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

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

Date Mailed: March 14, 2019
MAHS Docket No.: 18-012479
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, a telephone hearing was held on January 14, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by 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. Petitioner submitted additional records which were received, marked and admitted into evidence as Exhibit 2. The record was subsequently closed on February 13, 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 December 21, 2017 Petitioner submitted an application seeking cash assistance benefits on the basis of a disability.

2. On or around November 19, 2018 the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. (Exhibit A, pp.5-11)

3. On or around November 28, 2018 the Department sent Petitioner a Notice of Case Action denying her SDA application based on DDS' finding that she was not disabled.

4. On or around December 3, 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however, Petitioner confirmed that there was no issue concerning her FIP benefits and thus, the request for hearing was withdrawn and will be dismissed.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 osteoarthritis in multiple joints, right knee effusion, chronic deformity fracture of the spine causing back pain, and carpal tunnel syndrome (CTS). Petitioner alleged mental disabling impairments due to depression and anxiety.

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

8. Petitioner is a high school graduate with an associate degree and has employment history of work as a credit underwriter. Petitioner has not been employed since February 2015.

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 October 30, 2018 Petitioner participated in a consultative physical examination, during which she reported history of and treatment for osteoarthritis of all of her joints, deformity of the spine, spine fracture, right knee effusion, and CTS. Petitioner reported that she had physical therapy for her hands, knees and back, ending in 2018. She reported having difficulty standing, stooping, squatting, lifting, pushing, pulling, reaching and climbing stairs. She further reported paresthesia in her bilateral lower extremities, that she does not use a can or walking aid for support and that she has frequent episodes of swelling, stiffness, and muscle spasms. Upon physical examination, Petitioner had mild tenderness to palpation of the low lumbar area as well as crepitus with flexion and extension of both knees and a slow gait. There was no obvious spinal deformity, swelling, or muscle spasm noted, no calf tenderness, clubbing, edema,

varicose veins, brawny erythema, stasis dermatitis, chronic leg ulcers and no muscle atrophy joint deformity or enlargements noted. Petitioner was unable to tandem walk, heel walk or toe walk. No abnormalities were noted on neurologic exam. Although it was noted by DDS that this medical source statement was reserved to the Commissioner, the examining doctor determined that Petitioner has frequent limitations with standing, stooping, squatting, lifting, bending, pushing, pulling, reaching, and climbing stairs due to the examination findings including crepitus with flexion and extension of both knees, inability to tandem, heel or toe walk, decreased range of motion of both knees and follow up with multiple physicians including an orthopedic spine specialist, neurologist, rheumatologist, hand doctor, chiropractor, primary care physician (PCP) and podiatrist. (Exhibit A, pp. 73-81)

On October 30, 2018 Petitioner participated in a consultative mental status examination, during which she reported seeing a psychiatrist and therapist over the past four years to help her deal with situational stress and depression. She reported never having been hospitalized psychiatrically and never having tried to harm herself. Petitioner reported having a caregiver/chore provider through the State of Michigan who is at her home six hours daily to assist Petitioner with cooking, cleaning and shopping. It was noted that because of Petitioner's pain, she had to be seen in a first-floor office and she was observed to be slumped back in her chair with her chest and neck covered by her coat, complaining of severe pain and indicating she was going to the hospital because it was too much. She kept her eyes closed throughout the evaluation. Her affect was constricted, her mood reserved and serious, and she complained of depression secondary to chronic pain. She denied suicidal or homicidal ideations, psychosis or paranoia. The medical source statement indicates that Petitioner's history is consistent with mild adjustment disorder causing depression and anxiety, secondary to situational stressors including chronic pain. It was determined that Petitioner did not present with any impairments in the areas of memory, concentration or attention, other than distractions from pain. It was concluded that she should be able to do work-related activities at a sustained pace and was diagnosed with adjustment disorder that is managed with medications. (Exhibit A, pp. 68-70)

Records from Petitioner's visits with Dr. [redacted] were presented and reviewed. (Exhibit A, pp. 85-94, 211-229, 234-256). Notes from a May 31, 2018 visit show that among other conditions, she was being treated for CTS of the left and right hands and pain in both upper extremities. She reported that her pain to be in her right and left forearms, wrists, hands, fingers, and thumbs and described her pain as aching, burning, cold, heaviness, pins, needles, sharp, shock-like, shooting, sore, throbbing and tight. She reported that her pain radiates, that she has numbness and tingling and that she has pain with prolonged activity, while reaching, and with repetitive grasping. She stated that immobilizing the affected area, lying down, and resting are some factors that relieve her pain. It was noted that Petitioner's previous treatments included brace, cast, splint/sling, chiropractic therapy, applying heat, injection therapy, prescription medication and physical therapy all of which have not resolved her pain and associated manifestations. Upon physical examination, on the right, tenderness was present in the thumb at the 1st annular pulley mild moderate; present at the level of CMC joint-dorsal

surface-mild moderate; swelling; present palmar volar surface of hand-entire palmar surface mild. She had positive carpal compression test pain, paresthesia along median nerve course, numbness, positive grind test bilateral thumbs with pain, with crepitus. Phalen's sign positive mild, Tinel's sign along the median nerve at the wrist positive. On the left, wrist and hand positive carpal compression test pain, positive grind test bilateral thumbs with pain, Phalen's sign positive mild and Tinel's sign along the median nerve at the wrist positive. Sensory examination on the right showed hypoesthesia in the distribution of the median nerve; two point discrimination in the upper rights extremities decreased with inability to detect two separate points below a distance of 10 mm. Petitioner was diagnosed with CTS of the bilateral upper limbs, other synovitis and tenosynovitis of the right and left hands, sprain of the metacarpophalangeal joint of right thumb, osteoarthritis of the right and left hands. Petitioner was placed on the following restrictions to the use of her upper extremities: no repetitious movement of both hands, no lifting more than five pounds, 1 hour of work take a ½ hour break, and the use of a track ball mouse. (Exhibit A, pp. 85-94, 211-229, 234-256).

A July 9, 2018 CR lumbar spine showed a compression fracture of the T12 vertebral body with approximately 25% of height loss of the anterior aspect of the vertebral body. Minimal facet arthropathy at the L4-L5 and L5-S1 were noted. (exhibit A, p. 102)

Notes from Petitioner's visits with Dr. ███ indicate that Petitioner was receiving treatment for chronic left sided low back pain with sciatica, osteoarthritis of multiple joints, degenerative arthritis of the right knee, wrist and spine. Results from Petitioner's knee MRI were reviewed and showed tiny subarticular cystic changes midline femoral trochlea with adjacent bone marrow edema and thinning of the overlying cartilage. Results from Petitioner's October 2016 lumbar spine MRI of the spine showed multilevel spondylotic degenerative changes worse at L3-L4 with facet arthropathy, mild shallow diffuse disc bulge and ligamentum flavum thickening causing mild narrowing of the spinal cord. Chronic mild deformity fracture of the superior end plates of T12 resulting in approximately 25% loss of vertical height was also found. (Exhibit A, p. 103, 145-146)

A letter dated February 26, 2018 from ███████, PhD with ██████ indicates that Petitioner has been receiving psychotherapy, psychiatric and medication evaluation services since January 2017 and she has been diagnosed with major depression disorder (severe recurrent) and generalized anxiety disorder for which she is prescribed Celexa, Wellbutrin, and Remeron. It was noted that Petitioner's condition and level of care has prevented her from being alone or holding a job. (Exhibit A, p. 117)

Results from a February 7, 2017 Electromyography (EMG) study showed evidence of a moderate, sensorimotor, primarily demyelinating, median mononeuropathy at the right wrist (CTS). The abnormal findings were consistent with Petitioner's clinical complaints of numbness, tingling, and pain in the median distribution of the right hand. (Exhibit A, p. 122)

Petitioner presented verification of her receipt of Home Help Services through the Department of Health and Human Services. According to the statement provided,

Petitioner receives daily assistance with personal care tasks including eating, toileting, bathing, grooming, dressing, taking medication, meal preparation, shopping, laundry and housework. (Exhibit 1)

Petitioner presented a January 18, 2019 return to work slip from Dr. [redacted] which indicates that she is receiving treatment for CTS of the right and left upper limbs and that she has the following upper extremity restrictions: no repetitious use of both hands, no lifting more than five pounds, 1 hour of work and take a ½ hour break and the use of a track ball mouse. Petitioner was scheduled for a follow-up in three months. (Exhibit 2)

