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Date Mailed: September 5, 2019
MOAHR Docket No.: 19-006117
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 July 10, 2019, from [redacted] Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Emily Camp, Assistance Payments Supervisor.

ISSUE

Whether the Department properly determined that Petitioner was not disabled for purposes of continued State Disability Assistance (SDA) benefit program eligibility?

FINDINGS OF FACT

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

1. The Petitioner was an ongoing recipient of SDA benefits.

2. On April 1, 2017, the Disability Determination Service (DDS) approved the Petitioner for a short period (April 1, 2017 through November 1, 2017) for SDA benefits while she was recovering from bilateral ankle injuries. The Department did not return the case for a timely review. Approximately 16 months after the DDS approval, the Department returned the case for DDS review. Exhibit A, p. 19.

3. On February 12, 2019, the Department notified the Petitioner of a DDS review and a packet of materials was sent to Petitioner.

4. On May 14, 2019, after review, the DDS denied SDA finding that the Petitioner was no longer disabled and capable of light work activity, 20 CFR416.920(f). The DDS

also found that the Petitioner's physical or mental impairment has lasted or can be expected to last for at least 90 days or more and did not prevent Petitioner's employment of 90 days or more. Exhibit A, pp. 22-23.

5. On May 29, 2019, the Department sent the Petitioner a Notice of Case Action notifying her that her SDA case would close, effective July 1, 2019, because per DDS, she was no longer disabled. Exhibit A, pp. 12-13.

6. On June 7, 2019, the Department received the Petitioner's timely written request for hearing concerning the closure of her SDA case. Exhibit A, pp. 14-15.

7. Petitioner alleged disabling impairment due to arthritis of left knee, left foot nerve damage resulting in pain, surgery to repair right foot ligaments, right foot pain and COPD, and mental impairment due to depression, anxiety and Post Traumatic Stress Disorder (PTSD).

8. At the time of the hearing, the Petitioner was [redacted] years of age with an [redacted] birth date; she is [redacted] in height and weighs about [redacted] pounds.

9. Petitioner completed high school and one or two years of college without earning any degree.

10. Petitioner has an employment history of work as manager of a homeless shelter, a manager of a Women's shelter, manager of a restaurant, a bartender, and a restaurant server.

11. 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 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. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Once an individual has been found disabled, continued entitlement to benefits based on a disability is periodically reviewed in accordance with the medical improvement review

standard in order to make a current determination or decision as to whether disability remains. 20 CFR 416.993(a); 20 CFR 416.994(a). If the individual is not engaged in substantial gainful activity (SGA), the trier of fact must apply an eight-step sequential evaluation in evaluating whether an individual's disability continues. 20 CFR 416.994. The review may cease and benefits may be continued at any point if there is sufficient evidence to find that the individual is still unable to engage in SGA. 20 CFR 416.994(b)(5). In this case, Petitioner has not engaged in SGA at any time since he became eligible for SDA. Therefore, his disability must be assessed to determine whether it continues.

An eight-step evaluation is applied to determine whether an individual has a continuing disability:

> **Step 1.** If the individual has an impairment or combination of impairments which meets or equals the severity of an impairment listed in 20 CFR Appendix 1 of subpart P of part 404, the disability will be found to continue. 20 CFR 416.994(b)(5)(i).
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> **Step 2.** If a listing is not met or equaled, it must be determined whether there has been medical improvement as defined in paragraph (b)(1)(i) of 20 CFR 416.994 and shown by a decrease in medical severity. If there has been a decrease in medical severity, Step 3 is considered. If there has been no decrease in medical severity, there has been no medical improvement unless an exception in Step 4 applies. 20 CFR 416.994(b)(5)(ii).
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> **Step 3.** If there has been medical improvement, it must be determined whether this improvement is related to the individual's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv); *i.e.*, there was an increase in the individual's residual functional capacity (RFC) based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to the individual's ability to do work, the analysis proceeds to Step 4. If medical improvement *is* related to the individual's ability to do work, the analysis proceeds to Step 5. 20 CFR 416.994(b)(5)(iii).
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> **Step 4.** If it was found at Step 2, that there was no medical improvement or at Step 3 that the medical improvement is not related to the individual's ability to work, the exceptions in 20 CFR 416.994(b)(3) and (b)(4) are considered. If none of them apply, the disability will be found to continue. If an exception from the first group of exceptions to medical improvement applies, the analysis proceeds to Step 5. If an exception from the second group of exceptions to medical improvement applies, the disability is found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(iv).

