



[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 8, 2019
MOAHR Docket No.: 19-002456
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on April 10, 2019, from Detroit, Michigan. Participants on behalf of Petitioner included herself. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Medical Contact Worker.

ISSUE

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

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 June 20, 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On September 12, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 9-15).
3. On February 25, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 4-7).
4. On March 8, 2019, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 3).

5. Petitioner alleged disabling impairment due to intermittent explosive disorder; anxiety; ADHD; IBFD; PTSD; depression and a crushed fibula/tibia.
6. On the date of the hearing, Petitioner was [REDACTED] years old with an August 10, [REDACTED] birth date; she is [REDACTED] in height and weighs about [REDACTED] pounds.
7. Petitioner received an associate degree.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as deli clerk and sales consultant.
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 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.

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

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

416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

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

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

Step Two

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

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

more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. 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, *and in response to the interim order*, was reviewed and is summarized below.

On March 7, 2017, Petitioner was seen at [REDACTED] for an office visit. Petitioner reported having night terrors, nightmares, and violent episodes since being off of her medication. Petitioner reported that she had mood instability, irritability and impulsive outbursts when angry. Petitioner indicated that she has done poorly since the last visit. Petitioner did not believe any of her medication was effective. The assessment indicated delayed PTSD and ADHD. (Exhibit A, pp. 460-461).

On March 21, 2017, Petitioner was seen at [REDACTED] for a medication review. Petitioner reported having multiple increased stressors in regard to school and her husband's daughter that has been difficult to deal with. Petitioner noted improvement in sleep and night sweats prior to these developments. Petitioner did not report having any outburst or violence. (Exhibit A, pp. 459-450).

On April 18, 2017, Petitioner was seen at [REDACTED] for a medication review. Petitioner was noted to have rapid speech, her thoughts were fluent, no flight of ideas, she was goal oriented, her insight was very good, judgment was intact, her speech was not pressured, and her affect was noted as not irritable. (Exhibit A, pp. 458-459).

On May 25, 2017, Petitioner was seen at [REDACTED] for a medication review. Petitioner was being treated with Adderall to control impulsivity brought on by all PTSD. Petitioner's grooming was noted to be normal. Petitioner was noted to have a pleasant affect. Petitioner's speech was rapid but not pressured. Petitioner's thoughts were logical and goal oriented. Petitioner was noted to be fidgety. Her affect was noted to be

depressed despite animated nature. The assessment included ADHD and delayed PTSD. (Exhibit A, pp. 457-458).

On July 13, 2017, Petitioner was seen at [REDACTED] for an office visit for anxiety. Petitioner indicated that she was residing in a friend's basement under a salon. Petitioner indicated that she does not go anywhere most of the day and was unable to work due to panic attacks. Petitioner denied suicidal ideation. Petitioner was noted to have rapid speech. Her thoughts were logical and goal oriented. Petitioner's affect was noted to be anxious. (Exhibit A, pp. 456-457).

On January 19, 2018, Petitioner was seen at [REDACTED] for a consult for a left ankle fracture. The injury was noted to have occurred four days prior due to a slip and fall. Petitioner indicated that she had pain, swelling, and an inability to walk. Petitioner had closed reduction and splinting completed at [REDACTED] in Trenton, Michigan. Petitioner was unable to have surgery due to a dental infection. Petitioner went to the emergency room at [REDACTED]. The splint was removed, and Petitioner was re-splinted and sent to [REDACTED]. At [REDACTED], she was admitted and was told that she would need to be transferred to [REDACTED]. An ace wrap was applied. There was no attempt at reduction of splint. (Exhibit A, pp. 233-265).

On February 2, 2018, Petitioner was seen at [REDACTED]. There was open reduction and internal fixation (ORIF) of left trimalleolar ankle fracture with significant comminution of medial malleolus fragment. (Exhibit A, pp. 214-217).

On February 15, 2018, Petitioner was seen at [REDACTED] for a post op evaluation of left ankle fracture dislocation. Petitioner reported having a lot of burning and numbness after surgeries. Petitioner indicated that it was difficult to manage day-to-day activities. Petitioner indicated that she received help from her sister who was a nurse and also from her mother. Petitioner reported that she was taking her pain medication. Petitioner was concerned about leg swelling and indicated that she had not been walking on splint. Petitioner was noted to have moderate swelling. The pin sites were noted to be healing well as well as the incision sites. There was moderate swelling of foot. Positive healing contusions of heel. Petitioner's ankle range of motion was limited due to pain. Petitioner was able to move all toes. Petitioner's range of motion for her knee and hip were within normal limits. (Exhibit A, pp. 213-214).

