GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: February 15, 2019
MAHS Docket No.: 18-011052
Agency No.:
Petitioner:

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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, an in-person hearing was held on January 7, 2019 from Bay County, Michigan. The Petitioner appeared for the hearing with her mother, . The Department of Health and Human Services (Department) was represented by , 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. Petitioner submitted additional records which were received, marked and admitted into evidence as Exhibit 2 and Exhibit 3. The record was subsequently closed on February 6, 2019 and the matter is now before the undersigned for a final determination on the evidence presented.

ISSUE

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

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

1. On or around May 22, 2018 Petitioner submitted an application seeking cash assistance benefits on the basis of a disability.

2. On or around October 8, 2018, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. (Exhibit A, pp. 1-7)

3. On October 12, 2018, the Department sent Petitioner a Notice of Case Action denying her SDA application based on DDS' finding that she was not disabled. (Exhibit A, pp. 475-476)

4. On or October 23, 2018, Petitioner submitted a timely written Request for Hearing disputing the Department's denial of her SDA application.

5. Petitioner's case file indicates she also requested a hearing to dispute the Department's actions with respect to the Family Independence Program (FIP), however, Petitioner confirmed that there was no issue concerning her FIP benefits and thus, the request for hearing was withdrawn and will be dismissed.

6. Petitioner alleged physically disabling impairments due to back pain (two surgeries), ankle pain, diabetes, neuropathy, migraines, arthritis, nerve pain, elbow pain, and obesity. Petitioner alleged mental disabling impairments due to depression, anxiety and explosive disorder.

7. As of the hearing date, Petitioner was ██ years old with a December 16, ████ date of birth; she was ███ and weighed ███ pounds.

8. Petitioner is a high school graduate and she has employment history of work as a central station monitor with ██████████ and in a fast food restaurant. Petitioner has not been employed since November 2007.

9. 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 Health and 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 (April 2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity

by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

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

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

Step One

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

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

Step Two

Under Step 2, the severity and duration of an individual’s alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has

lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

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

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

The medical evidence presented at the hearing and in response to the interim order was thoroughly reviewed and is briefly summarized below:

On February 1, 2018 Petitioner underwent EMG testing due to low back pain and weakness in her legs. Findings indicated that it was an abnormal EMG of the bilateral lower extremities with electrodiagnostic evidence of a chronic mild L5 radiculopathy on the left. (Exhibit A, pp. 36-39). An April 13, 2017 EMG of Petitioner's lower extremities resulted in normal findings, suggesting that Petitioner's condition had worsened at the time of the February 2018 examination. (Exhibit App. 50-54)

A March 3, 2018 MRI of Petitioner's lumbar spine showed minimal broad-based disc bulge at L5-S1 level in combination with endplate osteophytic spurs and hypertrophy of facet joints causing moderate compromise of the right and mild compromise of the left L5 neural foramina. (Exhibit A, pp. 41-42)

From September 6, 2017 to September 9, 2017 Petitioner was admitted to [redacted] [redacted] for back surgery, having failed more conservative treatment. Petitioner underwent posterior lumbar hardware removal from a prior surgery in 2015 of L4 and L5. A decompression and new fusion were also performed at the L4-L5 level. This was Petitioner's second back surgery. (Exhibit A, pp. 70-87)

On July 5, 2017 Petitioner was evaluated at [redacted] for left elbow pain. Records indicate that she rated her pain as an 8 out of 10 and described it as sharp, achy, dull, and throbbing in nature. Numbness and tingling were also reported. Petitioner reported having received physical therapy, a brace, and lateral epicondylitis injection, none of which helped her pain. She also indicated that she had her left ulnar nerve released. She received an injection for her medial epicondylitis, upon examination of the left elbow which showed tenderness but normal range of motion. In January 2018 Petitioner presented for a follow-up for her left ankle and left elbow pain, describing both at a 7 out of 10 in severity. Physical examination of the left elbow showed pain to palpation lateral epicondyle, tenderness and pain in the 4th and 5th digits, and mild decreased sensation in fingers. Left ankle examination showed neuropathy in bilateral feet, pain to palpation medial malleolus, and +2 edema in the left ankle. Petitioner was diagnosed with left elbow pain, left ankle pain, primary osteoarthritis of the left elbow, lateral epicondylitis of the left elbow and left ankle instability. Petitioner received an injection in her left elbow and was referred to physical therapy for both her elbow and ankle pain. She was prescribed a splint brace for her left elbow. Records from follow-up visits in March 2018, May 2018, June 2018 show that Petitioner's elbow condition was worsening and indicated decreased sensation. Notes show that she was observed to use a cane to assist with ambulation. She presented in June 2018 with complaints of increased back pain, describing it as constant, burning, achy, and stabbing with numbness that radiates into her right lower extremity. On physical examination, there was palpable spinous process tenderness noted in the lower back L3-S1, limited range of motion of both the cervical spine and lumbar spine with increased pain upon extension, flexion, right or left lateral rotation. Deep tendon reflexes in the knees, ankles, biceps, and triceps were 2/4, and Romberg and Babinksi both negative. Petitioner was diagnosed with an annular tear of the lumbar disc and lumbar disc herniation with radiculopathy. A March 20, 2018 MRI of the left elbow showed acute partial thickness intrasubstance tear in the common extensor tendon and chronic partial thickness intrasubstance tear in the common flexor tendon. (Exhibit A, pp. 88-114)

Records from Petitioner's visits at [redacted] were reviewed and show that she received continuous treatment for anxiety, obesity, GERD, migraines, diabetes, chronic pain. (Exhibit A, pp.116-137)

On July 10, 2018 Petitioner was evaluated by [redacted] with B[redacted] [redacted] for a six-month follow-up appointment of her visit in January 2018. Petitioner reported that her headaches are occurring once per week but can last 3 to 5 days and ends up going to the emergency room. She reported that the headaches begin behind the right eye, that she has been recently having some tenderness to the left supraorbital region, experiences photophobia and phonophobia and nausea. It was

noted that she had chronic issues with balance and arthritic joint pains in the knees and hips and that she has tried Botox but was unable to tolerate it. Nerve blocks for her headaches were also not helpful. She as observed to walk with a slow, antalgic, wide-based gait. Additional records from her visits in 2017-2018 were also reviewed. (Exhibit A, pp. 138-147)

[REDACTED] records show that Petitioner was being treated for her chronic migraine headaches in February 2018 and that she was to have a series of 12 sphenopalatine ganglion blocks, however, the series was discontinued after the third injection. (Exhibit A, pp. 147-211)

Petitioner underwent a lumbar puncture at the L5-S1 level on January 26, 2018. (Exhibit A, pp. 212)

Records from Petitioner's May 2017 to June 2018 visits with [REDACTED] at [REDACTED] were reviewed and show that she was being treated for lumbar radiculopathy, s/p lumbar laminectomy, sacroiliac back pain, degenerative joint disease, neuropathy, facet arthropathy lumbar, arthritis, occipital neuralgia, spondylolisthesis of the cervical region, myofascial pain syndrome and chronic pain of the back, ankle and elbow. In August 2017 Petitioner received an ulnar nerve block injection to her elbow and a left occipital nerve block for her migraines. In March 2018 Petitioner reported that her pain intensity was at 10/10, radiating down to the right leg, worsened with bending forward and standing/walking. She reported significant numbness on the right buttock and leg area and that she is sustaining burns and cuts with no sensation. Results of the lumbar spine MRI from March 3, 2018 were reviewed, and notes indicate that it showed posterolateral disc bulge, endplate osteophytic spur formation and hypertrophy of the facet joints causing mild to moderate compromise of the L5 neural foraminal, right greater than left. In May 2018 Petitioner had lumbar spinal nerve block and facet joint injections. (Exhibit A, pp. 221-265)

