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Date Mailed: January 24, 2019
MAHS Docket No.: 18-011675
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 December 10, 2018, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Lynda Brown Hearing Facilitator.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. After the hearing, the Department provided missing pages from Exhibit A, pp. 127-132. The Petitioner also provided a Medications List at the hearing that was admitted as Exhibit B. A Medical Examination Report was received form [redacted] and marked into evidence as Exhibit C. A Medical Examination Report from [redacted] was received and marked into evidence as Exhibit D. Medical Examination Report from [redacted] was received and marked into evidence as Exhibit E. The record closed on January 10, 2019, 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 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 [redacted], 2017, Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On June 28, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 40-46).

3. On August 21, 2018, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability. (Exhibit A, pp. 83-85).

4. On November 8, 2018, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 3-4).

5. Petitioner alleged disabling impairment due to lupus causing joint pain and body aches, fluid retention, diabetes with blistering and numbness and tingling in feet as well as blistering causing difficulty walking; coronary artery disease; diabetes mellitus, hyperlipidemia, hypertension, congestive heart failure and obesity. In addition, Petitioner alleges her vision is deteriorating due to her diabetes. The Petitioner did not allege mental impairment as a basis for her disability.

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 also was a certified nurse's assistant.

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

9. Petitioner has an employment history of work as serving as a nurse's assistant, assisting with dietary needs of patients including food preparation and feeding patients. In addition, the Petitioner did home healthcare driving to patients' homes which involved transferring, lifting, bathing, administering medications and cleaning and housekeeping.

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, s/he 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's cardiologist completed a Medical Examination Report dated December 21, 2018. The current diagnosis included following: coronary artery disease, diabetes mellitus, hyperlipidemia, hypertension, congestive heart failure (HFREF), depression, chest pain and systemic lupus erythematosus (Lupus).

The laboratory findings relied upon an echocardiogram and an EKG. The doctor's clinical impression was that Petitioner was stable and had the following limitations: lifting, carrying occasionally less than 10 pounds one third of an eight-hour day, use of hands/arms for repetitive action, all activities including simple grasping, reaching, pushing/pulling and fine manipulation were not able to be performed by Petitioner, the Petitioner could stand/walk or sit for less than six hours in an eight-hour day or stand less than two hours in an eight-hour day. The Petitioner could not operate foot controls with either foot. In addition, the doctor attached medical records based on office visit to support the findings. The Petitioner's treatment beginning in 2016 for these physical limitations were also supported by the diagnosis for congestive heart failure, chest pain, and coronary artery disease. The doctor noted that the Petitioner also had mental limitations due to depression affecting sustained concentration.

The Petitioner's Doctor of Podiatry completed a Medical Examination dated [redacted] 2018. The diagnosis was diabetes with neuropathy, tingling/burning with current medications prescribed, gabapentin and lidocaine. The neurological part of the exam noted diabetic neuropathy in feet analysis and dry skin. The clinical impression was that the Petitioner's conditions were stable in the following limitations of occasionally lifting up to 20 pounds and never lifting more than 25 pounds or 50. Petitioner could stand/walk less than two hours in an eight-hour day, and sit six hours in an eight-hour workday. The Petitioner could not operate foot controls with either foot due to numbness. The doctor noted the following medical findings in support of the physical limitations: decreased touch sensation with painful neuropathy. The doctor noted the Petitioner could not meet her means in the home but did not list what assistance was needed.

A Medical Examination Report was completed by Petitioner's endocrinologist who indicated the Petitioner had macro vascular disease. The doctor indicated that he did not do workplace evaluation and did not complete the remainder of the Medical Examination Report.

On [redacted] 2016, the Petitioner had a stent to the mid-circumflex coronary artery. The Petitioner's cardiologist noted a Class II chronic heart condition based on the following signs and symptoms: chest pain, weakness, loss of appetite, syncope, exercise intolerance, chronic fatigue, dizziness and palpitations. With regard to Petitioner's diabetes mellitus, the following symptoms were noted: fatigue, difficulty walking, episodic vision blurriness, bladder infections, excessive thirst, rapid heart beat with chest pain, swelling, sensitivity to light heat or cold, muscle weakness, hot flashes, abdominal pain, vascular disease/leg cramping, extremity pain and numbness, frequency of urination, sweating, difficulty concentrating, headaches and dizziness/loss of balance. The doctor further certified that both the heart condition and the diabetes were expected to last at least 12 months and were chronic. Emotional factors also noted that contribute to severity of symptoms and functional limitations, included depression, anxiety, and personality disorder.

The Petitioner's podiatrist saw her on [redacted]2018, due to foot and ankle concern due to foot nerve sensations. The doctor noted poor circulation from long-term anti-coag therapy. Previously prescribed, DM shoes and lidocaine topical for neuropathy. The peripheral pulses were ¼ bilaterally. Plantar foot callusing present lateral forefoot no open ulcers. Touch sensations were noted diminished. Assessment noted idiopathic progressive neuropathy. Gabapentin was prescribed. The Petitioner has treated with this doctor since [redacted] 2017.

The Petitioner underwent an angioplasty on [redacted] 2017.

