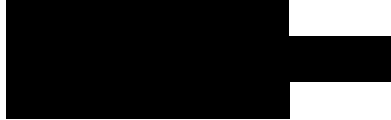




GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR



Date Mailed: November 8, 2019
MOAHR Docket No.: 19-008688
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 September 5, 2019, from Detroit, Michigan. Petitioner appeared on her own behalf. Participants on behalf of the Department of Human Services (Department) included Richkelle Curney, Hearing Facilitator.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. Records from Henry Ford Health System were received and marked into evidence as Exhibit 1. The record closed on October 10, 2019, and the matter is now before the undersigned for a final determination based 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 [REDACTED], 2018, Petitioner submitted an application seeking cash assistance on the basis of a disability.
2. On April 17, 2019, the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 352-358.)

3. On June 10, 2019, the Department sent Petitioner a Notice of Case Action denying the application based on DDS/MRT's finding of no disability (Exhibit A, pp. 372-373.)
4. On July 29, 2019, the Department received Petitioner's timely written request for hearing (Exhibit A, pp. 3-7.)
5. Petitioner alleged disabling impairment due to plantar fasciitis, heel spurs, tarsal tunnel, neuropathy, diabetes, liver disease and bilateral sciatica.
6. On the date of the hearing, Petitioner was [REDACTED] years old with a [REDACTED], 1970, birth date; she is 5' 0" in height and weighs about 233 pounds.
7. Petitioner completed the 10th grade and obtained her GED.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as custodian and a caregiver.
10. Petitioner has a pending disability claim with the Social Security Administration (SSA).

CONCLUSIONS OF LAW

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

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

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least 90 days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five-step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration

that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

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

Step 1

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

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

Step 2

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking,

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

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

The medical evidence presented at the hearing, *and in response to the interim order*, was reviewed and is summarized below.

On [REDACTED], 2018, Petitioner was seen at [REDACTED] with complaints of hand and feet pains. The record stated that by the end of the workday, Petitioner feels as if she has been hit by a truck. EMG revealed L tarsal tunnel syndrome. It was noted that Petitioner has chronic carpal tunnel syndrome. Petitioner's significant other reported that Petitioner is forgetful. Petitioner was diagnosed with Dyslipidemia; Type 2 Diabetes; bilateral carpal tunnel syndrome; morbid obesity with body mass index of 40.0-49.9; and tarsal tunnel syndrome of left side. (Exhibit A, pp. 239-241.)

On [REDACTED], 2018, Petitioner was seen by [REDACTED] with a complaint of painful feet and ankles. Petitioner stated that there have been no injuries and she denied any other complaints. (Exhibit A, p. 292.)

On [REDACTED], 2018, Petitioner underwent an esophagogastroduodenoscopy, flexible, transoral; biopsy. The results were to be provided at a later date. (Exhibit A, p. 297.)

On [REDACTED], 2018, Petitioner was seen by [REDACTED] with a complaint of painful feet and ankles. Petitioner stated that there have been no injuries; and she denied any other complaints. (Exhibit A, p. 291.)

On [REDACTED], 2018, Petitioner was seen at [REDACTED] with a chief complaint of abdominal pain. Petitioner stated that she had been experiencing the pain for six days. Petitioner also began having chest pains six days prior to the visit. (Exhibit A, pp. 245-248.)

On [REDACTED], 2018, a gastroenterology outpatient progress note was entered by [REDACTED] which indicated that Petitioner had an EGD recently which showed mild gastritis biopsies were negative for H. pylori; no ulcers were seen. Petitioner's lab work showed elevated liver enzymes mostly ALT and alkaline phosphatase. Petitioner had a CT without contrast which showed some liver steatosis. (Exhibit A, p. 301.)

On [REDACTED], 2018, Petitioner underwent a colonoscopy. The impression indicated a normal colon; normal terminal ileum; and small hemorrhoids. (Exhibit A, pp. 299-300).

On [REDACTED], 2018, Petitioner was seen by [REDACTED] with a complaint of painful feet and ankles. Petitioner stated that there have been no injuries, and she denied any other complaints. (Exhibit A, p. 290.)

On [REDACTED], 2018, Petitioner was seen at [REDACTED] with complaints of chest pain, headache and back pain. Petitioner provided a lab specimen, and x-rays were taken. Troponins, negative; EKG was unchanged from previous studies and her chest x-rays were unremarkable. Petitioner was given Toradol. (Exhibit A, pp. 175-179.)

On J [REDACTED], 2018, Petitioner was seen at [REDACTED] for a follow-up from an emergency room visit on [REDACTED], 2018, for chest pain, radiating to the back, and tightness in her neck for approximately one month. Petitioner did not have any chest pain at the time of the visit. (Exhibit A, pp. 252-255.)

On [REDACTED], 2018, Physician Assistant [REDACTED] indicated that Petitioner was unable to stand for extended periods of time due to a pinched nerve in her back which goes into her legs; plantar fasciitis; and spurs in her feet. It was noted that Petitioner's condition may also cause her to need frequent breaks. (Exhibit A, p. 149.)