An August 11, 2017 MRI of Petitioner's cervical spine showed minimal disc bulges without significant central spinal or neuroforaminal stenosis bilaterally at the C4-5, and C5-6 levels. (Exhibit A, pp. 304-305)

Records from Petitioner's May 2017 to June 2018 visits with [REDACTED] (Neurosurgery) were reviewed. (Exhibit A, pp. 362-420). Progress notes from her most recent visit on June 18, 2018 indicate that she continued to report back pain with constant burning, aching, stabbing low back pain with numbness that radiates down into her right lower extremity. Her pain was rated at an 8 out of 10 that day and it was reported that she underwent two sets of injections with no relief. Palpable spinous process tenderness was noted in the lower back L3-S1, as was limited range of motion of both the cervical and lumbar spine with increased pain upon extension, flexion, right or left lateral rotation. Deep tendon reflexes in the knees, ankles, biceps and triceps are 2/4 and Romberg and Babinski testing was negative.

Petitioner presented an after-visit summary from her December 26, 2018 appointment with at the . The summary indicates Petitioner was seen for chronic migraines, closed fracture of bone in left foot, photophobia of both eyes, diabetic polyneuropathy associated with type 2 diabetes, muscle spasm, and GERD. (Exhibit 1)

Petitioner presented her mental health progress notes from her October 2017 to January 2019 treatment at and r which were also reviewed. (Exhibit 3)

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 1.02 (major dysfunction of a joint(s) due to any cause), 1.04 (disorders of the spine), 9.00 (endocrine disorders), 11.14 (peripheral neuropathy), 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders), 12.08 (personality and impulse-control disorders) and 14.09 (inflammatory arthritis) were considered. A thorough review of the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

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

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s)

provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad

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

In this case, Petitioner alleges both exertional and nonexertional limitations due to her medical conditions.

Petitioner testified that she has constant pain in her back, ankle, and elbow. She testified that she cannot lift her right leg and that both legs go to sleep. She reported arthritis in her ankles, elbows and back, as well as neuropathy in both legs. Petitioner testified that she suffers from 20-25 migraines per month that last 3 to 4 days and require her to go to the emergency room at least 2 to 3 times monthly for injections. She stated that her migraines have symptoms including nausea, light sensitivity, and stabbing pain. Petitioner testified that she can walk only a ½ block before she needs to sit down and that she uses a cane or walker daily to assist her with ambulating. She was observed with an assistive walking device during the hearing. She reported being able to stand for no more than 5 minutes due to pain and being able to sit for no more than 15 minutes before needing to readjust positions or lay down. Petitioner was observed to readjust positions throughout the duration of the hearing. Petitioner stated that she is unable to bend or squat and can lift no more than 5 pounds. Petitioner reported that she lives with her mother and that she can bathe herself but has difficulty washing her hair, as she cannot stand for a long time. She stated that she can dress herself but has difficulty with pants and shoes. She reported that she does not do any household chores, as her mother does all chores and most of the cooking. Petitioner reported making only microwavable meals. She stated that she does not drive and that if she does go shopping, she uses an electric scooter to get around.

With respect to her nonexertional/mental impairments, Petitioner testified that she has been diagnosed with depression, anxiety, and explosive disorder for which she receives medication treatment and counseling for the last five years. She reported suffering from anxiety attacks three times weekly that last 20-25 minutes and include symptoms of difficulty breathing and heart palpitations. Petitioner reported verbal issues with anger that result in her explosive episodes and described an incident that occurred at her previous employment. She stated that she can concentrate for only 15 to 20 minutes and that she has difficulty with her memory, so she cannot complete most tasks without reminders. Petitioner reported suffering from crying spells three to four times per week, each lasting 30 minutes and further reported that she had thoughts of hurting herself and other people, most recently in November 2018. Petitioner indicated that she hears voices. Petitioner requires an emotional support dog who was present in the room with her throughout the duration of the hearing. Petitioner has noted difficulty with bending, stooping, and grasping items with both of her hands due to nerve impairments.

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.

The evidence presented is considered to determine the consistency of Petitioner's statements regarding the intensity, persistence and limiting effects of her symptoms. Based on a thorough review of Petitioner's medical record and in consideration of the reports and records presented from Petitioner's treating physicians, as well as Petitioner's noted morbid obesity, 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). However, the undersigned ALJ concludes that Petitioner is unable to perform the full range of sedentary work, thus, the occupational base is eroded by her additional limitations or restrictions. SSR 96-9p.

Based on the medical records presented, as well as Petitioner's testimony, Petitioner has moderate to marked limitations on her non-exertional ability to perform basic work activities, with respect to performing manipulative or postural functions of some work such as gripping, reaching, handling, stooping, climbing, crawling, or crouching.

The medical records presented show that Petitioner had been diagnosed with and was receiving mental health treatment for depressive disorder, anxiety, and explosive disorder. Based on the medical evidence presented, as well as Petitioner's testimony, it is found that Petitioner has mild to moderate limitations on her mental ability to perform basic work activities.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of employment as a central station monitor for an alarm company and fast food restaurant worker

required her to sit and stand for the majority of the work day and lift boxes ranging in weight from 15 to 25 pounds. Upon review, Petitioner's prior employment is categorized as requiring light exertion. Based on the RFC analysis above, Petitioner's exertional RFC limits her to sedentary work activities. As such, Petitioner is incapable of performing past relevant work. Because Petitioner is unable to perform past relevant work, she cannot be found disabled, or not disabled, at Step 4, and the assessment continues to Step 5.

Step 5

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

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

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

However, when a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was ██ years old at the time of application and hearing, and thus, considered to be a younger individual (age 18-44) for purposes of Appendix 2. She is a high school graduate and has semi-skilled work history that is nontransferable. 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, however, as referenced above, the occupational base is eroded by additional limitations or restrictions. Thus, based solely on her exertional RFC, the Medical-Vocational Guidelines, result in a finding that Petitioner is not disabled.

However, as referenced above, Petitioner also has nonexertional impairments imposing additional limitations. As a result, and based on the evidence presented, she has a nonexertional RFC imposing moderate to marked limitations in her ability to perform basic work activities, with respect to performing manipulative or postural functions of some work such as gripping, reaching, handling, stooping, climbing, crawling, or crouching. She also has mild to moderate limitations in her activities of daily living; mild to moderate limitations in her social functioning; and mild to moderate limitations in her concentration, persistence or pace. The Department has failed to present evidence of a significant number of jobs in the national and local economy that Petitioner has the vocational qualifications to perform in light of her RFC, age, education, and work experience. Therefore, the evidence is insufficient to establish that Petitioner is able to adjust to other work. Accordingly, Petitioner is found disabled at Step 5 for purposes of the SDA benefit program.

The 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

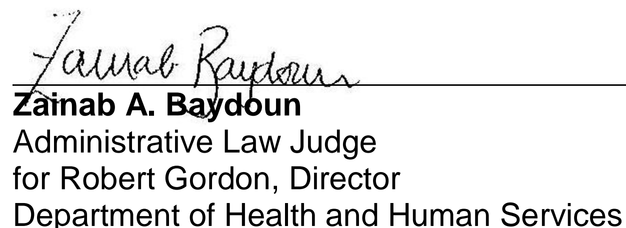
Accordingly, the hearing request with respect to FIP is **DISMISSED** and the Department's SDA determination is **REVERSED**.

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 May 22, 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; and

3. Review Petitioner's continued eligibility in July 2019.



ZB/tlf

Zainab A. Baydoun
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

Via Email:

Petitioner – Via First-Class Mail: