



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 19, 2018
MAHS Docket No.: 18-006535
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on August 20, 2018, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Lisa Ferwerda, 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. **The requested documents were NOT received.** The record closed on September 20, 2018, and the matter is now before the undersigned for a final determination based on the evidence presented.

ISSUE

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

FINDINGS OF FACT

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

1. On [REDACTED], 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On June 26, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 5-9).

3. On June 27, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 1-4).
4. On [REDACTED], 2018, the Department received Petitioner's timely written request for hearing.
5. Petitioner alleged disabling impairment due to cirrhosis of the liver, encephalopathy with varices, fatty liver, asthma, degenerative disc disease and spinal stenosis with numbness radiating to right arm, with two spinal fusions and residual pain. Lumbar spine spinal stenosis with compression fracture with screws and rods placed from L5 S1. The Petitioner also walks with a cane. The Petitioner also alleges mental impairment due to depression due to chronic pain and anxiety with panic attacks.
6. On the date of the hearing, Petitioner was 61 years old with a [REDACTED], 1957 birth date; she is 5' 3" in height and weighs about 190 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 a manager of a urology practice, a night cashier's/s stocker at a grocery chain and a customer service representative delivering oxygen tanks.
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, s/he 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, was reviewed and is summarized below.

The Petitioner's doctor completed a letter on March 22, 2018 describing some of the Petitioner's chronic health issues which he noted cause her to be unable to stand/sit for any length of time. The following conditions were listed, type II diabetes, low back pain, abnormal gait, severe asthma, parathesis of upper limb and skin, NAFLD cirrhosis of the liver and osteoarthritis. The condition of her back was described as follows: C4-7 anterior cervical discectomy fusion, T 11-12 compression fracture with multiple thoracic disc herniation and collapse. Patient also has L1-2 and L5-S1 disc collapse with foraminal stenosis with L5 radiculopathy. Petitioner's neurosurgeon is also considering some future surgery and is currently considering injections to help alleviate pain. The doctor's treatment records indicate that in the past beginning in 2013 patient was on antidepressants with past depression.

A summary of Petitioner's condition and evaluation was prepared on [REDACTED] 2017. Notes indicate C-4-7 anterior cervical discectomy fusion on [REDACTED], 2016 x-ray shows stable alignment and no concerning findings, at the time patient was in the process of fusing and continues to wear a soft collar at times. Patient prescribed [REDACTED] for pain due to her T 12 compression fracture. She attends a pain clinic for her back which has helped for a little bit but not long enough. Neck pain is improving mostly complaining of mid and low back pain today radiating into the buttocks. New MRI of the thoracic and lumbar spine shows multiple thoracic disc herniations and collapse. She has a left L1-2 disc and collapse of the L5-S1 disc with bilateral foraminal stenosis of L5. She has severe to a minimal stenosis, her pain is more across the low back and into the right, doctor concerned about L5 radiculopathy. Patient has gotten short relief with injection. Patient indicated she wished to move forward with her L5-S1 disc surgery at this point. The diagnosis was cervical radiculopathy, compression fracture of thoracic vertebra, low back pain and degenerative lumbar spinal stenosis.

The Petitioner was admitted to the hospital for surgery on [REDACTED] and discharged on [REDACTED], 2017 at which time she underwent an L5-S1 posterior lumbar laminectomy/right L5-S1 foraminal lumbar interbody fusion-bright with screws and rods and Medtronic cage. During her operation for the lumbar procedure the notes indicate that the vertebral bodies were pushed apart that were very collapsed.

An Independent Medical Examination was conducted on [REDACTED] 2018 regarding Petitioner's mental impairment status and was arranged by the Department. At the time of the examination the Petitioner was 61 years of age. At the time her impairment was described as depression that goes along with chronic pain, and nonalcoholic sclerosis and esophageal varices banded in her throat. Petitioner also reported encephalopathy with high ammonia levels which causes forgetfulness. Petitioner reported being too nervous to drive in the city. Petitioner reported seeing a therapist for the previous six months weekly. The examiner notes indicates that daily functioning confirms she has friends and gets along with other people. The Petitioner reported having an even temperament and did not yell easily. When working she got along pretty well with other people. Her interests were reported as managing a Facebook page for [REDACTED] animal friends, painting rocks and walking short distances. Interests include reading and television. Petitioner reports her activities require a friend who goes with her to run short errands and she watches TV in the evening. She cleans the kitchen in shifts because she can't stand for long without pain. She is able to do her own self-care. When asked about her depression the Petitioner reported that the best depression level ever is three and generally would be a five. Petitioner reported constant pain in back, neck and lower back with normal pain level around six the best pain level she ever experiences is a four. At the time of the examination the pain level was a six. The petitioner reported no hallucinations or delusions and no suicidal ideation or psychiatric hospitalization. The examiner noted that petitioner did not exaggerate her symptoms was able to present a good history, and mood and affect appeared appropriate. The diagnosis was adjustment disorder with depressed mood. Prognosis fair pending medical resolution.

The Petitioner had an outpatient procedure on [REDACTED], 2017 for esophageal varices. At the time of the procedure two distal Varix were banded.

An MRI of the lumbar spine was conducted on [REDACTED], 2018 the findings were surgery at L5-S1 level hardware appears to be normally positioned to the limits of an MRI study. At L1-two moderate chronic disc degeneration again with severe disc space narrowing and mild retrolisthesis. Small dissected disc protrusion to the left side of midline unchanged mild canal and foramin stenosis. No impingement on the distal Conus. L2-3 mild disc space narrowing retrolisthesis, very mild canal stenosis. At L3-L4 slight retrolisthesis mild facet arthropathy. No significant disc degeneration very mild foramin stenosis. At L4-5 mild chronic disc degeneration and mild facet arthropathy and small desiccated disc bulge mild foramin stenosis and mild left lateral canal narrowing. At L5-S1 interval surgery with laminectomies and fusion. Moderate disc space narrowing and mild facet hypertrophy. No clumping of the nerve roots, no observed arachnoiditis. Moderate chronic distal right foramin stenosis due to endplate spur and disc space narrowing. Mild chronic left foramin stenosis also unchanged. Normal postoperative change at the lumbosacral junction without evidence of residual canal stenosis at L5-S1 level.

An MRI of the cervical spine was conducted on [REDACTED], 2018. The findings note there was an artifact due to hardware in the cervical spine including interbody screws at C4-5 in a fixation plate with screws at C5, C6 and C7 with interbody implants at C5-6 and C6-7. The MRI results noted that C1 through C3 were unremarkable. C3-'s 4 mild broad-based disc bulging slightly impresses the anterior margin of the cervical spinal cord. The remainder of the spinal cord is well surrounded. C4-5 mild broad-based disc osteophyte complex impresses on the anterior margin of the spinal cord with bilateral ligamentum flavum hypertrophy and facet hypertrophy resulting in moderate bilateral foraminal stenosis and mild to moderate central canal stenosis. C5-6 mild broad-based disc osteophyte complex eccentric to the left with the left foraminal uncontrovertebral spur resulting in moderate left for a minimal stenosis and mild central canal stenosis and mild impression on the left margin of this spinal cord. At C6-7 moderate broad base disc osteophyte complex impresses on the spinal cord resulting in moderate right foraminal stenosis and mild to moderate central canal stenosis without left foraminal stenosis. At C7-T 1 mild broad-based bulging/impresses the anterior margin of the spinal cord. Impression: minimal grade 1 posterior spondylolisthesis at C2-3 and's C3-4. Multiple levels of postoperative fusion change results and susceptibility artifact from C4 through C7. Several levels of impression on the cervical spinal cord and central canal stenosis.

On [REDACTED] 2018 the Petitioner underwent a lumbar epidural steroid injection due to chronic low back pain at L-4-L5. Subsequent notes indicate the injections do not relieve pain. In addition on [REDACTED] she was seen by her primary care physician at which time after completing physical therapy, pain remains 7/10. The diagnosis is degenerative lumbar spinal stenosis with decreased range of motion in cervical spine. Lumbar spine with pain during extension and flexion and rotation to left and right and decreased range of motion and vertebral body pain. Petitioner is currently continuing with pain medication.

Petitioner has provided medical treatment records from January 25, 2018 which are hand written by the therapist and were extremely difficult to read. It appears that the Petitioner's chief complaints are depression due to pain and sleep disturbances and inability to sleep. No drug or alcohol abuse reported .

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 1.04 Disorders of the Spine and Listing 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). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. Id. The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. Id.

In this case, Petitioner alleges both exertional and nonexertional limitations due to her medical condition. Petitioner testified that she could drive short distances, 5 miles to go shopping and avoided large shopping malls favoring small supermarkets so she did not have to walk far. She further testified that friends help her carry shopping bags that are heavy and sometimes she uses a scooter while shopping. In addition she can load the dishwasher but only the top of rack due to her decrease in range in motion. She can stand for 15 minutes. Petitioner can sit for 30 to 40 minutes and then must stand. She can walk a couple blocks she cannot squat, and has difficulty bending at the waist. She can shower and dress herself and wears slip-on shoes. Her level of pain with medication is 5 to 7 on a normal basis. She is right-handed and there is nothing wrong with her hands or arms and notes muscle wasting in her legs. The heaviest weight she can carry is 10 pounds but not far. When arising in the morning she is stiff when she gets up and it takes her a while to dress and groom herself. Generally she watches TV, is able to meet with friends on occasion and colors one time a week for an hour outside the home. Her hobbies she has involve painting rocks and reading. She cannot walk the dog and generally naps for one hour. The Petitioner also spoke of her mental impairments indicating that she has anxiety attacks and cannot drive further than [REDACTED]. She does experience crying spells 3 to 4 times a week and has recently experienced bad memory. Petitioner continues to have sleep problems due to pain. Petitioner also reported that she now walks with a cane and drags her foot and is considered a fall risk.

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 the medical records make it likely particularly with respect to the MRI of her cervical spine, that the pain she continues to have is due to impression on her spinal cord in several locations which would likely account for the continued pain which she experiences. Petitioner does take pain medications which do not fully relieve her symptoms and her pain has continued since her two back surgeries. It is thus determined that there is a medical basis for the Petitioner's pain symptoms and the effects of pain on her abilities to sit, stand, walk and carry objects based upon the objective medical evidence presented.

With respect to Petitioner's exertional limitations, and the effects of ongoing pain in her lower back and cervical spine and ongoing use of pain medications and other non exertional limitations such as stooping, crouching, reaching and sitting and standing for any period of time, it is found based on a review of the entire record that Petitioner does not maintain the physical capacity to perform on a sedentary basis work as defined by 20 CFR 416.967(a) and thus cannot perform and is unable to adjust to other work and is determined to be evaluated as less than sedentary.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has only mild to moderate 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 manager in a medical urology practice, serving as a cashier in a large grocery chain which included stocking, bagging and cleaning, requiring standing for eight hour shifts; serving as a customer service rep filling out reports, dealing with the public, answering phones, loading oxygen bottles and equipment in and out of vehicles weighing up to 50 pounds and loading into vehicles and making home deliveries. Petitioner's work as an office manager of a medical practice required her to walk three hours a day, stand two hours a day, and sit six hours a day. The job also required climbing and reaching, stooping, and bending as well as on occasionally lifting and moving office supplies weighing 10 pounds. Petitioner's job as a customer service representative required her to walk two hours, stand two hours, sit four hours, bend two hours, handle and grab big objects two hours weighing up to 50 pounds and frequently lifting 25 pounds. Petitioner's job as a cashier required her to walk two hours stand eight hours stoop and bend down eight hours, handle, grab and grasp big objects and lifting on average 40 pounds with frequently lifted weight of 25 pounds. These jobs as described by Petitioner required exertional physical demands for sedentary work as regards the office management position; medium exertional physical demands as regards the cashiering/stocking position; and her job as a customer service representative also required medium exertional physical demands.

Based on the RFC analysis above, Petitioner's exertional RFC limits her to no more than less than sedentary work activities. As such, Petitioner is incapable of performing past relevant work. Petitioner also has a nonexertional limitations in her mental capacity to perform basic work activities which do not impact her ability based on the medical evidence provided. In light of the entire record, it is found that Petitioner's nonexertional RFC prohibits her from performing past relevant work.

Because Petitioner is unable to perform past relevant work, Petitioner cannot be found disabled, or not disabled, at Step 4, and the assessment continues to Step 5.

Step 5

If an individual is incapable of performing past relevant work, Step 5 requires an assessment of the individual's RFC and age, education, and work experience to determine whether an adjustment to other work can be made. 20 CFR 416.920(a)(4)(v); 20 CFR 416.920(c). If the individual can adjust to other work, then there is no disability; if the individual cannot adjust to other work, then there is a disability. 20 CFR 416.920(a)(4)(v).

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(c)(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

However, if the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2).

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 61 years old at the time of application and 61 years old at the time of hearing, and, thus, considered to be closely approaching retirement age (60-64) for purposes of Appendix 2. She is a high school graduate with a history of work experience as a doctor's office manager, a cashier and grocery stocking position and a customer service representative delivering oxygen tanks to customers. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform on a less than sedentary level.

In this case, the Medical-Vocational Guidelines, Appendix 2 do not support a finding that Petitioner is not disabled based on her exertional limitations. The Department has failed

to counter with evidence of significant numbers of jobs in the national economy which Petitioner could perform despite her limitations. Therefore, the Department has failed to establish that, based on her RFC and age, education, and work experience, Petitioner can adjust to other work. Therefore, Petitioner is disabled at Step 5.

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 [REDACTED], 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 October 2019.

LMF/tlf



Lynn M. Ferris

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

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

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

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

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

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

Via Email:

MDHHS-Mason-Hearings
BSC3 Hearing Decisions
L. Karadsheh
MAHS

Petitioner – Via First-Class Mail:

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