



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: August 22, 2018
MAHS Docket No.: 18-006031
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. After due notice, a telephone hearing was held on August 2, 2018, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Hayat Nagi, Eligibility Specialist.

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 December 21, 2017, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On April 16, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program.
3. On April 17, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability.
4. On June 12, 2018, the Department received Petitioner's timely written request for hearing.

5. Petitioner alleged mental disabling impairment due to Bipolar Disorder I, last episode manic, and Depression.
6. The Petitioner alleged no physical disabling impairment.
7. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED] 2018, birth date; she is [REDACTED] in height and weighs about [REDACTED] pounds.
8. Petitioner is a high school graduate.
9. Petitioner has an employment history of work as a Slot Assistant Shift Manager for slot machines at the [REDACTED]. The Petitioner last worker in September 2017.
10. Petitioner has a pending disability claim 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 ninety 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 assistances, SDA and and alleges 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 90 days, which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity (SGA) 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 1

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 2

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. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimis* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., 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. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

The medical evidence presented at the hearing was reviewed and is summarized below.

A consultative examination was performed on [REDACTED], 2018, resulting in a Psychiatric/Psychological Medical report. The current symptoms reported by Petitioner at the examination hearing based upon her diagnosis by her treating psychiatrist was Bipolar Disorder, Depression and Anxiety. The Petitioner described herself as having crying spells, hopelessness and being overwhelmed and agitated. Petitioner also described herself as having no motivation and being overwhelmed by the simplest of tasks, and was not taking care of herself regarding her grooming, and showering. Petitioner reported two inpatient hospitalizations for depression at [REDACTED]. She has participated in outpatient services since the 1980's with current treatment ongoing June 2016 to present.

The notes indicate that during the exam, the Petitioner was vague about her alcohol usage, reporting drinking 3 or 4 times in the last 30 days, reporting she last drank alcohol 6 days prior to her exam. Petitioner reported getting along well with people and has contact on Facebook with friends, and talks to relatives a couple times a week. The Petitioner made no eye contact during the exam. She reported getting overwhelmed

with paperwork, didn't shower, and remained in her robe all day. She does prepare meals and laundry reporting that her ex-husband does rest of household chores and pays bills. On the day of the exam, she sat in her home and stared at the wall until she had to go to the appointment.

The Mental Status description completed by the examiner was as follows. Self Esteem was poor, contact with reality intact. Thought processes and speech were intact, organized and goal directed, with no evidence of slowed or pressured speech. No hallucinations or delusions, feelings of persecution, thought control or suicidal or homicidal ideation. Petitioner expresses hopelessness, helplessness, worthlessness all the time, reported erratic sleep, does not complete tasks and displayed a sad effect.

The examiner noted that Petitioner presented with significant deficits in coping strategies that tend to present as depression. She could benefit from a referral to a peer group therapy program to learn appropriate coping strategies for dealing with stress and frustration and being overwhelmed and recommended a referral to Gambler's Anonymous for help with gambling addiction. Petitioner reported not gambling due to having no money. Diagnosis was Alcohol Use Disorder, Gambling Disorder, and Bipolar I Disorder with anxious distress. Prognosis was good with medication and therapy. The examiner also noted that Petitioner is unable to manage benefit funds due to her gambling disorder and could benefit from a referral to gambler's anonymous. The examiner also recommended a referral to Michigan Department of Career Development for evaluation and placement in a work training program.

The Petitioner also receives ongoing treatment from a psychiatrist at the Arab American and Chaldean Council (ACC). The Petitioner sees her psychiatrist every 2 or 4 weeks and a therapist every 2 weeks. The Petitioner testified that therapy has helped although she has worsened over the last year.

A current assessment, Medical Review Note was completed by the Petitioner's treating Psychiatrist which was dated January 11, 2018. (Exhibit A, p. 46.) Petitioner was reported as emotional during the exam and appeared dramatic. She presented with depressed mood and full range of effect. She was lonely when home. Grooming and hygiene was fair. The Notes indicate that the Petitioner was counseled about the continued use of alcohol and its effects on the body organs, and attendance at AA was recommended as well as supplements, thiamine, folic acid and use of Disulfiram or Vivitrol used to treat alcoholism, which were rejected by the Petitioner. During the interview, the notes indicate that the Petitioner is describing a distinctly depressed mood, that is associated with sadness, pessimism, loss of social interest, psychomotor retardation and some interference with appetite and sleep. The evaluation also noted attitude was argumentative, concentration noted easily distracted, insight was emotional, judgement was limited, knowledge was average, mood affect was depressed, psychomotor activity was reduced, no suicide plan, thought content/process was goal directed. Diagnosis was Bipolar I Disorder, most recent episode manic, Pathological Gambling and Alcohol Abuse, uncomplicated CD 10.

