[redacted]
[redacted]
[redacted], MI [redacted]

Date Mailed: March 5, 2019
MAHS Docket No.: 18-011272
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 December 5, 2018, from Lansing, Michigan. Petitioner, [redacted], personally appeared and testified. [redacted] Petitioner's mother, also testified. Petitioner submitted exhibits A and B which were admitted into evidence.

The Department of Health and Human Services (Department) was represented by Family Independence Manager Julian Castillo and Eligibility Specialist Deborah Ward. Ms. Ward testified on behalf of the Department. The Department submitted 303 exhibits which were admitted into evidence.

At the request of Petitioner, the record was held open pending addition medical records. On February 8, 2019, Respondent submitted an additional 90 exhibits as exhibit B (1-90). The original 303 exhibits submitted by the Department were renamed exhibit A (1-303). The record was closed on receipt of the additional medical records.

ISSUE

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

FINDINGS OF FACT

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

1. On [redacted] 2018, Petitioner reapplied for SDA benefits alleging disability.

2. On October 1, 2018, the Medical Review Team (MRT) denied Petitioner's application for SDA. [Dept. Exh. A, pp 16-22].

3. On October 23, 2018, the Department sent Petitioner notice that her application for SDA was denied from July 1, 2018, ongoing. [Dept. Exh. A, pp 1-2].

4. On October 31, 2018, Petitioner filed a request for a hearing to contest the Department's negative action. [Request for Hearing].

5. Petitioner reported a history of Asperger's syndrome. [Testimony of [redacted], 12/5/2018].

6. On [redacted] 2016, Petitioner underwent a service entry initial assessment for [redacted]. She was diagnosed with generalized anxiety disorder, panic disorder with agoraphobia, and pervasive developmental disorder NOS/Asperger's/Retts Disorder, Asperger's Disorder. [Dept. Exh. A, pp 200-204].

7. Petitioner's face-to-face therapy sessions were on [redacted] 2018; [redacted], 2018; [redacted], 2018; [redacted], 2018; [redacted], 2018; [redacted], 2018; and [redacted], 2018. The therapist noted during each session that Petitioner's general appearance; psychomotor activity; communication; speech; affect; thought process, and thought content were all normal or within normal limits. Her mood was noted as sad/dysphoric and/or depressed. [Dept. Exh. A, pp 257-264, 281-295].

8. On [redacted] 2018, Petitioner underwent an echocardiogram. The report showed the left ventricle was mildly dilated, with normal wall thickness. The left ejection fraction was 68%. The left ventricular wall motion was normal. The left atrium was borderline dilated. There was a small pleural effusion. [Dept. Exh. A, pp 174-176].

9. On [redacted] 2018, Petitioner was scheduled for the treadmill stress test. Petitioner was left a voice mail that her stress test was normal as was her recent echocardiogram. [Dept. Exh. A, pp 177-194].

10. On [redacted] 2018, Petitioner presented for a pre-op examination as a new patient with a complaint of microscopic hematuria for the last year. Cystoscopy, bilateral retrograde pyelography and a possible bladder biopsy was recommended. Informed consent was given. [Dept. Exh. A, pp 138-145].

11. On [redacted] 2018, Petitioner underwent a CT of the abdomen and pelvis. There was no nephrolithiasis or obstruction. There were small right renal cysts with no suspicious renal lesions. [Dept. Exh. A, p 164].

12. On [redacted] 2018, Petitioner followed up on her complaint of microscopic hematuria for the last year. She had a history of UTI, symptomatic with urinary frequency, low back pain and some lower abdominal discomfort. She was last

seen on [redacted] 2018, for an anticipated cystoscopy, bilateral retrograde pyelography and possible bladder biopsy which was canceled. The cystoscopy and possible bladder biopsy were discussed, and Petitioner agreed to have it in the office. [Dept. Exh. A, pp 146-153].

13. On March 28, 2018, Petitioner was scheduled for a Medication Review. The psychiatrist conducting the review by video-teleconferencing indicated that the Medication Review had been canceled several times and she was last seen on [redacted] 2017. The psychiatrist indicated there were no changes and she would be scheduled to return in three months. [Dept. Exh. A, pp 242-249].

14. On [redacted] 2018, the cystoscopy was performed in the office. The cystoscopy showed no evidence of any acute inflammation. She did have a few benign-appearing proximal urethral polyps. There was no evidence of infection, calculus, or urinary tract neoplasm. [Dept. Exh. A, pp 154-165].

15. On [redacted] 2018, Petitioner had two chest x-rays showing no acute cardiopulmonary abnormality. [Dept. Exh. A, p 63].

