



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
████████████████████
██████████████████ MI ██████████

Date Mailed: January 9, 2019
MAHS Docket No.: 18-010242
Agency No.: ██████████
Petitioner: ██████████

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 November 7, 2018, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Sonya McVay, 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. An MRI for 2018 and 2016 of the lumbar spine was received and marked into evidence as Exhibit C and Exhibit B; treatment records for Masonic Medical Group ██████████ were also received and marked into evidence as Exhibit D. The record closed on December 10, 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 ██████████, 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On September 17, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program. (Exhibit A, pp. 9-15.)

3. On September 26, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability.
4. On October 4, 2018, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 2).
5. Petitioner alleged disabling impairment due to lower back pain in the lumbar spine (spondylosis), pelvic pain, pinched nerve in her neck (Cervical Disc Disorder). At the hearing, the Petitioner also alleged mental impairment although the DHS-49F indicated no depression.
6. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED], birth date; she is 5' 5" in height and weighs about [REDACTED] pounds (BMI 39).
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 receptionist, a housekeeper, school aid and administrative assistant for construction project.
10. Petitioner has 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, and in response to the interim order, was reviewed and is summarized below.

The Petitioner presented an MRI conducted on [REDACTED] 2018, of the lumbar spine referencing chronic low back and hip pain. The Impression was No evidence of fracture or malalignment of lumbar spine. Early degenerative disc disease and facet arthrosis resulting in spinal canal and neural foraminal stenoses in lower lumbar spine. The MRI results note at L5-S1 the MRI states small broad based left foraminal disc protrusion. Mild left lateral recess stenosis with posterior displacement of the traversing left S1 nerve root. Minimal bilateral facet and ligamentum flavum hypertrophy, mild right and minimal left neural foraminal stenoses. At L4-L5 the MRI notes broad based right paracentral disc protrusion with underlying small diffuse disc bulge results in mild stenosis of the central spinal canal and mild to moderate stenosis of the right lateral recess and likely mildly displaces the traversing right L5 nerve root. Mild left greater than right facet and ligamentum flavum hypertrophy. Moderate right and mild left neural foraminal stenoses.

An earlier MRI of the Lumbar spine was performed on [REDACTED] 2016. The Impression was mild degenerative disc disease with mild broad-based disc bulge lateralizes slightly to the right side a L4-L5 level along with mild degree of spondylosis changes from fact arthrosis in noted. The exiting right L4 bilateral descending L5 nerve roots may be compromised. Clinical correlation was recommended. The MRI results specifically noted that L4-L5 decreased signal intensity of the T2 weighted images is seen involving the intervertebral disc spaces consistent with mild degenerative disc disease. Mild degree of disc space narrowing is seen. Broad-based disc herniation is present at this level cause effacement of the anterior epidural space. This appears to lateral slightly more to the right side. Abutment of the descending L5 nerve roots and the exiting right L4 nerve root is seen with possible compromise. The left neural exit foramina is patent. Mild degree of facet arthrosis is noted at this level. L5-S1 was unremarkable.

On [REDACTED] 2017, the Petitioner was seen by her then-primary-care doctor who noted tenderness of spine at L4 and transverse process of right at L5 and also diagnosed osteoarthritis of both hips, facet arthropathy and spinal stenosis. At the time, Petitioner reported three (3) weeks of severe pain in the groin and back. Straight leg testing was negative. At the time of the visit, patient was on prescribed pain medication including Lyrica, and oxycodone-acetaminophen and noted onset of low back pain [REDACTED] 2016. On [REDACTED] 2016, x-rays of cervical spine were taken due to complaints of chronic neck pain with the impression Osteophytic encroachment of the left neural foramin at C7-C7, which was a new development since last reviewed in [REDACTED] 2015. Diagnosis was cervical spondylosis, degenerative disc disease and physical therapy for neck. In [REDACTED] 2016, an x-ray of the cervical spine for neck pain and left upper extremity radiculopathy found degenerative changes of the anterior atlantoaxial articulation. Impression degenerative changes of the cervical spine. There is neural foraminal narrowing on the left at C8-C7 with no loss of vertebral axial height.

The Petitioner was seen at St. Johns ([REDACTED]) for follow-up on or about [REDACTED] 2018, at which time she used a cane. The patient was seen for chronic pain low back reported 7/10. Notes indicate that patient was obese with BMI of 39. Psychiatric noted insight, judgment was good and memory normal. Generalized tenderness of low back noted. The assessment was recurrent major depressive disorder moderate, doing better on Lexapro. The Petitioner was seen again on [REDACTED] 2018, with complaints of low back pain and straight leg raise test was inconclusive and range of motion painful. Patient was to follow up a pain clinic. Moderate recurrent major depressive episodes were noted with Lexapro increased.

The Petitioner was evaluated at [REDACTED] on [REDACTED] 2018, for chronic low back pain, and neck pain, which noted narrowing of L4-5 and L5-S1 with vacuum disc phenomenon. The examiner found cervical spine extension was 10 degrees out of 60. Flexion of lumbar was 50 degrees out of 90 with note that won't attempt further. The abilities were noted as ability to climb stairs was slow, noted putting on shoes painful with slip-ons, and bending was very limited, poor effort. Straight leg raise was 5

degrees both left and right in supine position. Gait noted leans to right on cane. Clinical evidence noted and confirmed need for walking aid to reduce pain. Lurching gait was noted. Gait was also ataxic and compensated. During the exam the notes indicated that Petitioner can walk 30-60 minutes, sit an hour and stand for a half hour, possibly longer. Petitioner can carry 2-4 pounds or a liter of fluid. Notes indicate legs do buckle under her weight and reported regularly losing her balance. Petitioner did have a positive Tinel's and questionable flattening on the left thenar eminence. Impression was chronic low back pain and carpal tunnel syndrome. Medical Source Statement noted patient reports objective in ability to function in whole or work setting, specifically difficulties related to her low back. Today's evaluation is limited by poor effort with regards to [REDACTED], and her gait is difficult to assess because she bears so much weight on the right. There are no frame objective abnormalities other than the limited range of motion and poor straight leg raise, but again these are impacted by effort. Objective data including imaging, and MRI of the cervical and lumbosacral spine may be meaningful in helping want to fight disease severity. The examiner did not have the benefit of the MRI testing.

Petitioner's physical therapy due to chronic pain and use of opioids the Petitioner's condition would prevent employment in any capacity. Therapist also noted the need for continued extensive physical therapy to improve her functional status and decreased dependence on pain medication. Prolonged static sitting or standing to maintain even a part-time employment would exacerbate condition and create further need for pain management. The opinion was given [REDACTED] 2017.

The Petitioner was prescribed a back brace by her pain management doctor on July 2, 2018, and was examined at the time for chronic low back pain due to lumbar radiculopathy and lumbar disc protrusion.

The Petitioner received a series of lumbar epidural injections beginning on [REDACTED] 2018, due to pain medication renderings satisfactory relief. The injections were performed at L4-05 (L-4 root) and L5-S1 (L5 root). At the time of the injection, L5 both right and left noted diminished sensation in the dermatome. Only two injections were performed.

No medical records regarding outpatient treatment for depression were provided and the Petitioner's primary doctor has treated her for moderate depression with medications.

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 1.04 Disorders of the Spine and 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, 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 walk a block, stand one, possibly two hours, sit one hour, and shower and dress herself with occasional assistance from her mother with grooming her hair. Standing and sitting were limited by back pain causing the activity to be stopped. The Petitioner testified that she could not touch her toes, and experienced difficulty climbing stairs, climbing only a few at a time. The Petitioner requires assistance with grocery shopping and uses a scooter and is assisted with carrying heavy bags of groceries. The same is true with any housework including

laundry which she requires assistance to carry the laundry basket and transferring laundry. The heaviest weight she could manage would be lifting 10 pounds. Petitioner uses a cane and thus, restricts what she can carry. The cane and its use were confirmed as required at the independent medical exam performed on behalf of the Department. The Petitioner is also prescribed narcotic pain relievers due to her chronic pain, sees a pain clinic for medications and treatment and has had spine epidural injections without improvement.

With respect to her medical impairment the Petitioner has not treated for her depression and has been prescribed medications for depression by her primary care doctor who diagnosed the Petitioner's depression as moderate.

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 on a less than sedentary basis. With respect to Petitioner non-exertional limitations due to depression, it is determined that they do not impair the Petitioner significantly. Her pain and treatment for pain is supported by the several MRI's and x-rays presented which support chronic low back pain with nerve root involvement. Clearly some other limitations due to her back pain and obesity (BMI 39) would present limitations with stooping, climbing and crouching.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has 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 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 receptionist, a housekeeper, school aid and administrative assistant for construction project involving schools and auto plants. Petitioner's work as a receptionist, which required standing and sitting approximately two hours and five hours, respectively, each day and lifting small objects boxes and packages and sought assistance for heavier items. The job was of two months duration. The Petitioner's housekeeping position required mopping, vacuuming, sweeping, dusting and removing trash, cleaning restrooms toilets and sinks. The job required Petitioner lift up to 10 pounds at the most and frequently less than 10 pounds or 10 pounds. She was required to walk and stand four hours each and climb four hours, as well as, stoop bending forward at the waist for four hours. The Petitioner's work as a janitor was similar and required that she lift 25 pounds and frequently lift 10 pounds or more. As an administrative assistant for the construction company, the Petitioner updated invoice logs for vendors and contractors, picked up and mailed packages, went to inspect different buildings, writing, typing, sending and receiving packages and lifting between 5 and 20 pounds frequently during her day. She was required to be on her feet eight hours of the day, and lifting a majority of the day. The Petitioner was also a school aid assisting with disabled school children, playing games requiring up-and-down between sit-and-stand and writing on the board.

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 moderate limitations in her mental capacity to perform basic work activities. In light of the entire record, it is found that petitioner's mental impairment of depression alone does not by itself inhibit 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 a person has a combination of exertional and non-exertional 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 closely approaching advanced age (age 50-54) for purposes of Appendix 2. She is a high school graduate with some after high school education with a history of work experience as a receptionist, a housekeeper, school aid and administrative assistant for construction project involving schools and auto plants. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform at a less than sedentary basis due to her back pain based upon the objective medical evidence as shown by deteriorating lumbar spine condition and nerve root involvement and difficulty walking, requiring use of a cane and her obesity which were considered in assessing her abilities for purposes of work activity.

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 his limitations. Therefore, the Department has failed to establish that, based on his RFC and age, education, and work experience, Petitioner can adjust to other work. Therefore, Petitioner is disabled at Step 5.

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.

DECISION AND ORDER

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 ■■■■■, 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 January 2020.

LMF/



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

DHHS

Richard Latimore
MDHHS-Wayne-57-Hearings

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

BSC4
L Karadsheh
L M Ferris
MAHS