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[redacted] **MI** [redacted]

Date Mailed: January 16, 2019
MAHS Docket No.: 18-010318
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 November 5, 2018, from Detroit, Michigan. The Petitioner was represented by herself. A witness, [redacted] appeared on behalf of Petitioner. The Department of Health and Human Services (Department) was represented by Charles A. Poldo, Assistance Payments Worker.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. A DHS-49 was received from [redacted] *and* marked into evidence *as* Exhibit B. The DHS-49 from [redacted] was not received. The record closed on December 9, 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 above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled/not disabled for purposes of the SDA benefit program.

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 September 4, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 8-14).

3. On September 24, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on DDS' finding of no disability (Exhibit A, p. 5).

4. On October 4, 2018, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 2-3).

5. Petitioner alleged disabling impairment due to fibromyalgia, osteoarthritis, bilateral carpal tunnel in wrists and hands, back pain and cervical pain with degenerative disc disease and asthma. The Petitioner has also alleged mental impairment due to 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 went to school for cosmetology and was licensed for hair, nails and skin. Petitioner also took some college classes.

8. At the time of application, Petitioner was not employed.

9. Petitioner has an employment history of work as a cosmetologist as a hair stylist, a waitress.

10. Petitioner has a pending disability claim with the Social Security Administration.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI

disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

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

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

Step 1

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

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

Step 2

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration

requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the de minimis standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. Higgs v Bowen, 880 F2d 860, 862-863 (CA 6, 1988), citing Farris v Sec of Health and Human Services, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication *must continue through the sequential evaluation process. Id.; SSR 96-3p.*

The medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below.

A DHS-49 was completed by the Petitioner's primary care doctor on [redacted] 2018. The Petitioner has been treated by this doctor since [redacted] 2017 and was last seen on the date of the exam for the DHS-49 completion. The diagnosis was bilateral carpal tunnel, fibromyalgia, diffuse osteoarthritis, chronic low back pain, diffuse arthralgia and myalgia, insomnia, sever anxiety and depression. The doctor imposed both physical and mental limitations. The physical limitations imposed were no lifting of any weight including less than 10 pounds. Petitioner could stand and/or walk less than 2 hours in an 8-hour day and sit less than 6 hours in an 8-hour work day; could not operate foot controls with either foot, and was limited bilaterally to no simple grasping, reaching,

pushing/pulling and fine manipulating. The physical limitations were expected to last more than 90 days. The findings were based on x-rays performed during the exam including shoulders, left elbow, lumbar spine and bilateral hands. The notes of the examination note bilateral hand weakness, bilateral osteoarthritis changes, a large bunion on right foot with hammer toes bilaterally. The medical findings supporting the limitations were based upon constant pain in muscles and joints.

The mental limitations noted memory, sustained concentration and social interaction based upon an evaluation and diagnosis of depression and anxiety. Notes indicate Petitioner cannot meet her needs in her home, including house chores, cleaning, cooking, yard work and laundry.

The Petitioner underwent a consultative Adult Mental Status Exam on [redacted] 2018. The examiner noted her gait was somewhat limping to the right. The notes advised that Petitioner was hospitalized in [redacted] in [redacted] 2017. The Petitioner acknowledged use of medical marijuana every day. The notes indicate that Petitioner advised the examiner that she was independent with activities of daily living and requires no assistance with hygiene. She does her own laundry and cooking. The conclusions were that Petitioner was alert, verbal and oriented fully to person and generally to time and place. Her memory was in average range, and her fund of general information was intact. She was readily able to perform mental arithmetic. Ms. Emig's interpretation of proverbs was superficial, and her reasoning was literal and concrete. Her formal judgment was impaired. Diagnosis was Major Depressive Disorder, Recurrent, Severe. Cannabis Use Disorder; Somatic Symptom Disorder with Persistent Pain, Severe. Prognosis was guarded.

The Petitioner was seen at [redacted] on [redacted] 2017, at which time the diagnoses included fibromyalgia, primary osteoarthritis involving multiple joins, asthma, arthralgia. Gastroesophageal reflux disease with esophagitis, neurofibromatosis, spine pain, lumbar, spine pain cervical and paresthesia.

