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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR



Date Mailed: May 31, 2019
MOAHR Docket No.: 19-001975
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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; and 45 CFR 205.10. After due notice, a telephone hearing was held on May 1, 2019, from Detroit, Michigan. Petitioner was present for the hearing and was represented by Elisa Gomez, Esq. Respondent was represented by Assistant Attorney General, Chantel Fennessey. Also appearing as witnesses on behalf of Respondent were Rhonda Mowder, Eligibility Specialist, and Lori Gripper-Williams, Family Independence Manager.

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 [REDACTED], 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On December 19, 2018, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 7-13).
3. On December 28, 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. 4-5).

4. On January 22, 2019, the Department received Petitioner's timely written request for hearing (Exhibit A, p. 2).
5. Petitioner alleged disabling impairment due to depression, anxiety, arthritis in her knees and migraine headaches.
6. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED], 1970 birth date; she is 5'2 in height and weighs about 348 pounds.
7. Petitioner is a high school graduate.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as salesperson.
10. Petitioner has a pending disability claim with the Social Security Administration.

CONCLUSIONS OF LAW

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

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

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If

an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

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

Step 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.

In this case, Petitioner applied for SDA benefits in [REDACTED] 2018. Petitioner was diagnosed with HIV in 2003. At the time of her application, Petitioner's HIV condition was stable and asymptomatic. Some of the medical records provided predated her application by several years. A review of Petitioner's most recent medical records relating to her symptoms of disability is summarized below.

On February 8, 2017, Petitioner was seen at [REDACTED] for a medication review. Petitioner's sleep and appetite were noted as good. It was noted that Petitioner was diagnosed with HIV in 2003 and began experiencing panic attacks since that time. The records further noted that Petitioner stopped driving because of panic for the past four years. Petitioner reported that her panic attacks were associated with shortness of breath, racing heart, sweating, and tremors lasting 5-10 minutes and occurring 2-3 times per week. Petitioner reported feeling depressed and anxious. Petitioner had been out of her medication for over a month. Petitioner noted that she stays isolated at home; having decreased energy, concentration and memory. Petitioner denied suicidal or homicidal thoughts. Petitioner denied crying spells and hallucinations. Petitioner was given a mental status examination. Petitioner was able to focus; her judgment was noted as fair; she was insightful; her thought process was unremarkable; he had delayed responses; she was withdrawn and tearful; her emotion state was appropriate; and her mood was noted as blunted affect. The diagnosis included: major depressive disorder, recurrent episode, moderate; generalized anxiety disorder; and panic disorder. Petitioner's GAF score was 50. (Exhibit A, pp. 217-222).

Petitioner continued to treat with Developmental Centers, Inc. through November 2018. Her diagnosis throughout her treatment included: major depressive disorder, recurrent

episode, moderate; generalized anxiety disorder; and panic disorder. Petitioner's GAF remained at 50. (Exhibit A, pp.223-314)

On July 21, 2017, Petitioner was seen at [REDACTED] for a HIV follow up visit. It was noted that Petitioner had a mental health diagnosis of depression active in the past three months. It was further noticed that Petitioner's HIV was stable and asymptomatic but not virologically suppressed. (Exhibit A, pp. 193-194).

On October 25, 2017, Petitioner was seen at [REDACTED] with a chief complaint of flu symptoms and stomach cramps. It was noted that Petitioner had a mental health diagnosis of depression active in the past three months. It was further noticed that Petitioner's HIV was stable and asymptomatic. It was recommended that Petitioner follow-up with a gastroenterologist and her primary care physician for evaluation. (Exhibit A, pp. 190-192).

On March 15, 2018, a Social Services Progress Note indicated that Petitioner was seen for a medical exam. Petitioner reported a history of depression and anxiety. Petitioner had appropriate affect, speech and thought content. It was noted that Petitioner was receiving treatment through the Development Center where she had been on medication and receiving therapy for five years. Petitioner reported increased stress related to recent diagnosis of a malignant colon polyp. Petitioner denied homicidal or suicidal ideations. (Exhibit A, pp. 205-207).

On November 5, 2018, a lumbar puncture procedure was performed at [REDACTED]. Petitioner tolerated the procedure well. The estimated blood loss was minimal. Petitioner's condition was unchanged following the procedure. The impression indicated successful accumulation of 33 mL of clear CSF. Opening pressure was 19 cm of water. (Exhibit A, pp. 118-119).

On December 7, 2018, Petitioner was seen at [REDACTED] with a chief complaint of chest pain. Petitioner presented to the emergency department for evaluation of chest pain of crying the night before. Petitioner described symptoms as burning quality. Petitioner has a history of HIV and reporter her CD4 count is around 790 and her viral load is undetectable. Upon physical, Petitioner was not in any distress. Petitioner was noted to have a normal heart rate, regular rhythm, normal heart sounds, and intact distal pulses. Petitioner's breath sounds were normal. There was no respiratory distress. Petitioner did not have any wheezing. Petitioner's mood and affect were normal. Her behavior was normal. There was no final diagnosis provided. (Exhibit A, pp. 82-117).

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 12.04 (depressive, bipolar and related disorders) and 12.06 (anxiety and obsessive-compulsive disorders) were considered.