On March 8, 2018, Petitioner was seen at [REDACTED] for orthopedic follow-up. Petitioner was not wearing her fracture boot and refused to wear it because it caused her leg to swell and rubs on her incisions. Petitioner's ankle was noted to have improved, but she was still experiencing shooting and burning pain. Petitioner was noted to be able to move her ankle better than the previous visit. Petitioner began put some weight on ankle since last visit. There was no increase in pain noted. There was no swelling. Petitioner's incision was noted to be healing well. There was some scabbing over lateral incision. Petitioner was able to move all of her toes and able to plantar flex 20 degrees, Dorsey flex 25, hip and knee range of motion were within

normal limits. X-ray revealed intact hardware without signs of failure or breakage. There were no new fractures/dislocation noted. Healing was present. (Exhibit A, pp. 211-212).

On April 25, 2018, Petitioner was seen at [REDACTED]. Petitioner was given lidocaine for a foot. There were lumps on the left side of her back. Petitioner indicated that she was getting forgetful. Petitioner was assessed to have anxiety, delayed PTSD, ADHD, vitamin D deficiency, and irritable bowel syndrome with diarrhea. (Exhibit A, pp. 445-447).

On May 10, 2018, Petitioner had an x-ray conducted at [REDACTED] which showed intact hardware without signs of fracture or breakage. There were no new fractures/dislocation. Healing was present. (Exhibit 207-209).

On September 6, 2018, Petitioner was seen for a medical evaluation. Petitioner was noted to have good grooming and hygiene, casual dress, to be tearful, angry, defensive, agitated and irritable. Petitioner's psychomotor activity was limited. Petitioner was noted to be in contact with reality. Petitioner had a poor attitude, judgment and limited insight. Petitioner was noted to have limits on problem-solving, concentration, attention and recall. Petitioner's self-esteem was noted as low. Petitioner did not seem to exaggerate or minimize symptoms. Petitioner's speech was clear, logical and spontaneous. Petitioner's affect was noted as depressed. Petitioner's diagnosis included major depressive disorder, moderate to severe; general anxiety disorder, panic disorder, agoraphobia, social anxiety disorder, and ADHD. Petitioner's prognosis was listed as severe to poor. (Exhibit A, pp. 180-183).

On October 17, 2018, Petitioner was seen for a mental health therapy session with the [REDACTED]. Petitioner's clothing was noted as disheveled. The behavior demonstrated psychomotor agitation and impulsivity. Petitioner's behavior demonstrated psychomotor hyperactivity. Her affect was sad, showed worry, evaluation of connectedness showed loosening of associations, and racing thoughts were demonstrated. Petitioner's thought content revealed no impairment and no suicidal tendency. Petitioner denied having a plan to end her life but reported that she wanted to go to sleep and not wake up. Petitioner's insight was intact. The assessment was delayed PTSD. (Exhibit 1, pp. 8-9.).

On December 13, 2018, Petitioner was seen for a mental health therapy session with the [REDACTED]. Petitioner's behavior demonstrated no abnormalities. Petitioner's behavior demonstrated impulsivity but no psychomotor abnormalities. Petitioner speech was odd and eccentric - flight of ideas and her affect was angered. Petitioner's affect was not inappropriate, and the attention demonstrated no abnormalities. Petitioner's thought content revealed no impairment and her insight was intact. Petitioner's GAD 7 score was 13. (Exhibit 1, pp. 10-11).

On January 9, 2019, Petitioner was seen for a mental health therapy session with the [REDACTED]. Petitioner's clothing was noted as disheveled and the behavior

demonstrated impulsivity. Petitioner's behavior also demonstrated psychomotor hyperactivity and her affect showed worry. Petitioner's affect was not inappropriate; however, racing thoughts were demonstrated. Petitioner's thought content revealed no impairment and no suicidal tendencies. Petitioner demonstrated impaired insight and was noted to project blame. The assessment was anxiety. (Exhibit 1, pp.4-5).

On January 18, 2019, Petitioner was seen for a mental health therapy session with the [REDACTED]. Petitioner's behavior demonstrated impulsivity. Petitioner's behavior demonstrated no psychomotor abnormalities but did demonstrate psychomotor hyperactivity. Petitioner's attitude was inattentive, the affect showed worry, and was angered. Petitioner's affect was not inappropriate. Petitioner's thought content revealed no impairment and no suicidal tendencies. Petitioner was noted to have impaired insight. The assessment indicated delayed PTSD and ADHD. (Exhibit A, pp. 15-16).

On February 1, 2019, Petitioner was seen for a mental health therapy session with the [REDACTED]. Petitioner's clothing was disheveled. Petitioner's behavior demonstrated psychomotor relentlessness and hyperactivity. Petitioner's affect was sad, showed fright, and showed worry. Petitioner's affect was not inappropriate. Racing thoughts were demonstrated an auditory attention was decreased. Petitioner's thought content revealed no impairment and no suicidal tendencies. Petitioner's insight was intact. The assessment included delayed PTSD and anxiety. (Exhibit 1, pp. 22-23)

On February 15, 2019, Petitioner was seen for a mental health therapy session with the [REDACTED]. Petitioner's clothing was disheveled, and her behavior demonstrated psychomotor hyperactivity. Petitioner's affect showed worry and was angered. Petitioner was angry at the man whose house she was staying at since she has been treated poorly and abused per her report. Petitioner's affect was not inappropriate. Racing thoughts were demonstrated. Petitioner's thought content revealed no impairment and no suicidal tendencies. Petitioner's insight was intact. The assessment included delayed PTSD and anxiety. (Exhibit 1, pp. 25-27)

On March 25, 2019, Petitioner was seen for a mental health therapy session with the [REDACTED]. Petitioner's PHQ-7 Depression Scale Score was 19. (Exhibit 1, pp. 34-37).

