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Date Mailed: August 18, 2022
MOAHR Docket No.: 22-002880
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 August 1, 2022, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Ryan Reisig, Eligibility Specialist.

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] 2021, Petitioner submitted an application seeking cash assistance benefits on the basis of a disability.

2. On May 18, 2022, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program.

3. On May 24, 2022, the Department sent Petitioner an Application Eligibility Notice informing her that her SDA application was denied.

4. On [redacted], 2022, Petitioner submitted a timely written Request for Hearing disputing the Department's decision to deny her SDA application.

5. Petitioner alleged disabling impairments due to fibromyalgia, epilepsy and chronic obstructive pulmonary disease (COPD).

6. As of the hearing date, Petitioner was [redacted] years old with a [redacted], 1971 date of birth.

7. Petitioner obtained a high school degree and an associate's degree in dental assisting. Petitioner has a reported employment history of work as a customer service representative. Petitioner has reportedly not been employed since August 2007.

8. 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, for 90 or more days. 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). The duration requirement for purposes of SDA eligibility is 90 or more days. BEM 261 (April 2017), p. 2.

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 was thoroughly reviewed and is briefly summarized below:

Petitioner was receiving ongoing treatment from her primary care physician (PCP) (Exhibit A, pp. 92-96; 210-230; and 340-425) and at [redacted]. Petitioner had been diagnosed with fibromyalgia; gastroesophageal reflux disease (GERD); obesity; and neuropathy. On [redacted] 2021, Petitioner presented at [redacted] with a chief complaint of shortness of breath (Exhibit A, pp. 105-108). Petitioner's pulmonary function test (PFT) showed decreased airflow with bronchodilator response as "meets ats criteria," associated with a mild decrease in diffusing capacity for carbon monoxide (DLCO), suggesting Asthma-COPD overlap syndrome. Petitioner's NiOx test, measuring airway inflammation was normal. A CT scan of Petitioner's chest showed no focal consolidation or lung nodules. Petitioner's pulmonary arteries were adequately opacified. On [redacted] 2021, Petitioner had a physical examination. All of Petitioner's systems were normal. However, Petitioner's PCP indicated that she had full range of motion in all of her joints, generalized muscle tenderness and tenderness in all joints, painful movements, and her flexion was restricted to 30 degrees (Exhibit A, pp. 343-344). Petitioner was advised her body mass index (BMI) was above normal and that she needed to follow up with nutritional counseling. On [redacted] 2021, Petitioner met with her PCP (Exhibit A, pp. 94-96). Petitioner reported additional issues with insomnia, symptoms related to COPD, including dyspnea, dyspnea at rest, dyspnea at exertion, wheezing, non-productive cough, productive cough, clear sputum production, colored sputum production, increased sputum production and change in sputum quality. Petitioner reported conditions related to fibromyalgia including diffused tenderness, generalized fatigue, arthralgias, joint stiffness and morning stiffness. Petitioner reported her symptoms were worsening. Petitioner completed a physical examination, and all systems were normal, including her chest and lung exam, with the exception of generalized muscle tenderness and tenderness in all joints, painful movements, and restricted flexion. Petitioner had full range of motion in all of her joints. Petitioner was advised to seek nutritional counseling,

start albuterol, trazodone, tramadol, hydroxyzine, promethazine and continue Ativan. On [redacted], 2022, Petitioner met with her PCP for a physical exam (Exhibit A, pp. 92-92). All of Petitioner's systems were normal with the exception of generalized muscle tenderness and tenderness in all joints, painful movements, and her flexion was restricted to 30 degrees. Petitioner was advised to seek nutritional counseling, continue Protonix, Dicyclomine, start MiraLAX and continue cyclobenzaprine. On [redacted] 2022, Petitioner presented at [redacted] complaining of shortness of breath, wheezing and cough (Exhibit A, pp. 212-216). Petitioner was advised to use her bronchodilator as needed, exercise and lose weight, quit smoking and to be monitored for lung cancer, as she had a long history of smoking cigarettes. With her request for hearing, Petitioner submitted additional medical evidence (Exhibit A, pp. 5-16). The medical documents were not complete. From the records presented, there is indication that Petitioner had a CT scan of her chest. Petitioner had lung nodules in the upper lobes bilaterally, that were most likely infectious or inflammatory. The nodules were not deemed suspicious. Petitioner had no consolidation of her lungs and pleural spaces. Petitioner had no enlarged lymph nodes of the heart and mediastinum, but her heart was mildly enlarged. Petitioner had no coronary calcification or pericardial effusion. It was determined that Petitioner had lung nodules that were benign in appearance, and it was recommended that she have a follow up CT scan in one year.

Petitioner had numerous visits to the emergency room in the past (Exhibit A, pp. 856-920). Petitioner's more recent history included an emergency room visit on [redacted] 2021 (Exhibit A, pp. 459-467) Petitioner had a chest x-ray which revealed mild hypo inflation, which may have been related to Petitioner's body habitus. Petitioner's heart was within normal limits and normal in size. There was no evidence of numeral thorax, pleural effusion, infiltrate, or abnormal lung mass. There was a possible surgical clip versus artifact over the left upper abdomen. The frontal view of the chest was unremarkable. There was no evidence of acute cardiopulmonary process. On [redacted], 2021, Petitioner presented at the emergency department with chief complaints of abdominal pain (Exhibit A, p. 108). On [redacted] 2021, Petitioner presented at the emergency department after a mechanical fall (Exhibit A, p. 105). Petitioner had a laceration on her left shin, but bleeding was controlled.

Petitioner was previously under the care of a neurologist, [redacted]. Petitioner began receiving treatment from [redacted] in [redacted] 2020 (Exhibit A, p. 338). On [redacted] 2021, Petitioner requested an increase in her dose of gabapentin, due to paresthesia and pain in both of her of her upper extremities (Exhibit A, pp. 290-299). Petitioner had an office visit on [redacted], 2021 (Exhibit a, pp. 281-289). Petitioner had last been seen in [redacted] 2020 and reported no improvement in her pain. Petitioner reported constant pain and paresthesia from her shoulders to her feet bilaterally. Petitioner reported that the Lyrica would help with pain for 30 minutes before the pain would return. Petitioner also reported no pain improvement with gabapentin. Petitioner reported she had previously visited with pain management, but the visit was not helpful. Petitioner requested a referral to another pain management physician. Petitioner's systems were normal, with the exception that examination of her musculoskeletal system revealed positive for arthralgias, back pain, gait problems, myalgias, neck pain

and neck stiffness, as well as dizziness, weakness and light-headedness during her neurological exam. Petitioner was alert and oriented, her speech was intact, her memory was intact, and she was experiencing no confusion. Petitioner's cranial nerves were normal. Petitioner's motor function revealed that her muscle bulk and tone was normal. Petitioner's muscle strength was normal power 5/5 for her bilateral upper extremities. Petitioner's bilateral lower extremity was 4/5 with pain and effort related weakness in bilateral lower extremities. Petitioner had normal sensory function and cerebellar function. Petitioner's reflexive function was intact and symmetric in the bilateral upper extremities. Petitioner had decreased reflexes in her bilateral lower extremities. Petitioner was negative for Babinski and Hoffman's. Petitioner had normal station and gait. Petitioner was able to perform toe and heel walking. Petitioner was unable to perform tandem walking. Petitioner met with her neurologist on [redacted], 2021 (Exhibit A, pp. 258-261). Petitioner was prescribed Lyrica and Protonix. Petitioner's systems were normal, with the exception that examination of her musculoskeletal system revealed positive for arthralgias, back pain, gait problems, myalgias, neck pain and neck stiffness, as well as numbness during her neurological exam. Petitioner presented with constant pain and paresthesia in her bilateral upper and lower extremities, along with truncal paresthesia, muscle pain and tenderness, as well as a burning sensation. Petitioner had a history of intermittent neck pain radiating to the right upper extremity. Petitioner had chronic back pain radiating to the right lower extremity. Petitioner had a history of lumbar surgery. Petitioner's presentation was concerning for fibromyalgia. Petitioner's nerve conduction study was unremarkable. Petitioner was alert and oriented, her speech was intact, her memory was intact, and she was experiencing no confusion. Petitioner's cranial nerves were normal. Petitioner's motor function revealed that her muscle bulk and tone was normal. Petitioner's muscle strength was normal power 5/5 for her bilateral upper extremities Petitioner's bilateral lower extremity was 4/5 with pain and effort related weakness in bilateral lower extremities. Petitioner had normal sensory function and cerebellar function. Petitioner's reflexive function was intact and symmetric in the bilateral upper extremities. Petitioner had decreased reflexes in her bilateral lower extremities. Petitioner was negative for Babinski and Hoffman's. Petitioner had normal station and gait. Petitioner was able to perform toe and heel walking. Petitioner was unable to perform tandem walking. Petitioner also had a history of epilepsy/seizure disorder. Petitioner reported she was previously treated for her seizure disorder but had not seen that physician in ten years. Petitioner indicated she was not on any antiseizure medication, except for gabapentin. Petitioner denied having a seizure for two to three years. Petitioner's nerve conduction study of her bilateral upper and lower extremities was unremarkable and there was no evidence of neuropathy, plexopathy, myopathy or radiculopathy. Petitioner was advised to continue with Lyrica and gabapentin. Petitioner reported she had tried pain management in the past but that it did not work. Petitioner reported she did not want to follow up with pain management. Petitioner was notified to follow up in 3-4 months.

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 and the listing criteria applicable at the time of Petitioner's assessment date, listings 3.02 (COPD) and 11.02 (Epilepsy) 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 limitations due to her impairments. Petitioner testified that due to her fibromyalgia, she is in chronic pain. Petitioner reported that she has pain throughout her entire body due to the fibromyalgia. Petitioner also reported that she has grand mal seizures that cause a loss of consciousness for 20 to 35 minutes, as well as extreme muscle contractions. Petitioner indicated she has not had a grand mal seizure in over a year. Petitioner stated she has absence seizures that last 4

to 5 minutes. Petitioner described that she zones out during her absence seizures, which she has once per month. Petitioner also reported that she has COPD. Petitioner stated she was previously diagnosed as borderline COPD but recently received a confirmed diagnosis of COPD. Petitioner stated she gets extremely out of breath due to the COPD. Petitioner stated she is able to walk around the grocery store and could walk up to 1/8 of a mile. Petitioner testified she has no difficulty gripping or grasping. Petitioner stated she cannot sit or stand for long periods of time due to pain. Petitioner reported she could lift a maximum of 15 pounds. Petitioner is able to ascend stairs but gets winded quickly. Petitioner has no difficulty descending stairs. Petitioner reported that she resides with her ex-husband. Petitioner is able to perform her own personal hygiene and can dress herself. Petitioner is able to complete indoor chores such as cooking and cleaning. Petitioner is able to grocery shop on her own but requires transportation, as she is not allowed to drive due to her epilepsy.

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. A thorough review of Petitioner's medical records, including records presented from Petitioner's treating physicians, was completed. Petitioner testified at the hearing that she is no longer seeing her previous neurologist, [redacted]. However, Petitioner did not provide any neurology records other than her treatment with [redacted]. At Petitioner's most recent examination with [redacted] on [redacted], 2021, Petitioner reported that she has not had a seizure in two to three years. At the hearing, Petitioner provided conflicting testimony. Petitioner also reported that she is unable to work due to her diagnosis of COPD. On [redacted], 2021, Petitioner's PFT showed only a mild decrease in her DLCO.

Additionally, Petitioner reported chronic pain due to fibromyalgia. Fibromyalgia is only a medically determinable impairment when it is established by appropriate medical evidence.

> Fibromyalgia is a medically determinable impairment only if: (i) there is a history of widespread pain that is, pain in all quadrants of the body (the right and left sides of the body, both above and below the waist) and axial skeletal pain (the cervical spine, anterior chest, thoracic spine, or low back)—that has persisted (or that persisted) for at least 3 months. The pain may fluctuate in intensity and may not always be present; (ii) at least 11 positive tender points on physical examination as listed in policy; and (iii) evidence that other disorders that could cause the symptoms or signs were

> excluded. Other physical and mental disorders may have symptoms or signs that are the same or similar to those resulting from fibromyalgia (for example, complete blood counts, erythrocyte sedimentation rate, anti-nuclear antibody, thyroid function, and rheumatoid factor). Fibromyalgia may also be a medically determinable impairment if: (i) there is a history of widespread pain; (ii) repeated manifestations of six or more fibromyalgia symptoms, signs, or co-occurring conditions,[10] especially manifestations of fatigue, cognitive or memory problems ("fibro fog"), waking unrefreshed, depression, anxiety disorder, or irritable bowel syndrome; and (iii) evidence that other disorders that could cause these repeated manifestations of symptoms, signs, or co-occurring conditions were excluded.
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> SSR 12-2p.

Based on the medical evidence provided, Petitioner has not established that her fibromyalgia is a medically determinable condition. Petitioner's examinations were too generalized to establish fibromyalgia as a medically determinable impairment. Additionally, there was insufficient evidence that the requisite testing was performed to rule out other disorders.

Due to Petitioner's physical limitations, she was unable to sit for long periods, had some difficulty walking, squatting and bending. Petitioner had some chronic pain, but her fibromyalgia is not a medically determinable condition. There was no indication in the medical records that Petitioner had significant limited mobility. 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(a).

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 stated she had a work history as a call center representative, where she sat at a desk the majority of the day. Petitioner also testified that she had obtained an associate's degree in dental assisting, but never performed any regular work as a dental assistant other than her brief internship.

Petitioner's employment as a dental assistant worker is defined by the Dictionary of Occupational Titles as requiring light work. As a call center employee, Petitioner's employment required sedentary work. Therefore, Petitioner's past employment requires sedentary to light work.

Based on the RFC analysis above, Petitioner's exertional RFC limits her to light work activities. Therefore, Petitioner is not precluded from performing past relevant work due to the exertional requirements of her prior employment. Because Petitioner is capable of performing past relevant work, it is found that Petitioner is not disabled at Step 4 and the assessment ends.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner **not disabled** for purposes of the SDA benefit program.

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

EM/tm

Ellen McLemore
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
Pam Farnsworth
Monroe County DHHS
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Interested Parties
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BSC4
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Via-First Class Mail :

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