On [REDACTED], 2018, a gastroenterology outpatient progress note was entered by Dr. Alrayes which indicated that Petitioner had an EGD recently which showed mild gastritis biopsies were negative for H. pylori; no ulcers were seen. Petitioner's lab work showed elevated liver enzymes mostly ALT and alkaline phosphatase. Petitioner had a CT and US without contrast which showed some liver steatosis. (Exhibit A, p. 309.)

On [REDACTED], 2018, Petitioner was seen at [REDACTED] with a complaint of back pain. Petitioner noted her back pain as moderate. The diagnosis included acute chronic low back pain, radiates with some tingling but no weakness. There was no spinal tenderness on examination. Petitioner had normal strength and sensation. It was noted to be likely radiculopathy. (Exhibit A, pp. 172-174).

On [REDACTED], 2018, Petitioner was seen at [REDACTED] relating to her Type 2 Diabetes; obesity; and chronic midline low back pain with bilateral sciatica. An aortic ultrasound was ordered. (Exhibit A, pp. 260-263.) Petitioner received a referral for outpatient therapy for her chronic midline low back pain with bilateral sciatica. (Exhibit A, p. 350.)

On [REDACTED], 2018, Petitioner was seen by [REDACTED] with a complaint of painful feet and ankles. Petitioner stated that there have been no injuries, and she denied any other complaints. Petitioner indicated that she was still experiencing pain and was told that she has sciatica. (Exhibit A, p. 289.) [REDACTED] also completed a Medical Statement in which he indicated that Petitioner could work part time as tolerated. (Exhibit A, p. 342.)

On [REDACTED], 2018, Petitioner underwent a liver biopsy. The final results indicated Portal granulomatous inflammation with bile duct damage most consistent. (Exhibit A, pp. 146-149.)

On [REDACTED], 2018, Petitioner was seen by [REDACTED] for a follow-up visit relating to her chronic elevation in liver enzymes. Laboratory testing showed positive mitochondrial antibody. Liver biopsy was obtained and was consistent with primary biliary cholangitis. Petitioner was given medication. (Exhibit A, p. 313.)

On [REDACTED], 2018, Petitioner was seen by [REDACTED] with a complaint of painful feet and ankles. Petitioner indicated that she has not had any injuries and denied any other complaints. (Exhibit A, p. 288.)

On [REDACTED], 2018, Petitioner was seen at [REDACTED] with a complaint of elevated liver enzymes; pain in both feet; and chronic midline low back pain with bilateral sciatica. Petitioner stated that her first steps in the morning feel stiff, but numbness/tingling is throughout the day. (Exhibit A, pp. 264-267.)

On [REDACTED], 2018, Petitioner was seen by [REDACTED] with a complaint of painful feet. The record indicated that on March 5, 2018, x-rays revealed no fractures or dislocations with heel spurs. (Exhibit A, p. 286.)

On [REDACTED], 2018, Petitioner was seen at [REDACTED] with concerns of pain to her left heel. Petitioner reported that the pain had been ongoing and worsening. Pain is worse at the start of the day. Petitioner reported that she had an EMG performed but it did not show signs of neuropathy. The assessment indicated plantar fasciitis, tarsal tunnel syndrome on her left side and Type 2 Diabetes. Petitioner was instructed not to walk barefoot. (Exhibit 1, pp. 9-15.)

On [REDACTED], 2018, Petitioner was seen at [REDACTED] with concerns of pain to her left heel. Petitioner reported that she had an EMG performed, but it did not show signs of neuropathy. The assessment indicated plantar fasciitis,

tarsal tunnel syndrome on her left side and Type 2 Diabetes. Petitioner was instructed not to walk barefoot. (Exhibit A, pp. 167-169.)

On [REDACTED], 2018, Petitioner was given ultrasound imaging of the right upper quadrant/liver of her abdomen. The findings indicated that the liver demonstrated a simple appearing syst in the right hepatic lobe measure 1.8 x 1.5 x 1.3 cm. Visualized portions demonstrated diffused increased echogenicity suggesting hepatocellular disease or hepatic steatosis. (Exhibit A, pp. 278-279.)

On [REDACTED], 2018, Petitioner was seen at [REDACTED] for follow-up treatment. Petitioner stated that her foot pain is worse in the morning and at the end of the day. (Exhibit A, pp. 272-277.)

On [REDACTED], 2018, Petitioner was seen by [REDACTED] for a follow-up visit relating to her chronic elevation in liver enzymes. Laboratory testing showed positive mitochondrial antibody. Liver biopsy was obtained and was consisted with primary biliary cholangitis. (Exhibit A, p. 321.)

On [REDACTED], 2019, Petitioner was seen at [REDACTED] for follow-up after having a cortisone injection for plantar fasciitis on her left foot. It was noted that Petitioner had ongoing neuropathy symptoms and possible tarsal tunnel. The assessment indicated that Petitioner had plantar fasciitis, ambulatory with a referral to physical therapy; tarsal tunnel syndrome on her left side with a referral to physical therapy; and type 2 Diabetes mellitus. Petitioner was instructed to refrain from walking barefoot. (Exhibit A, pp. 164-166; Exhibit 1, pp. 17-25.)

