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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

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Date Mailed: December 10, 2019
MOAHR Docket No.: 19-009040
Agency No.: ██████████
Petitioner: ██████████

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 September 30, 2019, from ██████████ Michigan. Petitioner participated on her own behalf. Participants on behalf of the Department of Human Services (Department) included Veronica Bracey, Eligibility Specialist.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. Correspondence was received from ██████████ was received and marked into evidence as Exhibit 2. The record closed on November 4, 2019; and the matter is now before the undersigned for a final determination based on the evidence presented.

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 April 29, 2019, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On July 22, 1979, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 522-528).

3. On August 2, 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. 543-547).
4. On September 13, 2019, the Department received Petitioner's timely written request for hearing.
5. Petitioner alleged disabling impairment due to diabetes, PTSD, panic attacks, schizo-trauma, personality disorder and memory loss.
6. On the date of the hearing, Petitioner was ■ years old with a ■ birth date; she is ■ in height and weighs about ■ pounds.
7. Petitioner is a high school graduate.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as cashier and.
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 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, *and in response to the interim order*, was reviewed and is summarized below.

On [REDACTED] 2018, Petitioner was seen at [REDACTED]. Petitioner stated that she was in jail for six months. Petitioner was receiving insulin while in jail, but a new dose was given. Petitioner needed an updated prescription. Petitioner complained of frequent urination, abdominal discomfort, blurred vision and fatigue. (Exhibit A, pp. 178-183).

On [REDACTED] 2018, Petitioner was seen at [REDACTED] with for blood sugar problems. Petitioner reported having a severe headache the day before. It resolved but returned. Petitioner also reported bilateral leg pain and knee pain. Petitioner had increased fatigue and blurred vision. The CBC showed normal white count hemoglobin and platelets. It was noted that Petitioner's presentation on the day of the visit was consistent with an acute kidney injury. Her BUN was 18 and her creatinine was 1.5. Her glucose was elevated at 437 consistent with poorly controlled diabetes mellitus. Petitioner was admitted for observation. (Exhibit A, pp. 273-279).

On [REDACTED] 2018, Petitioner was seen at [REDACTED]. Petitioner's A1C was 10.5 on the day of the visit and also 10.5 on [REDACTED] 2018. Petitioner denied any recent cocaine use but acknowledged that she was still using marijuana. The impression included Diabetes mellitus, Type II uncontrolled, as well as hypertension and depression. (Exhibit A, pp. 164-170).

On [REDACTED] 2018, Petitioner was seen at [REDACTED] for abdominal pain. Petitioner indicated that she had not had access to her short-acting insulin over the last month, but she had been taking her long-acting insulin. Petitioner reported having that she had been having some generalized abdominal pain but localized it to the epigastric and right upper quadrant. The right upper quadrant ultrasound showed post cholecystectomy abdomen. CBD was within normal limits. There were potential fatty liver changes. (Exhibit A, pp. 268-270).

On [REDACTED] 2018, Petitioner was seen at [REDACTED] for abdominal pain. Petitioner indicated that she drinks about half of a fifth every other day and uses marijuana and crack. Petitioner's labs results indicated glucose of 300; HCO₃ of 6, Sodium of 128; AG of 16; PH 7.16; and elevated B hydroxybutyrate. UA showed Ketones+. Petitioner was admitted in critical condition. Later in the day, it was noted that Petitioner had stable vital signs and fluid balance. Petitioner declined to consider any form of substance abuse rehabilitation. Petitioner was homeless at the time of the visit. Petitioner did not have any complaints of anxiety while at the hospital. Petitioner was discharged on [REDACTED], 2018. (Exhibit A, pp. 244-268).

On [REDACTED] 2019, the Petitioner was seen at [REDACTED] for elevated blood sugar levels. Petitioner stated that her blood sugar levels have either been extremely high or extremely low. Petitioner stated that she does not eat well and regularly uses crack cocaine. Petitioner's last cocaine use was two days before her visit. Petitioner further complained of high thigh pain. Petitioner was given an IV for her elevated blood sugar levels. (Exhibit A, pp. 241-243).

On [REDACTED] 2019, Petitioner was seen at [REDACTED] for evaluation of bilateral toe pain that began the day before. The pain was located to all of her toes. Petitioner denied any numbness. Petitioner's blood sugar was 518. Based on Petitioner's history and physical examination, the diagnosis included peripheral neuropathy. Petitioner reported that her pain improved after receiving Tylenol. After receiving one normal saline, Petitioner's blood sugar went down to 398. It was determined that Petitioner could manage her blood sugar on an outpatient basis. Petitioner was discharged. (Exhibit A, pp. 237-240).

On [REDACTED] 2019, Petitioner was seen at [REDACTED] for an eligibility assessment. Petitioner reported that she had been previously diagnosed with PTSD, anxiety, depression and psychosis. Petitioner also reported having Diabetes, leg pain and hearing issues. Petitioner endorsed 45 days of remission from crack cocaine and was currently living at a shelter. Petitioner's GAF score was listed as 45. Her GAF scores was also listed as

45 on [REDACTED] 2017 and her highest GAF score was listed as 50 on [REDACTED] 2007. (Exhibit A, pp. 231-234).

On [REDACTED] 2019, Petitioner was seen at [REDACTED]. Petitioner complained of extreme pain in her legs; right arm pain and inquired about insulin adjustments. Petitioner stated that the tips of her toes were painful. The impression included Diabetes Type II, uncontrolled. (Exhibit A, pp. 156-164).

On [REDACTED] 2019, Petitioner had an x-ray of her left hand. The findings indicated that there was no radiopaque foreign body in the soft tissues of the hand especially the thumb and first webspace. There was no fracture and no lytic or sclerotic lesion. There was no joint space narrowing seen. (Exhibit A, p. 128),

On [REDACTED] 2019, Petitioner was seen at [REDACTED] with a complaint of thigh pain for the past three weeks. Petitioner also wanted an evaluation of her thumb for glass. Petitioner indicated that she was washing dishes and a small piece of glass cut her thumb. Petitioner further stated that she ran a marathon on the past Saturday and did not notice an increase or decrease in pain. Lab results were negative. (Exhibit A, pp. 149-155).

On [REDACTED] 2019, Petitioner had a psychosocial assessment with [REDACTED]. The assessment revealed that Petitioner usually makes herself understood; is able to complete all personal care tasks without physical support; has limited involvement with relationships; needs limited support to accommodate challenging behaviors has no behavior plan; her perceptions are normal; her mood was normal; her judgment was fair; her impulse control was fair; her insight was fair; her sleep decreased and her appetite was normal. Petitioner had active diagnoses of major depressive disorder; PTSD; and schizoaffective disorder, depressive type. The recommendations included case management services; substance abuse groups; trauma groups; and psychiatry. Her listed GAF scores was listed as 35 on [REDACTED] 2017, and her highest GAF score was listed as 50 on [REDACTED] 2007. Petitioner endorsed remission from crack cocaine for 45 days. Petitioner was living at a shelter at the time of the visit. (Exhibit A, pp. 96-108; Exhibit 1).

On [REDACTED] 2019, Petitioner was seen at [REDACTED]. Petitioner came in with sporadic readings of her glucometer. Petitioner admitted to eating a deluxe hamburger with everything on it and hash browns. Petitioner was informed that making poor eating habits will cause increased deterioration in her health. Petitioner was diagnosed with Diabetes mellitus, Type II, uncontrolled. (Exhibit A, pp. 129-132).

On [REDACTED] 2019, Petitioner was referred by the State of Michigan-Disability Determination for a psychological/psychiatric evaluation. The Medical Source Statement stated as follows:

At this time, it appears the claimant is able to understand, remember, and complete simple and repetitive tasks. However, we can expect that they will be completed at a moderately decrease of pace due to lack of focus and motivation. In regards to complete tasks, she appears capable of understanding them but will probably have more difficulty with retention and may complete them at a severely decreased rate of pace, due to low motivation, distractibility and problems with sustained focus, supported by depression. Socially, the claimant will have marked impairment, she is irritable, avoidant and untrusting of others. She will probably have difficulty listening and accepting criticism for a position of authority. In addition, conversational speech is impaired by her tangential response style. We can expect a significant amount [sic] of absences due to the severity of her depression. Increase in stress can also lead to relapse. The report also indicated that Petitioner is unable to manage her benefit funds. (Exhibit A, pp. 119-123).

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, listings 1.02 (major dysfunction of a joint(s)); 9.00(B)(5) (diabetes mellitus and other pancreatic gland disorders) (12.04 (depressive, bipolar and related 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), to which 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/undress herself; bathe/shower herself; use the bathroom unassisted; eat unassisted; able to complete chores; can prepare meals; can bend at her waist; is able to stand, kneel, and climb stairs. Petitioner stated that she could squat but need assisted getting back up due to pain. Petitioner is unable to reach with left arm due to pain. Petitioner stated that she had neuropathy in her leg.

Petitioner stated that she has issue with memory due to domestic violence incidents involving being hit in the head. Petitioner testified that she is unable to concentrate because she is distracted easily. Petitioner indicated that she is sometimes able to complete tasks and is able to follow instructions if they are in writing. Petitioner stated that working with a group of people is challenging. Additionally, grocery shopping can be overwhelming due to the large number of people. Petitioner testified that she has a lot of social anxiety. Petitioner indicated that her panic attacks are sudden and unexpected. Petitioner struggles each date to concentrate and follow through with tasks.

A review of Petitioner's medical records revealed that she has had two hospital admissions due to her uncontrolled diabetes. Petitioner's testimony relating to her limited functional capacity is supported by the [REDACTED] 2019 psychological/psychiatric evaluation which confirmed that Petitioner could be expected to complete simple repetitive tasks at a decrease pace; complex tasks at a severely decreased tasks; marked impairment with her social interactions and could be expected to have a significant amount of absences. Petitioner's GAF score has ranged from 35 to 50, which further supports the severity of her depression.

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). However, 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 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 cashier and dishwasher. Petitioner has not worked since 2007. Petitioner's work as a cashier/stock clerk, which required standing and lifting up to 10 pounds regularly, required light physical exertion.

Based on the RFC analysis above, Petitioner's exertional RFC limits her to no more than sedentary work activities. As such, Petitioner is incapable of performing past relevant work. 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 him 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). 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).

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 45-49) for purposes of Appendix 2. She is a high school graduate with a history of work experience as a cashier and dishwasher. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities.

Based solely on her exertional RFC, the Medical-Vocational Guidelines result in a finding that Petitioner is not disabled. 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; moderate to 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.

The record established that Petitioner abused crack cocaine for a substantial period of time. Petitioner entered into a treatment program in [REDACTED] 2019 where she remained for [REDACTED] days. Petitioner testified that she has been compliant in her sobriety for the past eight months. Based upon Petitioner's testimony her mental health condition has not improved since she stopped her use of crack cocaine. Therefore, although there is evidence of crack cocaine usage in Petitioner's record, there is no evidence to suggest that Petitioner's non-exertional limitations would be resolved absent the abuse of opioids. Therefore, Petitioner's prior abuse of crack cocaine is not a contributing factor material to the determination that she is disabled and does not impact the disability finding. See 20 CFR 416.935(b).

DECISION AND ORDER

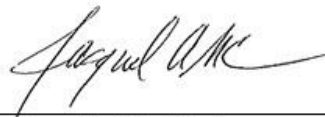
THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Reregister and process Petitioner's April 29, 2019 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 May 2020.

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JAM/jaf

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Jacquelyn A. McClinton
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