In addition, the Petitioner's treating psychiatrist completed a Medical Examination Report requested by the Department dated January 18, 2018. The Department should have requested a DHS-49 D and DHS-49 E of the psychiatrist as the Medical Examination Report sent to him is for applicants for SDA alleging physical disabilities, not mental disability. Notwithstanding the form's inapplicability to Petitioner, the Petitioner's psychiatrist indicated the Petitioner's mental condition was deteriorating and imposed the following mental limitations, memory, sustained concentration and social interaction. (Exhibit A, p. 65.) The psychiatrist also wrote a letter dated July 27, 2018, that indicated that Petitioner suffered from severe and persistent mental illness and is diagnosed with bipolar disorder and is not stable in her mental health symptoms.

As part of the medical file a third-party function report was completed by Petitioner's ex-husband who lives with Petitioner. The function report was completed on January 16, 2018, and stated the following observations and answers. The comments indicate that before she had a job and friends, which she cannot do, she now stays home and stares into space. He indicates that she wakes up at all hours of the night or day; has problems with remembering to bathe, care for hair and dress. The only household chore performed was laundry; and chores take a very long time; and she takes forever and needs encouragement. He described Petitioner as staying in all day and having no energy and only shops for food and does not do so often. Petitioner also watches TV all day and stays home 90% of the time. Social changes note that she has distanced herself from outside world. In the section regarding abilities, that Petitioner's illness affects her memory, completing tasks, concentration, understanding, following instructions and cannot focus. The Petitioner's ability to pay attention was described as 1 to 2 minutes, and that she does not finish what she starts and has to read instructions (example a recipe) over and over. Spoken word instructions have to be repeated. When asked how well Petitioner handled stress, he indicated "not well, becomes overwhelmed". He also noted as an unusual behavior stating Petitioner stares into space. (Exhibit A, pp. 133-140.)

A note taken during the psychiatric evaluation dated [REDACTED] 2017, noted Petitioner reported doing better, and her last drink was three nights ago. At the time of the evaluation, the Petitioner was returning to work the next day and appeared calm and mood appropriate. The notes indicate that patient's reported anxiety appears to have physical and behavioral consequences, such as, tension, poor concentration and impaired sleep.

A Psychosocial Assessment was completed on [REDACTED] 2017, by a therapist. The report notes that there is a history of depression on and off for over 30 years. Petitioner reported two hospitalizations in January 2016 and February 2017 at [REDACTED]. Notes indicate Petitioner has passive thoughts of suicide with no plan or attempt and a gambling addiction for over 10 years. At the time of the assessment, the Petitioner reported crying spells, feelings of hopelessness and worthlessness and generalized anxiety and racing thoughts. Petitioner expressed difficulty with staying focused at work and dealing with family conflicts. At the time, Petitioner was prescribed Lithium

Carbonate, Cymbalta and Clonaze. Insight was limited, attitude appropriate, and judgment good. Petitioner reported difficulty with crying spells and concentration at work. Mood was normal.

In an earlier treatment note from June of 2015, the notes indicate that Petitioner presented as severely depressed, had been gambling for the last 15 years, suffers from depression and anxiety most of the time, with racing thoughts at the same time, preoccupied with gambling, feeling hopeless, with recent episodes of intense panic attacks.

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 3

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, listing 12.04 Depressive, bipolar and related disorders was 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. 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).

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 (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) 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, the Petitioner alleges only nonexertional limitations due to her medical condition due to her mental impairments.

The Petitioner testified that she had received treatment due to mental problems during a 30-year period including inpatient treatment at [REDACTED] in 2017 for severe depression and thoughts of suicide and also in 2016. Petitioner's treating psychiatrist has diagnosed her with Bipolar Disorder most recent episode was manic. During the hearing the Petitioner credibly testified that she could no longer continue in her former

employment position as a Slot Manager due to her problems with concentration, focusing, crying spells, and was overwhelmed with tracking emails, policy and procedures, and so many responsibilities and anxiety around people. She does not read but does watch television but expressed she does so with a lack of concentration. She contacts some friends on Facebook but does not go out or see them in person. Petitioner's brother also testified at the hearing that her mental state was very depressed and began about three years ago after her father died in April 2015. He further testified that she was not the same person and was not motivated or highly functioning like she used to be.