16. On [redacted] 2018, Petitioner had a consultation with a pulmonologist. Petitioner's medical history was significant for anxiety disorder, Asperger disorder, obesity and tachycardia. She was obese and also had exposure to dove birds as well as second hand smoking. She presented with a 1-year history of dyspnea, cough, occasional wheezing, tachycardia and syncopal events. The events did not appear to align with any pulmonary disease process given that the syncopal events occurred for a few brief seconds and she woke up on her own with improved respiratory symptoms. On questioning, the pulmonologist opined that some of her symptoms may be associated with her anxiety and depression for which she sees a counselor. Her pulmonary function test on April 3, 2018, showed normal spirometry, lung volumes and DLCO. She did appear to have some symptoms consistent with asthma. She was referred for a CT Thorax given her exposure history and the severity of her symptoms. [Dept. Exh. A, pp 64-82].

17. On [redacted] 2018, Petitioner underwent a CT Thorax without IV contrast for dyspnea, cough, and concerns for asthma. Impression was mild air trapping seen with a fixed or reactive small airway disease. While air trapping can be seen with hypersensitivity pneumonitis, no other specific imaging features including ground glass opacities or centrilobular nodules were evident and no pulmonary fibrosis. [Dept. Exh. A, p 62].

18. On [redacted] 2018, Petitioner had a medication review by video-teleconference. Petitioner is supposed to get weekly therapy and monthly CSM however, she does not want home visits for CSM and often cancels her therapy and other office appointments. A note from her last visit on [redacted] 2018, indicated no changes. The plan was to start taking Prozac only the 7 days before menses for PMDD. Quetiapine could be increased to 50mg via the Medline at her request. [Dept. Exh. A, pp 100-106, 233-241].

19. On [redacted] 2018, Petitioner saw her primary care physician complaining of breathing problems. She also requesting a referral to rheumatology as she believed she may have fibromyalgia. Her hematuria workup in urology was negative. Petitioner was assessed with joint pain in multiple sites, myalgia, asymptomatic microscopic hematuria, shortness of breath, syncope and collapse. She was referred to rheumatology for joint pain, pulmonology for treatment of possible asthma, and instructed to continue to see psychology. [Dept Exh. A, pp 57-60].

20. On [redacted] 2018, Petitioner underwent an EKG which showed normal sinus rhythm, no acute ST segment changes or T-wave inversions. No evidence of Brugada, delta wave or other abnormality. [Dept. Exh. A, pp 120, 195-196].

21. On [redacted] 2018, Petitioner presented to the emergency department complaining of a headache, stuttering and seeing flashes of light and sparkling things. She was diagnosed with an atypical migraine. A CT was performed and revealed no acute pathology. [Dept. Exh. A, pp 124-130].

22. On [redacted] 2018, Petitioner underwent an electrocardiogram. The results were normal and there was no significant change when compared to the [redacted] 2018, electrocardiogram. [Dept. Exh. A, pp 197-198].

23. On [redacted] 2018, Petitioner presented for a neurological consultation. Petitioner reported having a concussion about two years ago when she hit her head on a refrigerator door. She has had scans of her brain which were unremarkable. She had an EEG a year ago and more recently, both were unremarkable. She had worn a 24-hour Holter monitor which was unremarkable. She reported a history of concussions, first at age 3 when she was dropped on a concrete floor, then at age 8 when she was hit with a baseball. She was attending counseling at [redacted] and had a telephone medicine psychiatrist. The neurologist conducted a physical examination finding:

    a. Babinski: negative.
    b. Cerebellar signs: absent.
    c. Cerebellar testing grossly/intact: There were no obvious cerebellar signs.
    d. Coordination: finger-to-nose and rapid alternating movements were intact, no truncal ataxia, no titubation, no ataxia.
    e. Cortical functions: alert and oriented x 3, comprehension and language intact.
    f. Cranial nerves:
        i. Pupils 4mms reacting briskly to 2mms, no apparent pupil defect.
        ii. EOM were full with normal pursuit and saccade.
        iii. No ptosis or nystagmus.
        iv. Motor: pinprick, light touch intact in all three divisions.
        v. No asymmetry of weakness.
        vi. Acuity intact to finger rub bilaterally.
        vii. Palate rose in midline.

viii. Sternocleidomastoid, trapezius strength intact.
ix. Tongue protruded midline without atrophy or fasciculation.
x. Gait: normal. Involuntary movements, there was no significant tremor seen.
xi. Motor strength: strength is intact in both upper and both lower extremities to individual manual muscle testing.
xii. Muscle bulk: there was no atrophy or fasciculations seen.
xiii. Pronator drift: not present.
xiv. Range of motion: full.
xv. Reflexes: reflexes were 2+ and symmetrical in all groups.
xvi. Sensory: sensory examination to light touch was symmetrically appreciated in the face, arm and legs.
xvii. Speech: normal.