Step 5. If medical improvement is shown to be related to an individual's ability to do work or if one of the first group of exceptions to medical improvement applies, **all** the individual's current impairments in combination are considered to determine whether they are severe in light of 20 CFR 416.921. This determination considers all the individual's current impairments and the impact of the combination of these impairments on the individual's ability to function. If the RFC assessment in Step 3 shows significant limitation of the individual's ability to do basic work activities, the analysis proceeds to Step 6. When the evidence shows that all the individual's current impairments in combination do not significantly limit the individual's physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature and the individual will no longer be considered to be disabled. 20 CFR 416.994(b)(5)(v).

Step 6. If the individual's impairment(s) is severe, the individual's current ability to do substantial gainful activity is assessed in accordance with 20 CFR 416.960; i.e., the individual's RFC based on all current impairments is assessed to determine whether the individual can still do work done in the past. If so, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

Step 7. If the individual is not able to do work done in the past, the individual's ability to do other work given the RFC assessment made under Step 6 and the individual's age, education, and past work experience is assessed (unless an exception in 20 CFR 416.994(b)(5)(viii) applies). If the individual can, the disability has ended. If the individual cannot, the disability continues. 20 CFR 416.994(b)(5)(vii).

Step 8. Step 8 may apply if the evidence in the individual's file is insufficient to make a finding under Step 6 about whether the individual can perform past relevant work. If the individual can adjust to other work based solely on age, education, and RFC, the individual is no longer disabled, and no finding about the individual's capacity to do past relevant work under Step 6 is required. If the individual may be unable to adjust to other work or if 20 CFR 416.962 may apply, the individual's claim is assessed under Step 6 to determine whether the individual can perform past relevant work. 20 CFR 416.994(b)(5)(viii).

Step 1

Step 1 in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue with no further analysis required.

The medical record presented was reviewed and is briefly summarized below.

On [redacted] 2017, the Petitioner underwent surgery for an open reduction of her left ankle due to a left trimalleolar fracture. At the time of the surgery, the Petitioner had also suffered a fracture of the 5th metatarsal bone of the right foot. The original disability period as determined by DDS was based upon the left ankle surgery and recovery therefrom. The Petitioner suffered a fall and injured both ankles on [redacted] 2017.

The Petitioner had surgery on her right ankle on [redacted], 2019.

On [redacted] 2019, the Petitioner was seen at the [redacted] Medical Group for orthopedic surgery after having an MRI of her right ankle, an EMG nerve testing on the left lower extremity. Petitioner was being seen due to chronic bilateral foot and ankle pain due to bilateral ankle fractures left treated surgically and on right treated non operatively. Notes indicate that Petitioner has had numbness in the left ankle extending upwards toward the knee continuously since March 2017 surgery. Overall, her left ankle had not changed, and right ankle continued to be painful on a daily basis. She was two years post injury. Originally, Petitioner had a right metatarsal fracture which was treated non operatively. She has had physical therapy and was wearing a brace. The doctor concluded that at this stage having failed all other conservative forms of treatment, recommended consideration of surgical options: a right ankle arthroscopy and a lateral ankle stabilization. Patient would be non-weightbearing for two weeks and weightbearing in the boot for four weeks or until healed. The Patient was advised that it could take up to three months for her condition to significantly improve. The Petitioner opted for surgery for repair. The right ankle MRI did reveal a lateral collateral ligament injury that never healed. The quality of pain was described as aching, shooting and stabbing with average 4/10 worse 8/10 and that pain interfered with activities of daily living severely in the last week. The pain is worsened with standing, walking and lifting. Pain eases with sitting. The Patient completed physical therapy seven (7) months ago; and at the time of her discharge from PT, her condition did not progress positively and likely she would benefit from a multidisciplinary chronic pain rehab program.