On [REDACTED], 2019, Petitioner had an internal medicine examination performed by [REDACTED]. The Medical Source Statement indicated that Petitioner showed moderate to marked limitations with climbing stairs, bending, lifting, kneeling, sitting, standing, walking, carrying and reaching for objects. (Exhibit A, pp. 155-162.)

On [REDACTED], 2019, Petitioner was seen at [REDACTED] relating to ongoing history of peripheral neuropathy bilateral feet as well as tarsal tunnel syndrome to her left foot. Petitioner reported a drastic improvement in her discomfort but still has some at times. Petitioner stated that her last plantar fascial injection helped for a few weeks, and she has been doing stretching exercises. The assessment was tarsal tunnel syndrome of left side; plantar fasciitis; and Type 2 Diabetes. (Exhibit 1, pp. 27-31.)

On [REDACTED], 2019, Petitioner was seen at [REDACTED] relating to a history of peripheral neuropathy bilateral feet. Petitioner reported that she has had some relief on Gabapentin but still had ongoing pain and instability. Petitioner reported gaining weight and having limitations in her activity because of ongoing neuropathy. The U/S guided tarsal tunnel injection performed one-month prior gave Petitioner very limited relief, and she has ongoing pain. Pain was noted upon palpitation to the plantar aspect moderate in nature of the left heel at the medial tuberosity at the origin of the plantar facia. No pain noted with medial and lateral compression of the calcaneal body.

No pain on palpitation noted across course of posterior tibial tendon. Decreased ankle joint dorsiflexion which increased with knee flexion. There was no remarkable finding noted with the MRI. The assessment indicated tarsal tunnel syndrome of left side; Type 2 Diabetes; and an ambulatory referral to physical therapy with ankle brace. (Exhibit 1, pp. 36-37.)

On [REDACTED], 2019, Petitioner was seen at [REDACTED] relating to a history of peripheral neuropathy bilateral feet. Petitioner reported that physical therapy had been very helpful but still had ongoing issues. Petitioner reported having issues walking for long periods and felt unstable at time but indicated that physical therapy has helped with that as well. Pain was noted upon palpitation to the plantar aspect moderate in nature of the left heel at the medial tuberosity at the origin of the plantar fascia. No pain noted with medial and lateral compression of the calcaneal body. No pain on palpitation noted across course of posterior tibial tendon. Decreased ankle joint dorsiflexion which increased with knee flexion. There was no remarkable finding noted with the MRI. The assessment indicated Type 2 Diabetes. (Exhibit 1, pp. 36-37.)

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

Step 3

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

Based on the medical evidence presented in this case, listings 1.02 (dysfunction – major joints); 1.04 (spine disorders); and 5.05 (chronic liver disease) were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3; and the analysis continues to Step 4.

Residual Functional Capacity

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

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, 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), to which 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 both exertional and nonexertional limitations due to her medical condition. Petitioner testified that she could dress/undress herself; bathe/shower unassisted; use the bathroom unassisted; eat unassisted; prepare meals; reach and climb stairs. Petitioner she could not squat or bend at the waist due to back and hip pain; could not stand for more than 20 minutes without experiencing pain; could not sit for more than 30 minutes without experiencing pain; and could not lift heavy objects. Petitioner also indicated that she could not kneel without the needing assistance to get up.

Additionally, Petitioner testified that she has blurred vision; cannot concentrate or complete tasks because she is forgetful. Petitioner indicated that she can follow instructions and works well with others.

The medical evidence provided did show that Petitioner has plantar fasciitis and left tarsal tunnel syndrome and elevated liver enzymes. However, there was no medical evidence provided that revealed any marked limitations on Petitioner's physical ability to stand, sit, or lift. The Medical Statement completed by ██████████ in August 2018, one month prior to Petitioner's application, indicated that she could work part time as tolerated. There was no end organ damage noted in the medical records provided. The objective testing did not reveal any fractures or dislocations with heel spurs.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

With respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(b). Based on the medical record presented, as well as Petitioner's testimony, Petitioner has mild to moderate limitations on his 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 4

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was 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 custodian and a caregiver. Both positions required a considerable amount of bending pushing, pulling and kneeling. In addition, Petitioner's custodial work at [REDACTED] required her to lift less than 10 pounds. Petitioner's work as a custodian with [REDACTED], required light physical exertion.

Based on the RFC analysis above, Petitioner's exertional RFC limits her to no more than sedentary work activities. As such, Petitioner is incapable of performing past relevant work. Petitioner does not have any limitations in her mental capacity to perform basic work activities. 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).


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 obtained her GED and has a history of work experience as a custodian and caregiver. 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. Based solely on her exertional RFC, the Medical-Vocational Guidelines result in a finding that Petitioner is not disabled.

DECISION AND ORDER

NOT DISABLED: 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 **not disabled** for purposes of the SDA benefit program.

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

JAM/jf



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

DHHS
(via electronic mail)

Tara Roland 82-17
MDHHS-Wayne-17-Hearings
BSC4
L Karadsheh

Petitioner
(via first class mail)