Petitioner was assessed with a concussion without loss of consciousness, initial encounter; post-traumatic headache, unspecified, intractable; and syncope and collapse. [Dept. Exh. A, pp 48-50].

24. On [redacted] 2018, Petitioner established care as a new patient in Internal Medicine. She was complaining of a bump on the right side of her throat that causes it to hurt when she swallows. In addition, Petitioner was wearing an event monitor. Medical history was provided by Petitioner and her mother. Petitioner was assessed with post-concussion syndrome, seasonal allergic rhinitis, snoring, syncope and collapse, anxiety and depression, and Raynaud's phenomenon without gangrene. Petitioner was referred to Internal Medicine based on Petitioner's multiple uncontrolled chronic conditions/symptoms. Petitioner and her mother agreed they would like Internal Medicine to take over Petitioner's care. [Dept. Exh. B, pp 1-13].

25. On [redacted] 2018, Petitioner had a medication review by video teleconference. She was scheduled for an earlier appointment and had to reschedule due to her mother insisting she bring Petitioner in for her appointments. She was last seen on [redacted] 2018. Petitioner had also not been able to keep her CSM or therapy appointments due to her mother's work schedule. The psychiatrist indicated that Petitioner had life-changing level of anxiety and agoraphobia since her TBI (mild concussion) in September 2016. She has had difficulty concentrating and derealization episodes of feeling like she is in a dream state. A complete neurological evaluation did not show any seizure activity or MRI changes of the brain. It was also noted that she had a suicide attempt at the age of 8. She was reassured she did not have schizophrenia. The psychiatrist opined that her symptoms sounded like sleep disturbance/medication interaction instead of any known psychiatric illness. [Dept. Exh. A, pp 83-89].

26. Petitioner is a [redacted]-old woman born on [redacted], 1994. She is [redacted]" tall and weighs [redacted] lbs. She has a high school education and some college. She has never held a full-time job.

27. Petitioner was appealing the denial of Social Security disability benefits at the time of the hearing.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 impariment 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.

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

> Sec. 604 (1). The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:
>
> (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

A person is disabled for SDA purposes if he or she:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- 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), see Medical Certification of Disability. BEM 261, pp 1-2 (7/1/2014).

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months (**90 days for SDA**). 20 CFR 416.905(a) (emphasis added). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity;

the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Petitioner is not involved in substantial gainful activity and testified that she has never held a full-time position. Therefore, she is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c).

Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

2. Capacities for seeing, hearing, and speaking;

3. Understanding, carrying out, and remembering simple instructions;

4. Use of judgment;

5. Responding appropriately to supervision, co-workers and usual work situations; and

6. Dealing with changes in a routine work setting. *Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services,* 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a petitioner's age, education, or work experience, the impairment would not affect the petitioner's ability to work. *Salmi v Sec of Health and Human Services,* 774 F2d 685, 692 (CA 6, 1985).

In the present case, Petitioner alleges disability due to Asperger's syndrome.

As previously noted, Petitioner bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Petitioner has presented some limited medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities, based on her diagnoses. The medical evidence has established that Petitioner has an impairment, or combination thereof, that has more than a *de minimis* effect on Petitioner's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, Petitioner is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Petitioner has alleged disability based on Asperger's syndrome. However, while Asperger's was mentioned in her medical history by all the medical personnel, no other symptom's, impairments or diagnoses were based on her Asperger's syndrome.

Petitioner has the burden of establishing her disability. The record evidence was insufficient to meet a listing. While there was evidence of Asperger's syndrome being listed under medical history, there was no evidence that her diagnosis of Asperger's syndrome was severe enough to meet a listing.

Because the Department's decision was based on evidence submitted up to the application date of June 2018, no further medical records were considered. While there was evidence of anxiety, depression, UTI, obesity, tachycardia, syncope, post-concussion syndrome, seasonal allergic rhinitis, snoring, depression, Raynaud's phenomenon without gangrene, TBI, and agoraphobia, there was no evidence that her diagnoses were severe enough to meet a listing. Therefore, the analysis continues to Step 4.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the petitioner's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the petitioner's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Based on the record evidence, Petitioner has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(a). In making this finding, the Administrative Law Judge considered all Petitioner's symptoms and the extent to which these symptoms can reasonably be accepted as consistent with the objective medical evidence and Petitioner's own testimony.