Respondent's counsel argued that Case No. 17-cv-13053 issued in the United States District Court Eastern District of Michigan Southern Division on March 27, 2019, granted Defendant's Motion Summary Judgment and resolved Petitioner's claim of disability. However, that decision was based upon a 2007 application for disability benefits and did not include many, if any, of the medical records considered in Petitioner's January 8, 2018 application for SDA benefits.

Petitioner's counsel argues that she meets a listing under 12.04. However, to meet a listing under 12.04 as it relates to depression, one must meet the medical documentation of the requirements of paragraph 1 or 2:

1. Depressive disorder, characterized by five or more of the following:
 - a. Depressed mood;
 - b. Diminished interest in almost all activities;
 - c. Appetite disturbance with change in weight;
 - d. Sleep disturbance;
 - e. Observable psychomotor agitation or retardation;
 - f. Decreased energy;
 - g. Feelings of guilt or worthlessness;
 - h. Difficulty concentrating or thinking; or
 - i. Thoughts of death or suicide.

The records from Development Centers, Inc. consistently indicate that Petitioner's appetite is good; her sleep is adequate; her judgment is fair; her concentration fluctuates from normal to able to focus; she has no thoughts of death or suicide; and there is no mention of any observable psychomotor agitation or retardation. While Petitioner does consistently display a depressed mood; a diminished interest in almost all activities; and decreased energy; she fails to meet five or more of the enumerated requirements. Therefore, it is found that Petitioner does not meet the requirements for listing under 12.04.

Petitioner's counsel also argues that she meets the listing under 12.06(A)(2)(a) as it relates to her panic disorder. To meet a listing under 12.06(A)(2)(a) medical

documentation is required to show that the panic disorder or agoraphobia, characterized by one or both:

- a. Panic attacks followed by a persistent concern or worry about additional panic attacks or their consequences; or
- b. Disproportionate fear or anxiety about at least two different situations (for example, using public transportation, being in a crowd, being in a line, being outside of your home, being in open spaces).

Although Petitioner regularly reports having panic attacks in between visits, there is no medical documentation to show that Petitioner has been hospitalized for panic attacks, has presented at the emergency room for panic attacks, or has had a panic attack at one of her therapy sessions. Further, there was no medical documentation to show that Petitioner had a fear or anxiety as noted in A(2)(b).

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). Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3). For the first three functional areas, a five-point scale is applied (none, mild, moderate, marked, and extreme). 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).

In this case, Petitioner alleges nonexertional limitations due to her medical condition. Petitioner testified that she could dress herself, use the bathroom independently, eat independently, reach and bend at her waist. Petitioner indicated that she could not sit for more than 20 minutes or stand for more than 10 minutes without experiencing pain. Petitioner indicated that she experiences shortness of breath if she walks a distance

greater than one-half block. Petitioner further indicated that she would experience pain if she attempted to kneel or squat due to pain in her knees. Although Petitioner complained about issues with walking, standing, sitting, kneeling, squatting and migraine headaches, the medical evidence presented at the hearing did not objectively corroborate Petitioner's testimony relating to the medical issues.

Petitioner testified that she has panic attacks which include her heart racing; sweating; and thoughts of dying. Petitioner estimated that the panic attacks last 15 minutes and occur twice per day. Petitioner stated that she no longer drives due to her panic attacks. Petitioner indicates that she attends approximately 10 appointments per month, which include her psychiatrist once per month and her therapist twice per month. Petitioner further testified that she experiences crying spells.

While it is true that Petitioner does not meet a listing, Petitioner has been consistently treating with a mental health professional for at least two years prior to application. At her regular therapy sessions, Petitioner reports having consistent and sustained panic attacks. Despite consistent treatment, including medication reviews, Petitioner's diagnoses of major depressive disorder, recurrent episode, moderate; generalized anxiety disorder; and panic disorder have not improved. Petitioner's GAF score was 50, which would indicate that she has serious limitations of social functioning. Petitioner's GAF score along with her failure to improve despite medication is consistent with the testimony that she provided at the hearing regarding her limitations of her activities of daily functioning.

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.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has moderate to marked 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 work as a salesperson. Petitioner has moderate to marked limitations in her mental capacity to perform basic work activities. In light of the entire record, it is found that Petitioner's nonexertional RFC prohibits her from performing past relevant work. Although Petitioner is unable to perform past relevant work, Petitioner cannot be found disabled, or not disabled, at Step 4, and as the assessment is required to continue to Step 5 to determine whether Petitioner can adjust to other work.

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, if the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2).

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, a younger individual (age 45-49). Petitioner has impairments due to her mental condition. As a result, she has a nonexertional RFC

imposing moderate to marked limitations in the ability to understand, remember, or apply information; moderate to marked limitations in the ability to interact with others; the ability to concentrate, persist or maintain pace; and moderate to marked limitations in the ability to adapt and manage herself. 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 nonexertional 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.

DECISION AND ORDER

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.

Accordingly, the Department's determination is **REVERSED**.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Reregister and process Petitioner's [REDACTED], 2018 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified;
3. Review Petitioner's continued eligibility in December 2019.

JAM/tlf



Jacquelyn A. McClinton
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Counsel for Respondent

MDHHS-Wayne-17-Hearings
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