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GOVERNOR

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

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DIRECTOR

[REDACTED]  
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[REDACTED] MI [REDACTED]

Date Mailed: January 25, 2019  
MAHS Docket No.: 18-006840  
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 three-way telephone hearing was held on August 23, 2018, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Patricia Marx, Family Independence Manager.

The following medical documents, which were numbered but not sequentially, are part of the hearing record and were reviewed, Exhibit A, pp. 1-173; Exhibit B, Disability Determination Service (DDS) Decisions Payment documents, pp. 1-19; Exhibit C, a handwritten letter by Petitioner; Exhibit Packet B, pp. 1-57, DDS Medical Record Group 1-3; Exhibit D, DDS Disability Development and Documentation Group 1 of 1, pp. 1-19; Exhibit E (Packet C), DDS Medical Records, pp. 1-199.

The record closed on August 23, 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], 2017, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On April 4, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit B, pp. 2-8).
3. On April 18, 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 July 13, 2018, the Department received Petitioner's timely written request for hearing.
5. Petitioner alleged disabling impairment due to fibromyalgia, Polycystic ovarian syndrome, GERD, Stage 1 liver disease, Appendiceal cancer, a bowel resection lymphadenectomy, and cervical dysplasia. The Petitioner alleges extreme fatigue due to anemia requiring iron infusions. The Petitioner also suffers from bowel incontinence requiring use of adult briefs. The Petitioner also alleges depression.
6. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED], birth date; she is [REDACTED]" in height and weighs about [REDACTED] pounds.
7. Petitioner is a high school graduate and completed three years of college.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as waitress, a cashier, a caregiver, an outside marketing representative for [REDACTED] and customer service.
10. At the time of the hearing, the Petitioner had not completed a pending disability claim with the Social Security Administration (SSA).

### **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 90 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 was reviewed and is summarized below.

In [REDACTED] 2017 the Petitioner underwent a laparoscopic Roux-en-Y gastric bypass that was successfully completed. During the surgery, the liver was viewed and was grossly enlarged at the left and right lobe; and a liver biopsy was performed. The results of the biopsy were not provided.

The Petitioner's Primary Care Doctor completed a Medical Examination Report on [REDACTED] 2017. The current diagnosis included carcinoma in situ of appendix, colon

cancer. The examination noted general increased fatigue and pain and anxiety and Depression. The clinical impression was that Petitioner's condition was stable. The doctor imposed the following limitations frequently lifting less than 10 pounds 2/3 of an eight-hour day, no lifting of 10 pounds or more. The Petitioner could stand and/or walk less than two hours in an eight-hour workday. The Petitioner could use her hand for simple grasping, reaching, pushing and pulling and fine manipulating and could use both her feet for foot leg controls. The weakness and difficulty were due to cancer treatment. Also noted were mental limitations due to memory, sustained concentration and social interaction due to anxiety and depression.

A Note from a physician's assistant dated [REDACTED] 2018, indicated that the Petitioner is debilitated due to chronic pain. No medical records or testing was referenced to support the diagnosis.

The Petitioner underwent a laparoscopic appendectomy due to an enlarged appendix on [REDACTED] 2017. Initially, colitis was concerning based on the CT; however, the bowel loops were normal without evidence of obstruction or bowel wall thickening. Pathology from the appendectomy noted a low-grade appendiceal mucinous neoplasm involving the proximal margin. A colonoscopy was performed, and there was no evidence of inflammatory change or neoplasia. The hospital stay lasted 5 days. At the time of discharge, the patient was complaining of right lower-quadrant pain. A cecal resection was to be reevaluated in 10 to 14 days. Pain medications were also prescribed. The Petitioner was discharged on [REDACTED] 2017, in stable and improved condition with restrictions on vigorous activities and no lifting more than 15 pounds.

A surgical pathology report was issued on [REDACTED] 2017, after laparoscopic surgery of appendix.

The Petitioner also presented to the hospital on [REDACTED] 2017, with nausea, vomiting and abdominal pain with diarrhea and fatigue. A CT of the abdomen was performed, indicative of colitis. The colitis was infectious versus inflammatory with colonic wall thickening and pericolonic edema. The small bowel had enlarged mesenteric lymph nodes, likely in infections or inflammatory, with no CT evidence of pancreatitis, no urinary obstruction. Hypokalemia was added to the diagnosis at the ER. The Petitioner underwent a colonoscopy on [REDACTED] 2017, at which time no evidence of the neoplasia extending into the cecum, with no evidence of inflammatory change, polyps, neoplasm or diverticular disease throughout the length of the colon. There was no evidence of blood in the entire colon with a normal endoscopic exam. The CT of abdomen and pelvis Impression was previous appendectomy, small amount of free fluid within cul de sac, no abscess collection identified, previous gastric bypass noted, previous cholecystectomy and IUD in place. Slight asymmetric enlargement of right rectus muscle suspicious for small rectus sheath hematoma. The Pathology report of the appendectomy tissue determined a low-grade appendiceal mucinous neoplasm. After the colonoscopy, the post-op diagnosis was colitis.

An initial oncology consult was conducted at the ██████████ Cancer Institute on ██████████ 2017. Further oncology surgery was planned for ██████████ 2017. A review was conducted and complaints of poor appetite, low grade fever sometimes, mild nausea, vomiting diarrhea. Some abdominal pain with intermittent dark blood in stool. Complaints of aches and pain in joints, headaches, and mild dizziness with complaints of numbness, tingling and anxiety. Complaints of shoulder pain. The assessment noted polycystic ovarian syndrome, gastric bypass, cholecystectomy, 2016 and recent acute appendicitis with low-grade mucinous appendiceal neoplasm and Microcytic hypochromic anemia. A discussion of surgery included oncologic surgery for low-grade appendiceal mucocele, also to inspect the GYN apparatus and depending on finding may need GYN surgery, anemia likely due to gastric bypass. During the surgery conducted on ██████████ 2017, the biopsy of pericolic lymph nodes was conducted; no nodes showed evidence of metastatic tumor with no residual appendiceal mucinous neoplasm. (Exhibit A, p. 102.)

The Petitioner was seen on ██████████ 2017, for nausea and epigastric pain. After the assessment the diagnosis was gastrojejunal ulcer without hemorrhage, perforation and obstruction. A gastric pouch biopsy endoscopic exam was performed, and a small ulcer with minimal eschar was found. The gastric pouch was biopsied with no malignancy present. (Exhibit A, pp. 160-161.)

The Petitioner was seen at Munson ER on ██████████ 2017, at which time she was examined; and vaginitis was diagnosed after complaints of bladder pressure, urinary urgency and frequency, however, no dysuria. The treatment was a prescription of Diflucan to treat the symptoms. The Petitioner was also seen on ██████████ 2017, with complaints of abdominal pain. The diagnosis was abdominal pain, unclear etiology, dyspnea, unclear etiology resolved likely anxiety and urinary tract infection. At the time, a transvaginal ultrasound was conducted; and the impression was negative transvaginal pelvic ultrasound. Ovary flow is documented without evidence of torsion; no adnexal mass or free fluid is seen. Uterus in normal size; endometrium is normal in thickness.

Finally, the Petitioner indicated that a new diagnosis for cervical dysplasia and cancer at Stage 2; however, no medical records were presented to support this condition. The Petitioner testified that she underwent cryofreeze of the cells.

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 5.02 gastrointestinal hemorrhaging from any requiring blood transfusion, 5.06 inflammatory bowel disease, and malignant neoplastic diseases 13.00, 13.17 Small intestine carcinoma, sarcoma or carcinoid, and 12.04, Depressive, bipolar and 12.06 Anxiety 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, non-exertional, 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 non-exertional 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 non-exertional limitations due to her medical condition. Petitioner testified that she could stand 2 or 3 minutes, sit 15 to 20 minutes and walk a short distance with a cane for stability. She could not perform a squat, could bend at the waist forward with pain, needs help showering and dressing, and help with her hair and uses a shower chair. The Petitioner testified that she has a pain of a level 6 to 7 with pain medications. The Petitioner testified that the heaviest weight she could carry was five pounds and cannot lift with her hands and arms. Petitioner also had numbness and tingling in her feet, and her leg is weak attributed to neuropathy. The Petitioner also testified that she goes to the bathroom a lot, up to 4 to



5 times due to loose stool. The Petitioner also has not received therapeutic treatment or psychiatric evaluation for anxiety, and no prescribed medication.

Consideration of the Petitioner's primary care doctor's evaluation and imposed limitations was given. It must be noted that the Medical Examination Report was completed in ██████████ 2017, one month after the appendix and cancer neoplasm; and Petitioner had also only been seen and followed at the time of this evaluation since ██████████ 2017. In addition, no other medical conditions were listed other than the neoplasm, which was fully removed without further treatment or chemotherapy. The report itself notes that the evaluation was based solely on the neoplasm discovered during the laparoscopic appendectomy; and thus, it only evaluates based upon a two-month period before and during the appendectomy. The Petitioner did not have to undergo chemotherapy, and a subsequent lymphadenectomy of the colon noted no affected lymph nodes and no metastatic neoplasm. Thus, reliance on the diagnosis of low-grade appendiceal mucinous neoplasm, which appears to be medically resolved based upon the objective medical evidence provided and reviewed, does not support the Petitioner's current alleged limitations discussed above.

Although the Petitioner's complaints of pain and its effects are reported as severe, the medical records do not support a diagnosis of fibromyalgia, or Stage 1 liver disease. Nor was objective medical evidence of ongoing pain management or diagnosis available or presented.

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 sedentary work as defined by 20 CFR 416.967(a).

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has mild 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 waitress/server, a caregiver, outside marketing for Sam's Club and customer service at a canoe livery and rental. Petitioner's work as a waitress required being on her feet six hours and frequently lifting less than 10 pounds and up to 25 pounds, which required light physical exertion. The Petitioner's work as a caregiver required transporting, personal patient care, walking and standing seven hours a day and lifting 100 pounds, due to having to turn patient and lifting to ambulate the patient which required medium work exertion. The Petitioner's work as a marketing representative for Sam's Club was a sales position and required travel to customer business members to assist with inventory, delivering samples, and selling memberships. The job required lifting frequently 10 pounds, and the heaviest weight was 25 pounds and required light physical exertion. The Petitioner's job as a customer service representative for a canoe rental required standing and walking, restocking the store, and carrying 25 pounds frequently and up to 50 pounds and required medium 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 mild limitations in her mental capacity to perform basic work activities due to the lack of treatment records. In light of the entire record, it is found that Petitioner's non-exertional RFC does not prohibit 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).

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) for purposes of Appendix 2. She is a high school graduate and completed three years of college with a history of work experience as a waitress, customer service, caregiver and an outside marketing representative for ■ Club. These work experiences are unskilled and semi-skilled positions. 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, Rule 202.27, result in a finding that Petitioner is not 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 **not disabled** for purposes of the SDA benefit program.

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

LMF/jaf



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**Lynn M. Ferris**

Administrative Law Judge  
for Robert Gordon, Director

Department of Health and Human Services

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

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

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

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

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

**DHHS**

Patricia Marx  
MDHHS-Benzie-Hearings

**Petitioner**

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