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

Step Three

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

Based on the medical evidence presented in this case, listings 1.06 (fracture of femur, tibia, pelvis, or one or more of the tarsal bones); 12.04 (depressive bipolar, and related disorders); 12.06 (anxiety and obsessive-compulsive disorders); and 12.11 (neurodevelopmental disorders) were considered. The medical evidence presented does not show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

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

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

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

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20

CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3). For the first three functional areas, a five-point scale is applied (none, mild, moderate, marked, and extreme). 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner alleges both exertional and nonexertional limitations due to her medical condition. Petitioner testified that she could dress and undress herself; use the bathroom by herself; eat by herself; prepare meals; bend at the waist and reach without assistance. However, Petitioner indicated that hurts to stand in the shower due to the "metal" in her foot. Petitioner indicated that she cannot stand to complete chores and cannot shop for groceries because it hurts to walk. Petitioner indicated that she cannot take more than two to three steps without experiencing pain. Petitioner stated that her

foot and back hurt immediately when she sits. Petitioner also indicated that she finds it difficult to use her hands due to carpal tunnel syndrome.

Petitioner indicated that she is unable to remember and concentrate. Petitioner related her inability to do so because she was a survivor of domestic violence and human trafficking. Petitioner stated that she is unable to complete tasks because she has no train of thought. Petitioner testified that she cannot accurately follow instructions and that she does not work well with others because she thinks everyone is against her.

The Department representative placed her observations on the record which included that Petitioner experienced difficulty walking from the lobby to the hearing room which is a short distance and that she walks favoring one foot. Petitioner's testimony regarding her inability to stand or walk was not supported by the objective medical evidence. However, Petitioner indicated that she is homeless and does not have a treating physician. This may account for the lack of medical evidence. However, without any medical evidence, the undersigned is unable to support a finding that Petitioner is disabled based upon exertional limitations.

Petitioner's testimony relating to her inability to work well with others is well documented in the medical evidence provided. Petitioner often appeared for her therapy sessions in a disheveled state. Petitioner was angry and combative at her therapy sessions. The findings consistently included that Petitioner was impulsive, hyperactive and inattentive. Petitioner's PHQ-9 score was in the moderately severe depression range and was just one point from the severe depression range which is consistent with her testimony. Petitioner's PHQ-9 score is also consistent with the September 2018 medical evaluation which found that her affect was noted as depressed; she was limited with problem-solving, concentration, attention and recall; she demonstrated low self-esteem. Notably, the September 2018 medical evaluation found Petitioner to be tearful, angry, defensive, agitated and irritable. Petitioner cried on at least two occasions during the course of the hearing. The Department representative testified that Petitioner is very emotional every time they speak.

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

With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(b). Based on the medical record presented, as well as Petitioner's testimony, Petitioner has moderate to marked limitations on her mental ability to perform basic work activities. Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

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

Petitioner's work history in the 15 years prior to the application consists of work as a deli clerk and a liquor sales consultant. Petitioner's work as a sales consultant, which required prolonged standing required light physical exertion. Based on the RFC analysis above, Petitioner's exertional RFC limits light to no more than light work activities. However, Petitioner also has moderate to marked limitations in her mental capacity to perform basic work activities. In light of the entire record, it is found that Petitioner's nonexertional RFC prohibits her from performing past relevant work. Although Petitioner is unable to perform past relevant work, Petitioner cannot be found disabled, or not disabled, at Step 4, and as the assessment is required to continue to Step 5 to determine whether Petitioner can adjust to other work.

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).

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).

When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was ■ years old at the time of application and ■ years old at the time of hearing, and, thus, considered to be a younger individual (age 18-44). However, Petitioner also has impairments due to her mental condition. As a result, she has a nonexertional RFC imposing moderate to marked limitations in the ability to understand, remember, or apply information; marked limitations in the ability to interact with others; the ability to concentrate, persist or maintain pace; and moderate to marked limitations in the ability to adapt and manage herself. 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.

DECISION AND ORDER

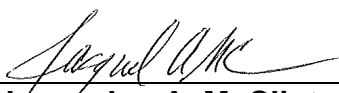
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner **disabled** for purposes of the SDA benefit program.

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

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

1. Reregister and process Petitioner's June 20, 2018 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;
3. Review Petitioner's continued eligibility in November 2019.

JAM/tif



Jacquelyn A. McClinton
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

Via Email:

[REDACTED]

Petitioner – Via First-Class Mail:

[REDACTED]