Petitioner also presented notes from an August 4, 2018 medication review appointment with Dr. [redacted] at [redacted] which show that she was receiving treatment for generalized anxiety disorder and major depressive disorder, recurrent severe without psychosis. During her appointment, Petitioner complained of continuing low energy, crying spells, chest pain, suicidal thoughts, hopelessness, helplessness, low self-esteem, self-abuse, self-shaming, poor sleep and appetite, sadness, heart palpitations, tension lack of concentration and lack of focus. She denied thoughts of harming herself of others at the time of the appointment and was to continue with outpatient supportive therapy and medication review in eight weeks. (Exhibit 2)

Petitioner provided a Michigan Medical Marihuana Program Physician Certification Form certifying her need to use medical marihuana to treat her severe and chronic pain, and severe and persistent muscle spasms. She also provided a Secretary of State Disability Parking Placard Application completed by her PCP Dr. [redacted] and indicating that Petitioner has permanent conditions of fibromyalgia, degenerative arthritis, and compression fracture of the lumbar spine that severely limit her ability to walk. (Exhibit 2)

Petitioner presented results of a February 13, 2019 Cervical Spine MRI which showed abnormal signal in the C2 vertebra due to sclerosis or fatty deposition, at C3-C4 central osteophyte disc complex that nearly abuts the cord with mild central stenosis, at C4-C5 mild osteophyte disc complex moderate left foraminal stenosis due to uncinate process hypertrophy, at C5-C6 osteophyte disc complex abutting the cord and effacing the anterior CSF space, mild central stenosis and mild to moderate bilateral foraminal stenosis. (Exhibit 2)

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 physical 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), 12.04 (depressive, bipolar and related disorders), and 12.06 (anxiety and obsessive-compulsive disorders) 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, knees and both of her hands. She stated that she can walk only two houses down a block or 1-2 minutes and that she takes a break every two minutes to rest. She testified that she is unable to use a cane or walker because of the CTS and other problems with her hands. Petitioner testified that she can sit for only 30 minutes and can stand for only a few minutes before needing

to sit or lay down to rest. She reported that she is unable to lift more than three pounds and cannot lift a gallon of milk. (It is noted that Dr. [redacted]l placed Petitioner on a five-pound lifting restriction). She is unable to bend or squat. Petitioner stated that she has an approved caregiver/chore provider who assists her with bathing, showering, dressing and all personal care. She stated that she is unable to complete any household chores and that her State approved chore provider also does all the household chores including cooking, cleaning, laundry, shopping and driving.

With respect to her nonexertional/mental impairments, Petitioner testified that she has been diagnosed with depression and anxiety for which she receives medication treatment and counseling through [redacted]. She reported suffering from panic/anxiety attacks which include symptoms of her heart racing and inability to breathe. Petitioner testified that she has problems with her concentration and memory and that she suffers from crying spells. It was noted that Petitioner was heard to be crying throughout the duration of the entire hearing. She reported having problems with anger and that she gets verbally upset but never physical. Although she reported thoughts of hurting herself, she indicated that she does not have a plan to do so. Petitioner denied auditory or visual hallucinations. Petitioner additionally testified that she is unable to bend or squat and that due to her arthritis and CTS in both hands, she cannot grip or grasp with her hands as she has constant numbness, tingling, tightness and pain.

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, some of which are referenced above, 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, Petitioner is unable to perform the full range of sedentary work due, thus, the occupational base is eroded by her additional limitations or restrictions. SSR 96-9p.

Based on the medical records presented including those documenting the CTS in both hands and the fracture deformity in Petitioner's spine among others, 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 and anxiety. 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 credit underwriter, which involved sitting for 80% of the work day and required typing for most of the day. Although it is characterized as requiring sedentary exertion, as referenced above, Petitioner has additional limitations including nonexertional limitations that would prevent her from performing past relevant work, including the restrictions to her repetitious use of both hands due to her CTS. 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 ██ 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 and has an associate degree with 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

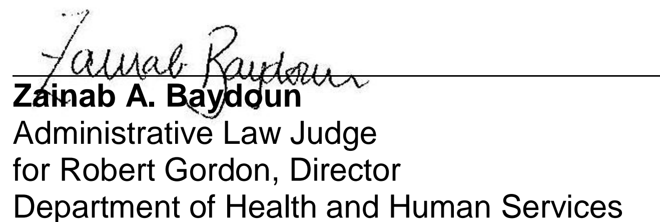
Accordingly, the hearing request with respect to FIP is **DISMISSED** and the Department's SDA determination is **REVERSED**.

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 December 21, 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; and

3. Review Petitioner's continued eligibility in August 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: