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GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: July 8, 2022  
MOAHR Docket No.: 22-001759  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

**HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250. After due notice, a telephone hearing was held on May 18, 2022, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Stephanie Pearson, Eligibility Specialist and Jennifer Meyers, Eligibility Specialist.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. The Department and Petitioner submitted additional records which were received, marked, and admitted into evidence as Exhibit B, pp. 1-1,736 and Exhibit 1, pp. 1-40 respectively. The record was subsequently closed on June 20, 2022, and the matter is now before the undersigned for a final determination on the evidence presented.

**ISSUE**

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

**FINDINGS OF FACT**

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

1. Following a Hearing Decision issued by Administrative Law Judge (ALJ) Aaron McClintic on October 30, 2019, Petitioner was determined disabled and approved for SDA benefits in connection with a March 7, 2019, application date. (See Hearing Decision in MOAHR Docket No. 19-009084)
2. In connection with a redetermination and as ordered by ALJ McClintic, Petitioner's eligibility for SDA was reviewed in February 2021.

3. On or around [REDACTED] 2021, Petitioner's SDA case was closed due to a failure to return requested information. Petitioner last received SDA benefits in April 2021.
4. On or around [REDACTED] 2021, Petitioner reapplied for SDA benefits with the Department.
5. On or around March 3, 2022, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program. (Exhibit A, pp. 4-24)
6. On April 11, 2022, the Department sent Petitioner a Notice of Case Action denying her SDA application based on DDS' finding that she was not disabled. (Exhibit A, pp. 31-34)
7. On [REDACTED] 2022, Petitioner submitted a written Request for Hearing disputing the Department's denial of her SDA application. (Exhibit A, pp. 30)
8. Petitioner alleged disabling impairments due to pancreatic cancer, degenerative joint disease, knee and back pain, chronic body pain, neuropathy, severe osteo and rheumatoid arthritis, high blood pressure, diabetes, trouble breathing, gout, swelling, chronic body pain, GERD, irritable bowel syndrome, breathing issues requiring a nebulizer, depression, anxiety and bipolar disorder. (Exhibit B, pp. 5-6)
9. As of the hearing date, Petitioner was [REDACTED] years old with a [REDACTED], date of birth; she was [REDACTED] and weighed [REDACTED] pounds.
10. Petitioner completed 11<sup>th</sup> grade and obtained a GED and has reported employment history of work as a housekeeper. Petitioner has reportedly not been employed since October 2021 but reported that during the period between May and October 2021 she was on medical leave. Prior to this time, Petitioner had been deemed disabled and receiving SDA benefits.
11. Petitioner has a pending disability claim with the Social Security Administration (SSA).

### **CONCLUSIONS OF LAW**

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

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

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled at a particular step, the next step is required. 20 CFR 416.920(a)(4).

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

### **Step One**

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

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

## **Step Two**

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

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

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

The medical evidence presented at the hearing and in response to the Interim Order was thoroughly reviewed and is briefly summarized below.

In October 2021, Petitioner was evaluated at the Beaumont Center for Hematology and Oncology. Records show that Petitioner was diagnosed and treated for pancreatic cancer in 2009 and underwent Whipple surgery. She presented for treatment in 2021 with complains of weight loss, nausea, and generalized itching. Petitioner's past medical history shows diagnosis of arthritis in hands and legs, chronic pain, diabetes, GERD,

history of seizures, neuropathy, hypertension, peripheral vascular disease (PVD), and that she has been using a cane and walker to assist with ambulation. A CT scan of Petitioner's abdomen and pelvis was completed, and results were suggestive of mild liver steatosis. (Exhibit B, pp. 12-110)

Records from Petitioner's mental health treatment with Team Mental Health were presented and reviewed. Progress notes from her [REDACTED] 2022, psychotherapy session indicate that in [REDACTED] 2021, Petitioner reported having racing thoughts and lack of focus. She reported feeling helpless and hopeless, that she hears voices, and has mood swings. During the [REDACTED] 2022, treatment session, Petitioner reported that she has been feeling alone, that she shuts down and feels isolated. She reported her health is declining, that she does not have any assistance, that she feels like a failure as a person and as a mother. Petitioner indicated that she has been seeing several doctors and recently found out that her neck has gotten worse within the last two years, with a concern for cancer. Petitioner's patient health questionnaire indicated that she feels down, depressed, or hopeless, has trouble falling or staying asleep, has little energy, poor appetite, trouble concentrating, trouble moving and restlessness more than half the days or nearly every day each week. Her PHQ score was consistent with severe depression. In [REDACTED] 2022, Petitioner continued reporting that she feels very depressed about her life, that her anxiety is extremely high, that she recently had Covid and is very irritated about the world. Treatment records show that Petitioner had diagnosis of major depressive disorder recurrent severe with psychotic features, generalized anxiety disorder, and other physical health conditions. As of [REDACTED] 2021, Petitioner's GAF score was [REDACTED]. Petitioner's prescribed medications for her mental health treatment were noted to be buspirone, Cymbalta, Klonopin, Seroquel, and Wellbutrin. During her [REDACTED] 2021, psychotherapy session, Petitioner reported that her health is a major concern and that sometimes she feels like she can't go on with it. She reported being in pain, limping, using a walker, and having bad pain all over her body. Petitioner reported feeling like this since 2009 and that she feels like a burden. Petitioner reported suffering from survivor's guilt as her mother passed away when she was 10 years old. She indicated that her doctor took her off of work as it was not good for her health. The previous week, Petitioner reported suffering from crying spells and outbursts, as well as side effects from vaccination. During a [REDACTED] 2021, psychiatric evaluation, it was indicated that Petitioner has depression, anxiety, trouble with concentration, mood disorder, pain and hurt, trouble sleeping and eating. (Exhibit B, pp. 126-236)

Petitioner presented a letter from her psychiatrist with Team Mental Health authored on [REDACTED] 2019, which indicates that Petitioner has been a patient since March 2019 with a current diagnosis of major depressive disorder severe with psychotic features. (Exhibit 1, p.16)

Petitioner's receives treatment from her primary care physician (PCP) [REDACTED] and extensive records were presented documenting her treatment from 2017 through 2022. Petitioner's PCP completed a Medical Source Statement in [REDACTED] 2021, which indicates that her primary conditions and symptoms for which she receives

treatment are hypertension, GERD, diabetes, gout, COPD, pancreatic cancer, degenerative joint disease, neuropathy, vitamin D deficiency, depression, anxiety, PVD, headaches, back pain, rheumatoid arthritis, and carpal tunnel syndrome. The doctor indicated that if Petitioner were employed, she would miss more than five days per of work per month due to her conditions and that she would be expected to be off task due to inability to pay attention and concentrate more than 25% of an eight-hour workday because of severe anxiety and depression, as well as severe degenerative joint disease. Petitioner's physician indicated that Petitioner was not exaggerating her symptoms and that during an eight-hour workday, Petitioner would be able to sit no longer than 15 minutes, stand no longer than 15 minutes, and walk no longer than five minutes. It was noted that Petitioner would need to change positions for comfort every 15 minutes due to severe back pain and neuropathy and rheumatoid arthritis. The doctor indicated that Petitioner did not have the ability to initiate, sustain, and complete fine motor movements and gross motor movements with both upper extremities due to neuropathy and toy arthritis. It was also indicated that Petitioner could not lift and/or carry less than 10 pounds any portion of an eight-hour workday and that she was unable to perform functions such as handling and/or fingering, reaching, stooping, kneeling, crouching, and further that she would require the ability to lie down during an eight-hour workday. It was noted that Petitioner required the use of a walker and two canes to assist with ambulation, and that she wore a back brace and a carpal tunnel syndrome brace for her hands. The medical source statement also indicates that Petitioner suffers from frequent poor memory, sleep disturbance, appetite disturbance with weight change, social withdrawal or isolation, emotional lability, blunt, flat, or inappropriate affect, significant cognitive decline from a prior level of functioning, difficulty thinking and concentrating, anhedonia or pervasive loss of interest, intrusive recollections of a traumatic experience, persistent irrational fears, generalized persistent anxiety, and feelings of guilt or worthlessness. The doctor concluded that Petitioner suffered from extreme limitations in her activities of daily living, dealing with normal work stress, reporting to work on time every day, difficulties working in coordination with others, difficulties maintaining social functioning, deficiencies of concentration, persistence, or pace resulting in failure to complete tasks in a timely manner and marketed limitations in her ability to follow basic instructions and staying on task. The doctor indicated that she has been treating Petitioner since 2009 and the limitations, symptoms, and restrictions described have been evident in Petitioner since 2009. (Exhibit B, pp. 276 – 278)

A CT scan of Petitioner's lumbar cervical spine completed in February 2019 showed degenerative disc disease at C3 – C4 with broad-based central to right paracentral protrusion. Degenerative disc disease with moderate to severe bilateral facet arthropathy at L4 – L5 was also found, as was loss of disc height at L3 – L4 and L4 – L5.

Petitioner presented evidence that in May 2022, she was diagnosed with osteoarthritis in her left knee and prescribed physical therapy treatment. (Exhibit 1)

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 1.02 (major dysfunction of a joint(s) due to any cause), 1.04 (disorders of the spine), 9.00 (endocrine disorders), 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders), and 13.00 (cancer) were considered. A thorough review of the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

### **Residual Functional Capacity**

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

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

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only

the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. Id.; 20 CFR 416.920a(c)(2). 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 exertional and nonexertional limitations due to her impairments. Petitioner testified that she has to wear bilateral braces on her hands due



to arthritis and hand swelling. She testified that she wears a back brace daily. Petitioner testified that she has swelling and pain all over her body, that she underwent a Whipple procedure in 2009 after a pancreatic cancer diagnosis and that all her bowels and abdominal organs have been reconstructed. She testified that she has no cartilage in her knees, severe arthritis, and because she no longer has a pancreas, developed diabetes. Petitioner testified that she is been diagnosed with an enlarged thyroid and that in 2019 she had surgery on both of her feet. This is documented in the medical records reviewed. Petitioner indicated that she has no energy, that her body has developed enlarged lymph nodes that require constant evaluation. Petitioner testified that she takes 29 medications, and that as a result, she suffers from side effects. Petitioner testified that since 2009 she has required the use of a cane and walker daily to assist with ambulation, and that she is only able to walk ½ of a block before needing to stop. Petitioner testified that she is unable to grip or grasp items with her hands because of arthritis and joint pain, and that she can sit for no longer than five minutes because of the degenerative disc disease in her back and neck. Petitioner testified that she has to rotate between sitting, standing, and laying down and that she suffers from disc disease in her cervical spine as well. Petitioner testified that she can lift no more than 5 pounds and that she is unable to stand longer than 15 minutes. Petitioner testified that she is unable to bend or squat and that she cannot climb stairs. While Petitioner testified that she lives alone, she requires the assistance of a caretaker approved by the adult home help program throughout the day to help with bathing and dressing. Petitioner testified that she is unable to bend to get herself dressed and requires assistance. She reported that the caretaker comes to her home five days per week for eight hours daily and performs all household chores such as cooking, cleaning, and laundry because Petitioner is unable to. Petitioner reported that she does not drive and that her caretaker completes all her shopping.

Petitioner also testified that she has been receiving treatment for depression, anxiety, and bipolar disorder through Team Mental Health and that she has severe anxiety and depression due to her constant health issues. Petitioner reported lack of sleep due to pain, a feeling of electric shock in her body due to her nerve damage, that she has no control over her bowels and that she has to wear diapers because of her reconstructed bowel. Petitioner testified that she can concentrate for about five minutes and has trouble with memory and lack of focus. Petitioner testified that she is easily irritated and agitated, and has thoughts of hurting herself, most recently in the month prior to the hearing. She suffers from visual and auditory hallucinations and indicated that spirits speak to her.

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

The evidence presented is considered to determine the consistency of Petitioner's statements regarding the intensity, persistence and limiting effects of her symptoms.

Based on a thorough review of Petitioner's medical record and in consideration of the reports and records presented from Petitioner's treating physicians, with respect to Petitioner's exertional limitations, it is found, based on a review of the entire record, that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a). However, Petitioner is unable to perform the full range of sedentary work thus, the occupational base is eroded by her additional limitations or restrictions. SSR 96-9p.

Based on the medical records presented, as well as Petitioner's testimony, Petitioner has moderate limitations on her non-exertional ability to perform basic work activities, with respect to performing manipulative or postural functions of some work such as reaching, handling, bending, climbing, crawling or stooping. Additionally, records indicate that Petitioner suffers from daily symptoms associated with major depressive disorder and anxiety. The records from Petitioner's mental health treatment are consistent with her testimony. Therefore, it is found that Petitioner has moderate to marked limitations in her ability to understand, remember, or apply information; in her ability to interact with others; in her ability to concentrate, persist, or maintain pace and in her ability to adapt or manage oneself.

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 temporary work as a housekeeper. Upon review, Petitioner's past employment is characterized as requiring light exertion. Based on the RFC analysis above, Petitioner's exertional RFC limits her to sedentary work activities. As such, Petitioner is incapable of performing past relevant work. Because Petitioner is unable to perform past relevant work, she cannot be found disabled, or not disabled, at Step 4, and the assessment continues to Step 5.

### **Step 5**

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

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

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

However, when a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was ■ years old at the time of application and at the time of hearing, and thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. She obtained a GED and has unskilled work history. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities, however, as referenced above, the occupational base is eroded by additional limitations or restrictions. Thus, based solely on her exertional RFC, the Medical-Vocational Guidelines, result in a finding that Petitioner is not disabled.

However, as referenced above, Petitioner also has nonexertional impairments imposing additional limitations. As a result, and based on the evidence presented, she has a nonexertional RFC imposing moderate limitations on her non-exertional ability to perform basic work activities, with respect to performing manipulative or postural functions of some work such as reaching, handling, bending, climbing, crawling or stooping and moderate to marked limitations in her ability to understand, remember, or apply information; in her ability to interact with others; in her ability to concentrate, persist, or maintain pace and in her ability to adapt or manage oneself.

The Department has failed to present evidence of a significant number of jobs in the national and local economy that Petitioner has the vocational qualifications to perform in light of her RFC, age, education, and work experience. Therefore, the evidence is insufficient to establish that Petitioner is able to adjust to other work. Accordingly, Petitioner is found disabled at Step 5 for purposes of the SDA benefit program.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program.

### **DECISION AND ORDER**

Accordingly, the 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] 2021, SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified; and
3. Review Petitioner's continued eligibility in May 2023.

ZB/ml

  
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**Zainab A. Baydoun**  
Administrative Law Judge

**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

**Via-Electronic Mail :**

**DHHS**  
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**Interested Parties**

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**Via-First Class Mail :**

**Petitioner**

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