The Petitioner had an MRI of the right ankle due to increasingly severe pain in her right foot and ankle. The MRI of the right ankle demonstrated intermediate grade ankle sprain with multiple ligament tears. The MRI results indicated a partial tear of the fibular attachments of the calcaneofibular ligament. The deep deltoid ligament demonstrates distorted architecture compatible with intermediate grade sprain/partial tearing. A small ankle joint effusion was present.

The EMG results of nerve testing of the left lower extremity noted an abnormal study, but it was nondiagnostic. No electrodiagnostic evidence of a large fiber polyneuropathy, peripheral nerve entrapment or lumbosacral radiculopathy to explain symptoms. Motor conduction studies responses are decreased distally in the left foot which may represent local trauma to nerves at the ankle or from intrinsic foot muscle wasting related to prior injury. The Petitioner's orthopedic doctor thought that it was due to a nerve block injury

during the 2017 left ankle surgery or possible her original injury may have cause it. The notes indicate that either way there may be no real possible solution to the condition. If condition persists, the doctor expressed that she may need a referral to pain management.

The Petitioner was seen for follow-up post-operatively on [redacted] 2019, at which time she was having mild pain to her ankle. Petitioner reported a fall while climbing stairs sustaining a hyper plantar flexion injury to her left toes and was having quite a bit of pain of the left toes. The Petitioner was instructed to be non-weightbearing in her tall pneumatic boot for two (2) weeks, then she can begin progressive weightbearing as tolerated in her boot. The left toes were to be iced and foot elevated. Notes anticipate change to an ASO brace in four (4) weeks.

On [redacted] 2019, the Petitioner was seen for follow up after right ankle surgery, having mild pain to ankle. Petitioner was wearing her boot and using crutches. Overall, Petitioner expressed she is slowly improving. On examination, there was some pain to surgical sight (mild). Good range of motion in the right ankle. Very stable with lateral stress. Doctor advised Petitioner should be full weightbearing in boot without crutches. She was cleared to go without the boot when at home, when ready. Doctor recommended that Petitioner stay in the boot outside of the home for the next two weeks. After that, she could be in regular athletic shoes and advance very slowly. Thera band and ankle strengthening exercise prescribed. Follow up in four (4) weeks to determine if formal physical therapy is needed.

On [redacted] 2019, the Petitioner was seen for follow-up. At the exam, Petitioner was having mild pain to right ankle. She was compliant with post-operative instructions. She overall feels like she is doing pretty well, wearing regular shoes and a cane for balance. The exam revealed some mild pain to surgical site. Mild amount of swelling of right ankle. Good range of motion and very stable with stress of the ankle joint. The doctor prescribed formal physical therapy and can advance her activity as tolerated and should be careful of what surface she in active on.

X-rays of both the right and left ankles were taken on [redacted] 2019. The left foot revealed distal tibia and fibula hardware in the medial malleolus and distal fibula with no fracture or arthritis. An x-ray of the right food notes Hallux valgus with prominence of the medial eminence of the first metatarsal head with no fracture.

At the hearing, the Petitioner reported that her right ankle is better and swells with upper leg instability. Lyrica has helped with shooting pains. She still walks very slowly and is ongoing in physical therapy as her right foot is numb from walking. She also described shooting pain in both feet.

The Petitioner was also seen on [redacted] 2107, for left knee pain which worsened acutely while walking in a walking boot for her left ankle fracture. Previous to her ankle fracture, the knee pain was minimal and irregular. Based upon x-rays of left knee, the

diagnosis was osteoarthritis of left knee with patellar malalignment syndrome of left knee. The recommendation was physical therapy for evaluation and treatment.

The Petitioner was seen for COPD and right foot pain. The Petitioner recently had a spirometry on [redacted], 2019, which showed severe COPD. Petitioner had reduced her smoking to a half pack per day. Petitioner's COPD is reported aggravated by mild activity and smoking, with associated symptoms including dyspnea with exertion, morning cough and wheezing. Petitioner was advised that it is imperative to get off cigarettes and was prescribed an inhaler to reduce the inflammation.

The Petitioner has been treated weekly, sometimes biweekly, for her mental health issues. A thorough review of the notes indicates that while still in treatment for depression, anxiety and post-traumatic stress disorder, her diagnosis for these impairments are rated as consistently moderate. The Petitioner was continuing to treat with her therapist, and the last medical record reviewed was for [redacted] 2019, at which time the diagnosis was PTSD and Major Depression Symptomatic. At this exam, the general observation by her therapist was that her mental status was generally normal; she was cooperative with average eye contact; mood was depressed and anxious; and speech clear; cognition was within normal limits; insight was partial and judgment within normal limits. None of the notes indicated any suicidal ideation/plan/intent and no auditory/visual hallucinations. Last hospitalization for mental illness was at age 28. Notes indicate Petitioner was able to focus. At a medication review on [redacted] 2019, the nurse practitioner's notes indicate mental status was unremarkable, mood euthymic, speech clear, thought process was logical, thought content was within normal limits as were insight and judgment.

As compared to a medication review one year prior, made on [redacted] 2018, at that time, Petitioner reported a chief complaint that she was just really irritable and had not been seen for treatment since [redacted] 2017. She reported no normal sleep schedule with difficulty falling asleep, not able to work and her ankles are messed up. She expressed feeling very defensive, appetite up and down with lack of interest attending to ADL's with depression rated 8/10. Mental status was irritable, but cooperative; mood was irritable; affect labile; speech rapid pressured, through process tangential with judgment and insight within normal limits. The impression was depression is heightened, reports low energy, irritability, trouble with focus/concentration and restlessness, with poor sleep and racing thoughts. Medication changes were made.

A medication review for [redacted] 2018, noted diagnosis of major depression. At the time, the Petitioner's living situation was no gas on for cooking and no hot water. The Petitioner had no side effects with prescribed drugs unless missing doses. The Petitioner was positive for ankle pain and using a cane. The Mental Status exam was normal with all areas observed within normal limits. The assessment was Depression, major, recurrent, moderate.

The Petitioner also had a biopsychosocial assessment on [redacted] 2018. The notes indicate that the Petitioner stated intake to the treatment program in [redacted] 2016 and reported moderate levels of depression and mild levels of anxiety including symptoms of irritability, sleep energy and appetite disturbances, low self-esteem and difficulty with concentration. At the time, the Petitioner reported history of abuse from previous relationships and struggling with an unhealthy relationship. The Petitioner reported an abusive childhood by her mother and step-father, both of whom struggled with alcoholism. Petitioner also reported attending church and history of physical abuse, domestic violence, verbal emotional abuse and sexual abuse and molestation as a child. The Petitioner reported flashbacks and hypervigilance with PTSD symptoms. The Petitioner had a suicide attempt as a teenager and has received treatment for mental illness since she was [redacted] years of age. At the time, the stressors reported were chronic pain and income. The mental status exam was essentially normal with mood anxious and angry. In summary, the evaluator notes that Petitioner will benefit from receiving integrated health care services provided by a physician, psychiatrist and health coach to manage her chronic conditions. The Petitioner has expressed her willingness to work on her problems and that her therapy is helping her. In a therapy session on [redacted] 2019, Petitioner examined leaving her current relationship as well as expressed wanting to go back to school, expressing interest in policy changes and clinical work. At this session, the mental status exam notes all categories were within normal limits with a diagnosis of depression, major, recurrent moderate.

At the hearing, the Petitioner testified that she had no anger issues, no thoughts of suicide and no visual or auditory hallucinations or seeing things. She stated her depression was not good due to not being able to get around and could not make her bed. Her short-term memory was better, and memory overall was fair; and she could follow simple instructions. She has contact with her children and not with friends. She reported her medications have been helping her, and her anxiety has diminished.

In light of the medical evidence presented listing 1.02 (major dysfunction of a joint, 12.04 Depressive, bipolar and related disorders, 12.06 Anxiety and obsessive compulsive disorders and 12.15 Trauma and stressor-related disorders. Because the medical evidence did not establish that Petitioner was unable to ambulate effectively as that term is defined in 1.00B 2b, the evidence does not support a listing under 1.02. Petitioner's medical record does not reflect marked restrictions of activities of daily living, marked difficulties in maintaining social functions, marked difficulties in maintain concentration, persistence or pace; repeated episodes of decompensation, each of extended duration; or a current history of one or more years' inability to function outside a highly supportive living arrangement. Therefore, Petitioner's condition does not meet a listing under 12.04, 12.06, or 12.15.

Because 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, a disability is not continuing under Step 1 of the analysis, and the analysis proceeds to Step 2.

Step 2

If the impairment(s) does not meet or equal a Listing under Step 1, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1). 20 CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). For purposes of determining whether medical improvement has occurred, the current medical severity of the impairment(s) present at the time of the most recent favorable medical decision that found the individual disabled, or continued to be disabled, is compared to the medical severity of that impairment(s) at the time of the favorable decision. 20 CFR 416.994(b)(1)(vii). If there is medical improvement, the analysis proceeds to Step 3, and if there is no medical improvement, the analysis proceeds to Step 4. 20 CFR 416.994(b)(5)(ii).

In this case, the initial approval by DDS disabled the Petitioner for a short term from [redacted] 2017, through [redacted] 2017, due to bilateral ankle injury with surgery of left ankle for an open reduction of her left ankle due to a left trimalleolar fracture. At the time of the surgery, the Petitioner had also suffered a fracture of the fifth metatarsal bone of the right foot. The right foot was treated non-surgically.

A review of the current evidence of the left foot surgery indicates that the fracture is well healed, and all the hardware and pins are intact; and the Petitioner can walk and weight bear on the left foot. Thus, medical improvement of that condition has been demonstrated. The current condition relative to nerve pain and nerve damage to the left foot was not evident at the time of the original favorable determination. The determination was not provided to the undersigned, but some medical records covering the time after left foot surgery were reviewed.

On [redacted] 2017, the Petitioner was seen for bilateral foot numbness, weakness, and swelling 5.5 months post-surgery of left ankle. Patient reported using a cane to walk. Petitioner reported continued swelling in the ankle when she is on her feet for more than an hour. Right small toe has receded into the foot. Symptoms were reported worse with pain 6/10 at the worst. The left ankle was well-healed and ankle, midfoot, forefoot and MTP were stable with tenderness. The right foot was noted for stability and tenderness. X-ray of left ankle noted good position of hardware and evidence of healing. X-ray of right foot noted good anatomic alignment and evidence of healing. Notes indicate no functional limitations of right foot. Overall, the doctor believed fractures have healed, and the hardware is stable with some degree of gastroc tightness as well as posterior tibial symptoms. Doctor recommended physical therapy as well as use of an orthotic and compression stocking.

On [redacted] 2017, Petitioner was walking with a cane; and her right ankle was worse. Notes indicate that the cane was necessary, and the Petitioner was to continue wearing a boot. At that time, the doctor qualified the Petitioner to be off work.

On [redacted] 2018, the Petitioner was seen for pain in right foot for lateral side pain. An x-ray noted mild fracture deformity at the fifth metatarsal neck which appears to be chronic, no acute fracture identified with no subluxation. No additional bone or joint abnormality is seen. Patient was seen for bilateral ankle numbness and tingling in the legs with additional numbness and tingling in toes radiating up to knees. Petitioner reports that her regional nerve block in left foot and ankle were numb for over four (4) days post-surgery. Biggest complaint on left side is sustained numbness on the bottom of her foot moving up towards her knee, which is uncomfortable when she is active. Her discomfort is rated 6/10. Biggest pain is on the outside of right ankle. Ankle gets stuck when she tries to move. Physical therapy has not helped. Discomfort on right rated 6/10. Right foot does not have that much pain. A referral to podiatry was made for evaluation and treatment. At the examination, the notes indicate pain to palpation to left ankle described as relatively mild with no gross instability noted. Significant pain to the anterolateral right ankle. Difficulty to test stability secondary to guarding and pain. X-rays of right ankle were normal. Shortly thereafter, the Petitioner underwent surgery of right ankle in [redacted] 2019 after an MRI of the ankle indicated torn ligaments.

The medical evidence presented with the review showed ongoing treatment for bilateral ankle fractures, with the left more severe and full healing of the left ankle and all hardware intact. As regards the right ankle, the Petitioner has continued to have treatment and ultimately had surgery. Medical evidence showed that her fracture was healed; however, two years post-injury, it was determined multiple ligaments ultimately were discovered to have not healed.

As regards the Petitioner's mental impairments, the treatment notes indicate medical improvements based upon the evidence outlined in Step 1; as she continues to treat, her symptoms have lessened; and her diagnosis for depression and anxiety are moderate; and her last PTSD diagnosis was that she was symptomatic due to an episode of flashback.

Therefore, medical improvement is found; and the analysis continues to Step 3.

Step 3

At Step 3, it must be determined whether the medical improvement is related to the individual's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv); *i.e.* there was an increase in the individual's residual function capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. Medical improvement is related to your ability to work if there has been a decrease in the severity as defined in paragraph (b)(1) (i) of the impairments present at the time of the most recent favorable medical decision but no increase in your functional capacity to do basic work activities as defined in para (b)(1) (iv). In this case, the evidence supports a medical improvement that is related to Petitioner's ability to do work as there is a decrease in the severity of the impairments at the time of the most recent favorable medical decision and an increase in functional capacity to do basic work activities as set forth in paragraph 20 CFR 994 (b) (1) (iv). Notwithstanding

medical improvement, an individual still must be able to engage in substantial gainful activity. Clearly, in this case, at the time the Petitioner was approved, she was post-bilateral ankle fractures and a surgery on left ankle and recovery therefrom. The Petitioner's residual functional capacity as determined at that time was not provided to the undersigned; however, the Petitioner was non-ambulatory for a time and then limited in her ability to walk and thus, was more likely than not determined to be less than sedentary. The medical disability as found by DDS was a short duration from [redacted] 2017, through [redacted] 2017, (six-month period). At present, the Petitioner's ability to participate in basic work activities has increased as she is now fully ambulatory, able to walk without crutches post-surgery and a cane due to right ankle pain. Here the medical improvement is related to the ability to do work as it affects the Petitioner's ability to now walk and stand. Because the medical improvement is related to Petitioner's ability to do work, the analysis proceeds to Step 5. 20 CFR 416.994 9 (b) (5) (iii).

Step 5

At Step 5, because the Petitioner's medical improvement is related to her ability to do work, all of Petitioner's current impairments in combination are considered to determine whether they are severe in light of 20 CFR 416.921. An individual's impairments are not severe only if, when considered in combination, they 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 Petitioner testified at the hearing that she could stand about 30 minutes to an hour and then her feet hurt; her left foot is generally numb up to the knee and tingles. She also has swelling in her ankles. She further testified that she could sit at least three hours. She could walk approximately one block, could not perform a squat due to her balance issues resulting from numbness in her feet, particularly on the left. The Petitioner could bend at the waist but was required to hang on to something. She could shower holding on to the shower wall and dress herself sitting down, and tie her shoes, and could not touch her toes. She testified that she consistently has sore ankles and experiences shooting pain in the range of 4-6 out of 10 bilaterally. She is left-handed and has no problems using her hands. As regards her legs and feet, the Petitioner testified that she has persistent pain in her ankles and constant numbness and pin prick like sensations, sometimes at level 10/10 and difficulties with balance at times.

As regards Petitioner's mental impairments, she has consistently treated for a combination of PTSD, Depression and Anxiety and has a mental health history that would warrant her current diagnosis. Medications have helped her anxiety symptoms, and she has moderate depression symptoms.

The evidence presented was sufficient to establish that Petitioner's impairments have more than a minimal effect on her ability to perform basic work activities. Therefore, the impairments are severe, and the analysis proceeds to Step 6.

