 1. A person is disabled for SDA purposes if he or she meets any of the following criteria:

- Receives other specified disability-related benefits or services....
- Resides in a qualified Special Living Arrangement (SLA) facility.
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS)...

Id., pp. 1-2.

When the person does not meet one of the [above] criteria, [MDHHS is to] follow the instructions in BAM 815, Medical Determination and Disability Determination Service (DDS), Steps for Medical Determination Applications. *Id.*, p. 4. The DDS will gather and review the medical evidence and either certify or deny the disability claim based on the medical evidence. *Id.* The review of medical evidence is primarily outlined by federal law.

Petitioner alleged being unable to work for at least 90 days. Petitioner alleged no other basis for SDA eligibility.

Generally, state agencies must use the same definition of disability as used for Supplemental Security Income (SSI) (see 42 C.F.R. § 435.540(a)). [Federal] law defines disability 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 C.F.R. § 416.905(a). MDHHS adopted a functionally identical definition of disability (see BEM 260 (July 2015), p. 10). The same definition applies to SDA, though SDA eligibility factors only a 90-day period of disability. The remainder of the analysis considers the specific disability evaluation set forth by federal SSI regulations.

In general, you have to prove... that you are blind or disabled. 20 C.F.R. § 416.912(a). You must inform us about or submit all evidence known... that relates to whether or not you are blind or disabled. *Id.* Evidence includes, but is not limited to, objective medical evidence (e.g., medical signs and laboratory findings), evidence from other medical sources (e.g., medical history and opinions), and non-medical statements about symptoms (e.g., testimony) (see *Id.*).

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

The first step in the process considers a person's current work activity (see 20 C.F.R. § 416.920 (a)(4)(i)). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether

a person is statutorily blind or not. The 2017 monthly income limit considered SGA for non-blind individuals is \$1,170.00.

SGA means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. *Id.*, p. 9. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute SGA. *Id.*

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

At the second step, we consider the medical severity of your impairment(s). 20 C.F.R. §416.920 (a)(4)(ii). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in §416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. *Id.*

Generally, federal courts have imposed a de minimus standard upon petitioners to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, SSR 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirements are intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. 20 C.F.R. § 416.920 (5)(c). We will not consider your age, education, and work experience. *Id.* The second step analysis will begin with a summary of presented medical documentation and Petitioner's testimony.

A psychological evaluation dates [REDACTED], was noted. It was stated that a student attacked Petitioner while she was diving a bus. Petitioner reported symptoms of irritability, anxiety, and impatience. A diagnosis of mixed personality disorder with passive-aggressive and histrionic features was noted. Petitioner was deemed capable of working.

A right shoulder MRI report dated [REDACTED] (Exhibit F, pp. 53-54) was presented. AC joint arthrosis and lateral outlet stenosis was noted to be compatible with outlet-related cuff syndrome.

A cervical spine MRI report dated [REDACTED] (Exhibit F, pp. 46-47) was presented. Marked degenerative changes and moderate osteophyte complex were noted. Disc herniation with effacement and deformity was noted at C4-C5. Moderate spinal and bilateral neural foraminal narrowing were noted.

Physician office visit notes (Exhibit 1, pp. 11-15) dated [REDACTED], were presented. Petitioner's PTSD was noted as "poorly controlled" with current medications. Reported symptoms included disturbed sleep due to nightmares or pain; a two-hour maximum sleep time was reported. Petitioner displayed a labile affect and cried while providing her work history. Bilateral arm and finger numbness was noted as ongoing for approximately six months. Various right shoulder and cervical spine motion restrictions were noted.

An initial psychological evaluation dated [REDACTED], was noted. An anxious and depressed mood was noted. A diagnosis of PTSD was noted.

A Psychiatric Evaluation (Exhibit C, pp. 188-193) dated [REDACTED], from a treating psychiatrist was presented. Reported symptoms associated with PTSD, anxiety, and depression were noted. Petitioner reported poor sleep and a poor appetite. Mental health exam assessments included depressed mood, constricted affect, and adequate judgment. An Axis I diagnosis of PTSD was noted. An undated GAF of 55 was noted.

Various mental health medication and psychotherapy notes (Exhibit C, pp. 134-186; 194-196; Exhibit D, pp. 6-71; Exhibit E, pp. 34-157) from June 2016 through November 2017 were presented. The documents verified Petitioner's attendance and regular psychotherapy and medication review appointments. Various medication changes were noted. As of [REDACTED], Petitioner's GAF was 49 (see Exhibit E, p. 10). As [REDACTED], Petitioner's prescribed medications included Celexa. The documents were consistent with little change in Petitioner's condition since the psychiatric evaluation from [REDACTED].