The Petitioner's treating psychiatrist has prescribed Abilify, Atenolol, Clonazepam, and Cymbalta. The Petitioner stated the drugs have helped only to the extent they take the edge off, but have not resolved her depression. She sees her psychiatrist every 2 or 4 weeks and her therapist every 2 weeks. She described herself as indecisive and memory is not on point and is detached from people and life. She does not keep her house clean, and does not go out other than to go to her doctor's appointments as people make her anxious. Her conversations are unfocused and all over the place. She does not shower every day and often overlooks her hygiene. As regards household tasks she testified that she performs them in stages, washing dishes a few at a time and moving on to something else before she completes the dishwashing and may not return to the task to finish. Petitioner described her anxiety attacks cause her to shake, become tight in the chest with breathing difficulty. She cries every day.

In determining mental residual functional capacity statements about symptoms must be supported by objective medical evidence from an acceptable medical source that could reasonably be expected to produce the symptoms alleged that when considered with all the other evidence including statements about the intensity and persistence of your mental symptoms. 20 CFR416.929 (b) and (c). In this case objective medical evidence was from Petitioner's treating psychiatrist who she has seen for several years.

The Petitioner is also diagnosed with alcohol abuse – uncomplicated and has received counseling from her therapist and psychiatrist. The alcohol abuse uncomplicated diagnosis is based upon the diagnosis code used for billing an alcohol use disorder, mild. Petitioner testified during the hearing that she drinks only one time weekly and consumes 3 or 4 beers. There was no history noted in her mental health provider records regarding history of withdrawal or treatment for alcohol use symptoms. As regarding her gambling diagnosis, Petitioner testified that she does not gamble because she has no money.

Based upon the medical evidence presented, the evaluation of her treating psychiatrist, the consultative evaluation, the Petitioner's testimony and her ex-husband's written evaluation of his observations, it is determined that the Petitioner has moderate to marked limitations with activities of daily living, her social functioning is moderately affected, and her concentration appears to be markedly limited as is her persistence and pace and had no episodes of decompensation.

Step 4

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 Slot Manager for [REDACTED]. In this job, she was required to function at a high level of responsibility. As a Slot Manager, her duties included managing the gaming floor, administrative responsibilities, supervisory responsibilities and customer service. In that position, she was responsible for supervising 2 to 6 supervisors and 10 to 22 team members, depending on the shift. She was responsible to hire and discipline employees she supervised and ensure they were in compliance with all internal controls. She was required to service equipment, fill hoppers with tokens and assist with customer payouts over \$25,000. The Petitioner was considered a lead worker. At the end of her tenure, she was unable to meet the demands of her work and would take family medical leave.

Due to Petitioner's mental limitations and her mental capacity to perform basic work activities, Petitioner is no longer capable of performing past relevant work. In light of the entire record, it is found that Petitioner's nonexertional 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). However, if the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2).

In this case the Petitioner was [REDACTED] years old at the time of the application and was [REDACTED] years old at the time of the hearing, and, thus, is considered to be of advanced age (age 55 and over). Petitioner is a high school graduate with a skilled work history as a Slot Manager at the [REDACTED].

Petitioner has impairments due only to her mental condition. As a result, she has a nonexertional RFC imposing moderate to marked limitations with activities of daily living, her social functioning is moderately affected, and her concentration appears to be markedly limited as is her persistence and pace and had no episodes of decompensation. In addition, the evidence record does not support that the Petitioner's diagnosis of alcohol abuse, uncomplicated is material in this matter such that if Petitioner ceased use of alcohol, her symptoms and signs involving her diagnosis of bipolar and depression would be resolved.

The Department has failed to present evidence of a significant number of jobs in the national and local economy that Petitioner has the vocational qualifications to perform in light of her nonexertional RFC, age, education, and work experience. Therefore, the evidence is insufficient to establish that Petitioner is able to adjust to other work. Accordingly, Petitioner is found disabled at Step 5 for purposes of the SDA benefit program.

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 for purposes of the SDA benefit program.

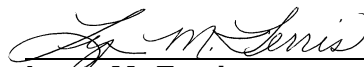
DECISION AND ORDER

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. The Department shall reregister and process the Petitioner's December 21, 2017, application to see if all other non-medical criteria are satisfied and notify the Petitioner of its determination.
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified.
3. Review Petitioner's continued eligibility in August of 2019.

LMF/



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) 763-0155; 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

Lauren Casper
MDHHS-Macomb-20-Hearings

Petitioner

[REDACTED]
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