Step 6

Under Step 6, the individual's RFC based on all current impairments is assessed to determine whether the individual can still do work done in the past. If so, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

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 (involving 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), light (involving lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds, or a good deal of walking or standing, or sitting most of the time with some pushing and pulling of arm or leg controls), medium (involving lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds), heavy (involving lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds), and very heavy (involving 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; 20 CFR 416.969a(a).

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).

As previously noted, in this case Petitioner has both exertional and non-exertional limitations.

The Petitioner testified at the hearing that she could stand about 30 minutes to an hour and then her feet hurt, and she would experience swelling in her ankles. She further testified that she could sit at least three hours. She could walk approximately one block, could not perform a squat due to her balance issues resulting from in numbness in her feet particularly on the left. The Petitioner could bend at the waist but was required to hang on to something. She could shower and dress herself, and tie her shoes, and

could not touch her toes. She testified that she consistently has sore ankles and experiences shooting pain in the range of 4-6 out of 10 bilaterally. She is left handed and has no problems using her hands. As regards her legs and feet the Petitioner testified that she has persistent pain in her ankles and constant numbness and pin prick like sensations, sometimes at level 10/10.

As regards Petitioner's mental impairments, she has consistently treated for a combination of PTSD, Depression and Anxiety and has a mental health history that would warrant her current diagnosis. Medications have helped her anxiety symptoms, and she has moderate depression symptoms. Her PTSD symptoms of flashbacks are infrequently noted.

Based upon the evidence on the record, including Petitioner's testimony, it is found that the improvement in Petitioner's condition has resulted in an exertional RFC to perform sedentary work based upon her exertional limitations and a non-exertional RFC that allows her to perform simple tasks on a sustained basis due to her moderate non exertional limitations.

Petitioner reported past employment as a manager of a homeless shelter, a manager of a Women's shelter, manager of a restaurant, a bartender, and a restaurant server.

Based on her description of the jobs, Petitioner's employment as a restaurant manager, bartender and dining room, kitchen supervisor, and restaurant server involved standing and walking substantially all of the day and lifting boxes of food, liquor and stocking stations and the bar area daily with supplies weighing between 10 and 25 pounds on a regular basis and up to 50 pounds at most, required light physical exertion; and her past employment as a women's shelter manager involved doing laundry, climbing stairs, vacuuming and overall cleaning as well as transporting and stocking supplies daily, which involved standing and walking at least 6 hours of the day and lifting frequently 10-20 pounds required light physical exertion. Based on her current exertional RFC and non-exertional RFC, Petitioner is **unable** to do work done in the past. Accordingly, Petitioner **is** disabled at Step 6, and the analysis continues to Step 7.

Step 7

In Step 7, an assessment of an individual's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.994(5)(B)(vii). If the individual can adjust to other work, then the disability has ended. *Id.* If the individual cannot adjust to other work, then the disability continues. *Id.*

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 non-exertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was [redacted] years old at the time of review decision; and at the time of hearing, placing her age within the closely approaching advanced age category for purposes of Appendix 2. She completed high school and two years of college with no degree earned. The skills from her past employment, which were tied to light physical exertion, are **not** transferable as they relate solely to performing her work on her feet all day working in the restaurant industry and managing a kitchen, and not supervising or working at a desk but rather hands on activities that required her to be on her feet addressing multiple situations. As discussed above, Petitioner maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities. In light of these factors, the Medical-Vocational Guidelines, 20 CFR 416.967(a) Rule 201.14, results in a disability finding based on Petitioner's exertional RFC. Accordingly, Petitioner's disability is found to continue at Step 7.

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 continues to be 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. The Department shall reinstate the Petitioner's SDA case effective July 1, 2019;

2. Issue supplements to Petitioner for any lost SDA benefits that she was entitled to receive from July 1, 2019, ongoing if otherwise eligible and qualified in accordance with Department policy;

3. Notify Petitioner of its decision in writing; and

4. Review Petitioner's continued SDA eligibility in September 2020 in accordance with Department policy.

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 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

DHHS (via electronic mail)

Kimberly Kornoelje
MDHHS-Kent-Hearings

BSC3
L Karadsheh

Petitioner (via first class mail)

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