A Progress Note dated [REDACTED], from a treating social worker (Exhibit C, pp. 134-136) was presented. Notable mental status examination assessments included angry mood and agitated psychomotor activity. Petitioner expressed anger over current finances and relationships. Symptoms of helplessness, depression, anger, and verbal outbursts were noted.

A Medication Review Note (Exhibit C, pp. 129-133) dated [REDACTED], from a treating mental health physician was presented. Mental health assessments were normal. An Axis I diagnosis of PTSD was stated. Cymbalta was increased based on Petitioner's request.

Hospital emergency room documents (Exhibit D, pp. 147-194) dated [REDACTED], were presented. Petitioner presented for a laparoscopic umbilical hernia repair.

Neurologist office visit notes (Exhibit D, pp. 97-101) dated [REDACTED], were presented. Petitioner reported ongoing complaints from an assault that occurred while she worked as a bus driver. Petitioner reported ongoing neck pain, right shoulder pain, and daily headaches. Petitioner reported multiple rounds of physical therapy on her right rotator cuff as well as surgery. It was noted Petitioner was "slightly better". Petitioner reported headaches were occurring at the end of a day when she "has overdone it". Ongoing "significant" shoulder and neck pain were reported. Petitioner declined an offer of injections. A brain MRI was stated to be consistent with a mild traumatic brain injury. Flexeril and Neurontin were continued. Follow-up in three months was planned. Petitioner's reporting was consistent with previous neurologist appointments since June 2017 (see Exhibit D, pp. 75-96).

An internal medicine examination report (Exhibit C, pp. 118-126) dated [REDACTED] was presented. The report was signed by a consultative physician. Petitioner reported a medical history of neck pain, headaches, shoulder pain, ear ringing, dizziness, fainting, PTSD, and COPD. It was noted that Petitioner teared up when discussing her [REDACTED] attack. A slight right-hand tremor was noted. Straight leg raising (supine) was positive. Petitioner was not able to perform finger-to-finger testing. Multiple cervical and lumbar spine restrictions were noted. The physician's medical source statement stated that Petitioner had a number of symptoms associated with clinical signs which could be consistent with a closed-head injury. An unclear prognosis was indicated. Petitioner was deemed capable of sitting, standing, bending, and climbing stairs, though the conclusions did not specify to what extent. Petitioner was assessed as capable of limited pushing/pulling and carrying no more than a ½ gallon of milk.

A cervical spine MRI report (Exhibit 1, pp. 27-28) dated [REDACTED], was presented. An impression of multilevel spondylotic changes were noted. Severe right foraminal narrowing was noted at C4-C5 and C5-C6. Moderate foraminal narrowing was noted bilaterally at C6-C7. Degenerative facet changes were noted at multiple disc levels.

Petitioner testified that she was assaulted in [REDACTED] while driving a bus. Petitioner testified that one of the special needs students she was transporting grabbed her head and "faceplanted" it into the top of a seat. Petitioner testified that the assault left her with headaches, neck pain, and a torn right rotator cuff. Petitioner testified she is scared of even stepping on a bus since the attack. Petitioner's testimony was consistent with her medical records.

Petitioner testified the attack left her with a closed-head injury. Petitioner testified she's experienced head pain ever since the attack. Petitioner testified that her neurologist recommends performing neck stretching to reduce head pain. Petitioner testified her headaches cause a non-stopping 4/10 level of pain. Petitioner also testified that her

head injury limits her memory and concentration. For example, Petitioner testified that she cannot process quick speech and that she forgets people's names.

Petitioner alleged impairments related to a torn right rotator cuff. Petitioner testified she underwent surgery in [REDACTED] [REDACTED] which repaired her tear, but not nerve impingements. Petitioner testified she underwent four rounds of physical therapy which did not notably reduce her pain.

Petitioner alleged impairments related to neck pain. Petitioner testified she is currently undergoing physical therapy for her neck. Petitioner testified she wore a cervical collar in the past. Petitioner testified she wanted to see a neurosurgeon for a long time but was delayed due to insurance problems. Petitioner testified that three of her fingers are numb because of her neck problems.