The Petitioner attended an Independent Consultative Internal Medicine Exam on [redacted]2018. The Petitioner reported doing a few light household chores and can no longer exercise and difficulty leaving the house due to anxiety. The exam notes moderate trigger point tenderness primarily in the anterior and posterior shoulder areas, across the lower back and thighs and her knees. The doctor indicated some limitation in left shoulder and weakness in the left upper extremity graded as 4/5. Some left-hand-grip strength in finger squeezed was noted 4/5 due to elbow pain. Petitioner is able to write with dominant hand and pickup coins. No muscle spasm in cervical spine or tenderness. The dorsolumbar spine exam notes no evidence of paravertebral spasm, no tenderness to percussion of the spinous processes. Straight leg testing in supine and sitting position is normal. Petitioner could walk on her heels but not on her toes. Poor balance was exhibited and difficulty with tandem gait. Bending and squatting can be done halfway with support. In summary, examiner noted limitation in left shoulder motion and some mild weakness in left arm and hand grip which appears to be secondary to her lateral epicondylitis. In lower extremities she does have some

difficulty with balance. Ability to perform work-related activities such as bending, stooping, lifting, walking crawling, squatting, carrying and traveling, as well as pushing and pulling heavy objects is mildly impaired due to the objective findings. Current abilities note sitting and standing 20 minutes, bending with support, squatting and arising from a squat with support, and climbing stairs very painful. Grip strength on left was rated 2/2/8 (significantly less than right grip strength 18/14/12).

The Impression was fibromyalgia with moderate pain, and history of fibro fog treated medically. Neurofibromatosis with multiple small generalized lesions without central nervous system involvement. History of bilateral carpal tunnel syndrome

On [redacted] 2018, Petitioner underwent a right endo carpal tunnel release and a cortisone injection for left carpal tunnel.

The Petitioner was testified on [redacted] 2017, due to feeling a lump in her throat and hoarseness. After testing, the tests assessed Laryngopharyngeal Reflux. On [redacted] 2018, the Petitioner underwent microscopic suspension direct laryngoscopy with right vocal cord stripping. On follow-up, some hoarseness but stable in severity. No further treatment necessary.

The Petitioner was seen on [redacted] 2017, at [redacted]. A general exam was conducted noting no focal tenderness in the back, slightly tender no synovitis right elbow, medial and lateral epicondylitis, loss of rom of right shoulder with no right carpal tunnel. Left shoulder with pain with range of motion. The Assessment was fibromyalgia, osteoarthritis involving multiple joints, arthralgia, gastroesophageal reflux disease, lumbar spine pain and cervical spine pain. Paresthesia's in all four extremities consistent with fibromyalgia and complaints of joint swelling. Notes indicate DIPs, PIPs, MCPs, wrist, elbows, shoulders, hips, knees, ankles, feet and toes reveal 18/18 and 8/8 rated 8-9/10. Notes indicate she does have fibromyalgia/chronic widespread pain syndrome and will start Cymbalta. In [redacted] 2017, the doctor also noted that on testing she does have seronegative RA (rheumatoid arthritis) without rheumatoid factor. Cymbalta was stopped due to liver function test result in [redacted] 2017. In [redacted] 2017, Lyrica was restarted due to insurance denying Savella prescription.

An x-ray of right hand was completed on [redacted] 2017, noting no focal osteoarthritic change perceived, noting previous 1st MCP fusion and no significant osseous or arthritic change perceived. An x-ray of cervical spine performed which failed to reveal any evidence of fracture of osseous pathology appeared normal. The lumbar spine was examined and x-rayed on [redacted]2017, with mild rotoscoliosis convex to right with mild to moderate disc space narrowing between L2-3 and mild narrowing between L3-4 with mild spondylosis. Impression was scoliosis and degenerative changes. On [redacted] 2017, an x-ray of both hands noting a surgical plate across the right first metacarpophalangeal articulation with probable fusion of the articulation. Impression, post-surgical changes on right. The Impression for was negative bilateral wrists. An EMG nerve conduction study of the lower extremity pain was performed on [redacted]

2017, which noted an Impression, testing on this patient is normal without evidence of neuropathy. Needle exam likewise is normal without evidence of radiculopathy.

On J[redacted]2018, the Sports Medicine Clinic noted that right carpal tunnel release back on [redacted] 2018, with left cortisone injection notes overall numbness and tingling is completely resolved in right hand and left hand is improved. Suggest repeat cortisone injection left carpal tunnel versus surgical release. Patient was also seen for left elbow pain, 10/10 although notes indicate patient was quite comfortable on exam. No treatment or diagnostic testing has been done. No numbness or tingling present. After x-ray, assessment was left lateral epicondylitis with recommended injection. Petitioner's left elbow was splinted with further repeat cortisone injection. Range of motion and strengthening exercises for right hand. Notes indicated that bilateral carpal tunnel syndrome with right greater than left- and right-hand osteoarthritis. At this time, all pain medication and treatment deferred to rheumatologist, continue bilateral thumb splints with bilateral EMG for upper extremities. Patient continues to have numbness and tingling in both hands, particularly worse on right. Petitioner did receive some relief from her right-hand numbness and tingling after carpal tunnel release on right. The patient was to continue with right-hand strengthening exercises. In [redacted] 2018, EMG was normal, but Tinel's was positive. Consideration of left carpal tunnel release. Also, elbow pain was noted with a prescription for right elbow splint to be worn at night and during the day as needed. On [redacted] 2018, a left lateral epicondylitis was diagnosed, and physical therapy prescribed with injection of Kenalog. After x-ray, the left elbow impression was normal with no evidence of arthritis or joint effusion.

The Petitioner was seen in the emergency room on [redacted] 2017, for depression and suicidal ideation associated with the loss of her dog of 12 years. The Petitioner was released after evaluation.

The Petitioner had a surgery [redacted] 2018, due to chronic hoarseness and received a direct laryngoscopy with right vocal cord stripping. A biopsy was negative for dysplacia or malignancy.

The Petitioner was seen on [redacted], 2017, at which time the diagnosis was fibromyalgia, primary osteoarthritis involving multiple joints, arthralgia and neurofibromatosis.

On [redacted] 2018, the Petitioner was seen at the Spinal Recovery Center for left-sided neck pain with 9/10 with tingling radiating down the arm to fingertips. Low back pain also reported 9/10 with shooting numbness radiating down right let to lower extremity worse when going up and down stairs, getting in and out of vehicle, walking, standing and sitting. Pain reported as constant and unable to sleep at night. MRI prescribed by her PCP but denied by insurance. On exam the range of motion was decrease for cervical spine on flexion, extension, right later and left lateral flexion as was the lumbar spine examination. Straight leg raise test was positive on the right. Kemp's standing test was positive on the right as was Yeoman's test positive on right. Shoulder compression test was positive on left and Jackson compression test was positive on the left. The diagnosis was Cervicalgia,

radiculopathy in cervical region and low back pain. X-rays were ordered. On follow up tenderness exhibited from C-3-C7, L2-L5.

The Petitioner was seen on [redacted], 2018, by her primary care physician (PCP) who noted fibromyalgia was worse since her last visit. Pain reported as severe. Petitioner was to see a rheumatologist on [redacted] 2018. Bilateral wrist pain has slightly improved and is 6/10 with medication and continues to wear bilateral wrist braces. Left elbow pain is moderate, (same) 6/7 with or without medications. The Petitioner was prescribed Trintellix for depression and was not in counseling or therapy and doctor advised therapy.

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 Musculoskeletal System 1.02 Major Dysfunction of joint(s) (due to any cause); 1.04 Disorders of the spine; and Mental Disorders, 12.04 Depressive, bipolar and related disorders were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3; and the analysis continues to Step 4.

Residual Functional Capacity

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

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

Limitations can be exertional, 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 this case, Petitioner alleges both exertional and non-exertional limitations due to her medical condition. Petitioner testified that she could stand 20 minutes, sit 15 minutes and then experienced her legs going numb; she could walk a couple of blocks and could not squat, or bend easily at the waist. She could shower and dress while sitting and must stand in the shower. She does not tie her shoes and wears slip-ons. Petitioner is right handed and has residual numbness and osteoarthritis in her hand and underwent carpal tunnel release. The Petitioner also has a hammer toe on her right foot with a bunion the size of a golf ball. The Petitioner could carry/lift no more than 7 pounds a short distance. Petitioner further testified that she needs help with carrying groceries, uses a scooter when grocery shopping, and does not vacuum or carry her laundry down the stairs.

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). The Petitioner's chronic pain was considered in making this assessment and her diagnosis of fibromyalgia by her PCP.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has moderate to severe limitations on her mental ability to perform basic work activities based upon her depression and the Mental Status Examiner's finding that her prognosis was guarded and that her depression was evaluated as severe and recurrent.

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 working as a hairdresser, cutting hair, and as a waitress. Petitioner's work as a hairdresser, which required standing 6-7 hours and was also required to lift small children into the booster chair, required light physical exertion. The Petitioner was a licensed cosmetologist and as such, performed semi-skilled work. The Petitioner also was a waitress on her feet most of the shift, 6-7 hours and required lifting/carrying 10 to 15-pound food trays and dish trays on average. As such, the Petitioner's waitressing job required performing light work.

Based on the RFC analysis above, Petitioner's exertional RFC limits her to no more than sedentary work activities. As such, Petitioner is incapable of performing past relevant work. Petitioner also has moderate-to-severe mental limitations in her mental capacity to perform basic work activities due to depression related to constant joint and body pain. In light of the entire record, it is found that Petitioner's non-exertional 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 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 [redacted] years old at the time of application and [redacted] years old at the time of hearing, and thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. She is a high school graduate with a history of work experience as a hairdresser, cutting hair, and waitress. 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. In this case, the Medical-Vocational Guidelines Rule 201.14 result in a disability finding based on Petitioner's exertional limitations.

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 [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 January 2020.

LMF/

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

Lori Duda
MDHHS-Oakland-2-Hearings

Petitioner

[redacted]
[redacted]
[redacted] MI [redacted]

BSC4
L Karadsheh
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