Petitioner relied heavily on a service entry initial assessment for [redacted] from [redacted] 2016, mistakenly believing it was from July 2018 and had any relevance to the issue at hand. It did not, due to the assessment being over 2 years old, and not consistent with her current counselor's or psychiatrist's assessment.

Petitioner testified indicating that she had balance issues and that was why she was prescribed the cane. However, a review of the medical records generally focused on her breathing and possible asthma issues, as well as instances of loss of consciousness and blood cells in her urine. Those were the most addressed issues. While Petitioner was noted to have scoliosis, the records were scarce in addressing any further back problems when compared to syncope and hematuria.

After considering the evidence of record, the Administrative Law Judge finds that Petitioner's medically determinable impairments could reasonably be expected to produce the alleged symptoms, and that Petitioner's statements concerning the intensity, persistence and limiting effects of these symptoms are partially credible.

Next, the Administrative Law Judge must determine at step four whether Petitioner has the residual functional capacity to perform the requirements of her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as Petitioner actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the petitioner to learn to do the job and have been substantial gainful activity (SGA). (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the Petitioner has the residual functional capacity to do her past relevant work, the petitioner is not disabled. If the Petitioner is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

In this case, Petitioner has no past relevant work and the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the Petitioner is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the Petitioner is able to do other work, he/she is not disabled. If the Petitioner is not able to do other work and meets the duration requirements, he/she is disabled.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the burden of proof shifts to the Department to establish that Petitioner does have residual function capacity. The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental

demands, sensory requirements and other functions will be evaluated. See discussion at Step 2 above.

In this case, Petitioner alleged her disability as Asperger's syndrome. Petitioner's medical records also show she was diagnosed with generalized anxiety disorder, panic disorder with agoraphobia, pervasive developmental disorder NOS, Asperger's/Retts Disorder, UTI, obesity, tachycardia, syncope, post-concussion syndrome, seasonal allergic rhinitis, snoring, depression, Raynaud's phenomenon without gangrene, TBI, and agoraphobia. Petitioner's tests and findings are listed below:

-[redacted] 2018, Petitioner's echocardiogram and treadmill stress test were both found to be normal.

-[redacted] 2018, Petitioner's pulmonary function test showed normal spirometry, lung volumes and DLCO. She did appear to have some symptoms consistent with asthma. Petitioner's cystoscopy results showed no evidence of any acute inflammation. While she did have a few benign-appearing proximal urethral polyps, there was no evidence of infection, calculus, or urinary tract neoplasm. Further Petitioner's chest x-rays showed no acute cardiopulmonary abnormality.

-[redacted] 2018, Petitioner's CT Thorax results showed mild air trapping but no other imaging feature or pulmonary fibrosis.

-[redacted] 2018, Petitioner's EKG was normal.

-[redacted] 2018, Petitioner was diagnosed with an atypical migraine and a CT was performed which revealed no acute pathology. She also had another EKG, which was compared to the [redacted] 2018 EKG. They were both normal, with no changes observed.

-[redacted] 2018, during a Medication Review, Petitioner was reassured she did not have schizophrenia and the psychiatrist opined that Petitioner's symptomology sounded like sleep disturbance/medication interaction instead of any known psychiatric illness.

-Petitioner also testified during the hearing on [redacted] 5, 2018, that she stays in her room on the computer, watches television and does not leave the house.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Petitioner has the residual functional capacity to perform other work. Petitioner is disqualified from receiving disability at Step 5 based upon the fact that she has not established by objective medical evidence that she cannot perform sedentary work. Under the Medical-Vocational guidelines, an individual aged 18 – 44 (Petitioner is [redacted] years of age), with a high school education and an unskilled or no history who can perform even only sedentary work is not considered disabled pursuant to Medical-Vocational Rule 201.27.

Petitioner has not presented the required competent, material, and substantial evidence which would support a finding that Petitioner has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Petitioner has cited medical problems, the clinical documentation submitted by Petitioner is not sufficient to establish a finding that Petitioner is disabled. There is no objective medical evidence to substantiate Petitioner's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. Accordingly, Petitioner is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The Department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because Petitioner does not meet the definition of disabled under the MA program and because the evidence of record does not establish that Petitioner is unable to work for a period exceeding 90 days, the Petitioner does not meet the disability criteria for State Disability Assistance benefits.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was not eligible to receive State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds Petitioner not disabled for purposes of the SDA benefit program.

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

VLA/hb

Vicki Armstrong
Administrative Law Judge
for Robert Gordon, 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

Julian Castillo
4081 W Polk Rd
Hart, MI 49420

Oceana County, DHHS

BSC3 via electronic mail

L. Karadsheh via electronic mail

Petitioner

[redacted]
[redacted]
[redacted], MI [redacted]