An Internal Medicine Examination (independent) was performed on [redacted] 2018. The examiner noted reduced pulses in feet bilaterally. Rheumatoid type deformity in distal aspect of her fingers with generalized swelling of all her fingers. Grip strength was less on the left, and Petitioner was able to write and pick up coins with either hand. The doctor notes sensory modalities are well preserved including light touch, pinprick and vibration. Impression was long-term history of lupus untreated with generalized joint pain and alopecia. History of coronary artery disease with three previous myocardial infarctions and three cardiac stents without angina. History of congestive heart failure stable at this time. History of two previous cerebrovascular accidents with some mild residual problems with jaws locking up. Type II diabetes mellitus, or medication with fair control, with mild neuropathy in feet. Poorly controlled hypertension and obesity. The summary noted significant shoulder discomfort with motion and swelling and mild deformity in the hands. Lower extremities have normal function, strength and range of motion. 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. Petitioner could stand only 10 minutes per the evaluation and could not climb stairs.

In [redacted] 2017, the Petitioner had an ECG, which was abnormal with nonspecific T wave abnormality and possible left ventricular hypertrophy, and possible left atrial enlargement. In [redacted] 2016, the Petitioner was seen for chest pain secondary to non-ST elevation myocardial infarction or lupus myocarditis. Chest pain was typical for angina. At the time of the admission, suspected myopericarditis was noted as a probability. The admission was for three days. The Petitioner underwent a cardiac catheterization and was found to have an 80% stenosis in the left circumflex artery, and a stent was placed. There was also a 70% stenosis in the right coronary artery. The findings also included diabetes with Metformin prescribed, systemic lupus erythematosus. At the time of admission, the Petitioner's condition was noted as serious.

The Petitioner was seen on [redacted] 2017, in the emergency room with head pain; final diagnosis was blunt head injury with superficial scalp laceration. The patient was discharged after a negative CT of the brain.

Petitioner was seen in the emergency room on [redacted] 2017, with complaints of chest pain and epigastric pain. The final impression was acute hypertensive emergency, and the Petitioner was admitted. Evaluation with cardiac catheterization noted moderate

disease involving the right coronary artery with three separate lesions, which were found to be nonobstructive. The impression was possible gastritis, ulcer, and esophagitis; GERD, NSTEM1, coronary artery disease, hypertension, hyperlipidemia, lupus and diabetes. The ASA class was a 3, due to severe systemic disease, due to coronary artery disease with angina, insulin dependent diabetes, morbid obesity. The catheterization resulted and testing noted an ejection fraction 60% of left ventricle. The findings noted LAD, had varying degrees of stenosis, which were addressed. (Exhibit A, pp. 93-94.)

At the time of the interview with the Petitioner's caseworker, she reported the following observations: difficulty with breathing, hearing, memory, seeing, signs of fatigue, signs of pain or distress, sitting, skin condition, standing and walking.

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 4.04 Ischemic heart disease, 9.00 Endocrine Disorders, Diabetes Mellitus; and 11.14 Peripheral Neuropathy and 12.04 Depression 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 walk a half block, had difficulty using the microwave as she could not raise her arms, and difficulty with laundry lifting and carrying and required assistance. The Petitioner does not climb stairs and uses a walker at home. She is able to shower and dress herself and her right hand shakes when she writes and has pain in both feet. The heaviest weight she could carry was two pounds. The Petitioner also has difficulty sleeping due to her heart fluttering when she lies flat. The Petitioner also has joint pain throughout her body. Her treating cardiologist has imposed significant limitations including limitations on lifting/carrying occasionally less than 10 pounds for one third of an eight-hour day; use of hands/arms for repetitive action, all activities including simple grasping, reaching, pushing/pulling and fine manipulation were not able to be performed by Petitioner; the Petitioner could not stand/walk or sit for less than six hours in an eight-hour day or stand less than two hours in an eight-hour day. The Petitioner could not operate foot controls with either foot.

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 less than sedentary work and cannot perform sedentary work as defined by 20 CFR 416.967(a).

Based on the medical record presented, Petitioner alleged has no limitations on her mental ability to perform basic work activities as no medical treatment has been received for depression although Petitioner's cardiologist noted depression.

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 Substantial Gainful Activity (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 CAN, nurse assistance, which involved caring for elderly and ill patients. Petitioner's

work required standing, carrying, lifting, and transferring patients, feeding up to 30 patients and pushing food carts and standing on her feet much of the time doing housekeeping and laundry and lifting up to 10 pounds regularly; and when working as a dietary aid, she frequently lifted 25 pounds, required light physical exertion.

Based on the Residual Functional Capacity (RFC) analysis above, Petitioner's exertional RFC limits her to no more/less than sedentary activity; and the Petitioner cannot perform sedentary work activities. As such, Petitioner is incapable of performing past relevant work.

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

Step 5

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

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

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

In this case, Petitioner was [redacted] years old at the time of application and [redacted] 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 and worked as a nurse's assistant with certification and has a history of work experience as a home help provider, dietary assistant, and nurse's assistant caring for elderly patients. As discussed above, Petitioner does not maintain the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform even sedentary work activities.

In this case, the Medical-Vocational Guidelines, Appendix 2, do not support a finding that Petitioner is not disabled based on her exertional limitations. The Department has failed to counter with evidence of significant numbers of jobs in the national economy which Petitioner could perform despite her limitations. Therefore, the Department has failed to establish that, based on her RFC and age, education, and work experience, Petitioner can adjust to other work. Therefore, Petitioner is disabled at Step 5.

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], 2017, 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/jaf

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

Lauren Casper
MDHHS-Macomb-20-Hearings

Petitioner

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

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