Petitioner testified she has regular PTSD symptoms of daily crying spells, sleeping only 2-4 hours per day, anxiety, concentration difficulties, and a low threshold to noise. Petitioner testified she has seen a counselor and psychiatrist every 2-3 weeks since 2015. Petitioner testified her counselor helps with coping skills. Petitioner testify that prescribed medications help but they are constantly adjusted as her body builds an immunity to the positive effects.

Petitioner testified that she has lumbar degenerative disc disease. Petitioner testified she started physical therapy but switched it to therapy for her neck.

Petitioner alleged impairments due to ear ringing. Petitioner testified that a specialist last year told her that her hearing is impaired and that the ringing should eventually stop; Petitioner testified the ringing has not yet stopped. Petitioner testified Xanax was prescribed for the ear ringing. Treatment documents for tinnitus were presented (see Exhibit E, pp. 196-200).

Petitioner testified she has breathing problems due to asthma and COPD. Petitioner did not elaborate on breathing restrictions.

Presented medical records verified a medical treatment history consistent with exertional restrictions due to a closed-head injury, ear ringing, COPD/asthma, right shoulder pain, neck pain, and lumbar pain. Presented records also verified degrees of concentration and social interaction restrictions related to PTSD. Petitioner's treatment history was established to have lasted at least 90 days and at least since Petitioner's date of SDA application. Accordingly, it is found that Petitioner established having a severe impairment. Thus, the disability analysis may proceed to Step 3.

At the third step, we also consider the medical severity of your impairment(s). 20 C.F.R. § 416.920 (4)(iii). If you have an impairment(s) that meets or equal one of our listings in appendix 1 to subpart P of part 404 of this chapter and meets the duration requirement, we will find that you are disabled. *Id.* If you have an impairment(s) which meets the

duration requirement and is listed in appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. *Id.* 20 C.F.R. § 416.920 (d).

Petitioner's various diagnoses merit consideration of various SSA listings. Applicable listings included joint dysfunction for shoulder pain (Listing 1.02), spinal disorders (Listing 1.04), hearing loss (Listing 2.10), pulmonary insufficiency (Listing 3.02), and multiple mental health disorder listings. For purposes of this decision, it will be assumed that Petitioner does not meet any listings and the analysis will proceed to the final steps.

If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record.... 20 C.F.R. § 416.920 (e). We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work... and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can adjust to other work... *Id.*

Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. 20 C.F.R. § 416.945 (a)(1). Your residual functional capacity is the most you can still do despite your limitations. *Id.* We will assess your residual functional capacity based on all the relevant evidence in your case record. *Id.* We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not "severe,"... when we assess your residual functional capacity. 20 C.F.R. § 416.945 (a)(2). We will assess your residual functional capacity based on all of the relevant medical and other evidence. 20 C.F.R. § 416.945(a)(3). We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. 20 C.F.R. § 416.945(a)(5).

For purposes of this decision, a fully developed RFC assessment will not be undertaken at this point in the analysis. Instead an RFC assessment will be performed, as necessary, in the final steps of analysis.

At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. 20 C.F.R. § 416.920(a)(4)(iv). If you can still do your past relevant work, we will find that you are not disabled. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 C.F.R. § 416.960(b)(1). We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy. 20 C.F.R. § 416.960(b)(3).

Petitioner testified she previously worked as a mutuel clerk for a race track. Petitioner testified her duties included processing winning tickets including payments. A Disability Determination Explanation determined that Petitioner was not disabled based on a finding that Petitioner could perform her past employment as a mutuel clerk (see Exhibit A, p. 45). Petitioner testified that she is not able to perform past employment due to the repetitive reaching actions required for taking tickets from customers and use of a machine required for processing tickets. Petitioner also testified that she could not sit long enough or concentrate well enough to do her past job. Petitioner's testimony was consistent with presented evidence.

Petitioner's neck radiology from [REDACTED] is highly indicative of pain that would limit Petitioner's concentration and movements. Petitioner's mental health treatment history is consistent with concentration difficulties which would, at best, allow the simplest of employment, but not employment involving the counting of money. Petitioner's limited lumbar and shoulder movements would further restrict Petitioner from competitively performing employment as a mutuel clerk. These conclusions are further consistent with a letter from Petitioner's former employer.

Petitioner presented a letter from Petitioner's employer from when Petitioner performed the duties of a mutuel clerk. The letter was dated [REDACTED], and signed by a controller. The letter stated that Petitioner would not last more than 1-2 weeks if she returned to employment. The letter further stated that clerks are expected to perform 1200 transactions over a 6-hour workshift.

Petitioner's only other past relevant employment from the past 15 years amounting to SGA was as a bus driver. Petitioner testified that PTSD from a past assault would not allow her to work as a bus driver. Petitioner's psychiatric and therapy history is consistent with PTSD that precludes the performance of past employment as a bus driver.

It is found that Petitioner is unable to perform past employment. Accordingly, the disability analysis may proceed to the final step.

If we find that your residual functional capacity does not enable you to do any of your past relevant work or if we use the procedures in § 416.920(h), we will use the same residual functional capacity assessment when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and the vocational factors of age, education, and work experience, as appropriate in your case. (See § 416.920(h) for an exception to this rule.) Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. 20 C.F.R. § 416.920(a)(4)(v). If you can make an adjustment

to other work, we will find that you are not disabled. *Id.* If you cannot make an adjustment to other work, we will find that you are disabled. *Id.*

Your impairment(s) and related symptoms, such as pain, may cause limitations of function or restrictions which limit your ability to meet certain demands of jobs. 20 C.F.R. § 416.969a(a). These limitations may be exertional, nonexertional, or a combination of both. *Id.*

When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the strength demands of jobs (sitting, standing, walking, lifting, carrying, pushing, and pulling), we consider that you have only exertional limitations. 20 C.F.R. § 416.969a(b). When your impairment(s) and related symptoms only impose exertional limitations and your specific vocational profile is listed in a rule contained in appendix 2, we will directly apply that rule to decide whether you are disabled. *Id.*

When the limitations and restrictions imposed by your impairment(s) and related symptoms, such as pain, affect only your ability to meet the demands of jobs other than the strength demands, we consider that you have only nonexertional limitations or restrictions. 20 C.F.R. § 416.969a(c)(1). Some examples of nonexertional limitations or restrictions include the following... nervousness, anxiousness, depression, attention or concentration deficits, difficulty remembering instructions, vision loss, hearing loss, difficulty with environment (e.g. fumes), hand manipulation, bending, crouching, kneeling, or other body maneuvers (see *Id.*).

If your impairment(s) and related symptoms, such as pain, only affect your ability to perform the nonexertional aspects of work-related activities, the rules in appendix 2 do not direct factual conclusions of disabled or not disabled. 20 C.F.R. § 416.969a(c)(2)

Limitations are classified as exertional if they affect your ability to meet the strength demands of jobs. *Id.* To determine the physical exertion requirements of work in the national economy, we classify jobs as *sedentary, light, medium, heavy, and very heavy*. 20 C.F.R. § 416.967.

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. 20 C.F.R. § 416.967 (a) Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. *Id.*

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. 20 C.F.R. § 416.967(b). 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. *Id.* To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. *Id.* If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 C.F.R. § 416.967(c). If someone can do medium work, we determine that he or she can also do sedentary and light work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 C.F.R. § 416.967(d). If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. *Id.*

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 C.F.R. § 416.967(e). If someone can do very heavy work, we determine that he or she can also do heavy, medium, light, and sedentary work. *Id.*

Given Petitioner's age as of SDA application date, education and employment history a determination of disability is dependent on Petitioner's ability to perform light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

Petitioner testified that she can ascend no more than 3-4 stairs at a time. Petitioner testified that back pain precludes her from standing longer than five minutes. Petitioner testified she is limited to a half block of walking. Petitioner testified that she can sit for 30 minutes and up to 90 minutes with a sit/stand option. Petitioner testified she can lift/carry 10-12 pounds. Petitioner testified she could sit no more than two hours or stand/walk for more than an hour over a typical workday.

Petitioner testified that bathing is difficult because of bending and reaching limits. Petitioner testified that she can dress herself, but it takes 10 minutes to do so. Petitioner testified PTSD makes her slack in grooming. Petitioner testified she is unable to use an upright vacuum. Petitioner testified that she cannot pull laundry out of a washing machine due to neck pain. Petitioner testified she can drive but is limited (Petitioner testified she drove 15 minutes to attend the hearing). Petitioner testified she is unable to crouch, crawl, or kneel.

Petitioner's stated limitations on walking, sitting, standing, lifting and ADLs were consistent with an inability to perform light employment. The analysis will proceed to consider whether Petitioner's statements were supported by presented medical records.

Physician statements of restriction were provided. Generally, physician statements of restrictions are the most reliable evidence of restrictions; this is particularly true for treating physicians. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*.

Petitioner's primary care physician completed two assessments concerning Petitioner's abilities. The documentation was consistent with finding that Petitioner could not perform light employment.

A Medical Source Statement dated [REDACTED] (Exhibit 1, pp. 6-9) dated [REDACTED], was presented. The statement was completed by Petitioner's treating primary care physician. Diagnoses of PTSD (since 2015), headaches (since 2014), asthma/COPD, shoulder pain, neck pain were stated. A fair prognosis was indicated. Petitioner's symptoms included memory loss. Petitioner's physician stated that Petitioner's pain was severe enough to "constantly" interfere with Petitioner's attention and ability to complete simple tasks. Petitioner's physician stated that Petitioner's stress was severe enough to "constantly" interfere with Petitioner's attention and ability to complete simple tasks. Petitioner was assessed as incapable of walking a block or on uneven ground. Petitioner was assessed as needing 15 minutes to lie down before needing to stand or walk. Petitioner was assessed as maximally capable of sitting for 15 minutes, standing for 10 minutes, and walking for 5 minutes. Over an 8-hour workday, Petitioner was assessed as maximally capable of sitting or standing/walking each for less than an hour. Petitioner was assessed as needing breaks every 15 minutes to complete a typical workday. Petitioner was limited to occasional lifting or carrying of less than five pounds. Over an 8-hour workday, Petitioner was deemed completely incapable of performing right hand grip and 95% incapable of performing fine manipulation with her right hand. It was estimated that Petitioner would miss employment more than five times per month. It was estimated that Petitioner would be unable to complete a workday due to impairments more than five times per month. The stated basis for assessments included physical examinations, Petitioner's history, and radiology.

A Medical Examination Report (Exhibit B, pp. 3-5) dated [REDACTED], was presented. The form was completed by a treating primary care physician with an approximate six-month history of treating Petitioner. Petitioner's physician listed diagnoses of chronic headache, PTSD, cervical radiculitis, memory loss, COPD, and neck pain. A stable clinical impression was noted. Decreased bilateral arm motions, right shoulder, and neck motions were noted. Petitioner was limited to occasional lifting of less than 10 pounds. Petitioner was deemed capable of less than one hour over an eight-hour workday of standing/walking and sitting. Petitioner was assessed as incapable of bilateral extremity repetitive actions such as simple grasping, reaching, pushing/pulling, and fine manipulation. It was noted that Petitioner needed assistance with household chores. Unspecified restrictions to memory, concentration, and social interaction were indicated.

Radiology of Petitioner's cervical spine verified *severe* foraminal stenosis at multiple levels. Severe foraminal stenosis of the cervical spine is consistent with severe and radiating nerve pain. The diagnosis is consistent with not only neck pain, but also finger restrictions; finger restrictions were found by Petitioner's PCP and a consultative examiner.

Treatment records verified right shoulder pain despite multiple treatments by Petitioner. Despite multiple physical therapy attempts and neurology treatment, Petitioner's reported shoulder pain showed little improvement of time. These considerations were consistent with an inability to perform light employment.

Treatment records verified ongoing complaints of headache consistent with a closed-head injury. Brain radiology verified a mild closed-head injury. The radiology is consistent with Petitioner's reporting of daily headaches affecting her activities. These considerations were consistent with difficulties in performing any employment but simple employment.

Presented psychiatric and counseling documents verified Petitioner's most recent GAF was 55. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. Petitioner's GAF was not consistent with the much more severe assessments of Petitioner's PCP but were consistent with moderate degrees of concentration and social difficulties. These considerations were consistent with limitations to employment reliant on social interactions as well as performing duties involving concentration.

Given Petitioner's compliance with treatment for multiple diagnoses and the severity of each of Petitioner's problems, and the assessments from Petitioner's PCP, it is found that Petitioner is precluded from performing light employment. For purposes of this decision, it will be found that Petitioner can perform simple sedentary employment and that such types of employment are available to Petitioner.

Based on Petitioner's exertional work level (sedentary), age (approaching advanced age), education (high school graduate with no direct entry into skilled work), employment history (unskilled), Medical-Vocational Rule 201.12 is found to apply. This rule dictates a finding that Petitioner is disabled. Accordingly, it is found that MDHHS improperly found Petitioner to be not disabled for purposes of SDA benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly denied Petitioner's application for SDA benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's SDA benefit application dated September 27, 2017;
- (2) evaluate Petitioner's eligibility subject to the finding that Petitioner is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Petitioner is found eligible for future benefits.

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

CG/



Christian Gardocki

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

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