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GOVERNOR

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

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Date Mailed: December 14, 2022
MOAHR Docket No.: 22-004779
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 November 10, 2022, from Detroit, Michigan. Petitioner appeared for the hearing and was represented by Attorney Kathryn Smolinski and Student Attorney Shea Mace. Petitioner testified on her own behalf. Assistant Attorney General (AAG) Zachary Smitt represented the Department of Health and Human Services (Department) was present with Jennifer Meyers, Assistance Payments Worker. AAG Smitt solicited testimony from Assistance Payments Worker Stephanie Pearson.

Exhibit A, pp. 1-2,840 was admitted into the record as evidence on behalf of the Department.

Exhibit 1, pp. 1-119 and Exhibit 2, pp. 1-4 were admitted into the record as evidence on behalf of Petitioner.

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 or around [REDACTED] 2021, Petitioner submitted an application seeking cash assistance benefits on the basis of a disability. (Exhibit A, pp.11-15)
2. On or around July 26, 2022, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program.

3. On or around August 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. 7 –10)
4. On or around October 11, 2022, Petitioner submitted a timely written Request for Hearing disputing the Department's denial of her SDA application.
5. Petitioner alleged disabling impairments due to cancer, complications from chemotherapy and radiation, severe bowel and intestinal damage, abdominal pain, anxiety, and depression.
6. As of the hearing date, Petitioner was [REDACTED] years old with an [REDACTED] 1974, date of birth; she was [REDACTED] and weighed [REDACTED] pounds.
7. Petitioner obtained a high school diploma and attended three years of college. Petitioner has reported employment history of work as a cook and server in a restaurant, an assistant manager at a fast-food restaurant, and a medication technician at an assisted living facility. Petitioner has reportedly not been employed since 2013.
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. 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 was thoroughly reviewed and is briefly summarized below.

Clinic notes from Petitioner's gynecology oncology clinic from a visit on [REDACTED] 2022, indicate that Petitioner's treatment history with the clinic is as follows: [REDACTED] 2013 Petitioner was diagnosed with cervical squamous cell carcinoma and in [REDACTED] 2013 had robotic assisted radical hysterectomy with right salpingo-oophorectomy, left salpingectomy, and bilateral pelvic lymph node dissection with left ovarian transposition with positive lymph nodes, she underwent weekly pelvic radiation in [REDACTED] 2014 and completed four cycles of systemic carboplatin and paclitaxel similar to the outback trial chemotherapy from [REDACTED] 2014 to [REDACTED] 2014. In [REDACTED] 2014 Petitioner underwent a laparoscopic lysis of adhesions for persistent left-sided abdominal pain and in [REDACTED] 2016 had a partial colectomy for what was deemed radiation colitis with diverting ileostomy which was subsequently reversed in [REDACTED] 2016. As of the [REDACTED] 2022 visit, notes indicate that Petitioner continued to report chronic abdominal pain for which she takes Norco daily. Petitioner was being treated by a pain management specialist (Dr. Smith) and notes show that she had a hernia repair surgery with Dr. Webber in [REDACTED] 2022. Petitioner reported that she continues to have "erratic diarrhea, daily" and is treated by Dr. Kelly, gastroenterologist. Notes from the [REDACTED] 2022 visit also indicate that Petitioner is receiving treatment from her Primary Care Physician (PCP) for Graves

disease and was to follow up with her PCP and possibly neurology regarding worsening memory problems. Petitioner reported pain in her abdomen, anxiety, depression, memory loss, thyroid problems, and arthritis pain. During her visit in [REDACTED] 2021, Petitioner complained of chronic abdominal pain and notes indicate she was recently given a referral for general surgery as she has a possible hernia.

Records from Petitioner's [REDACTED] 2022, follow-up appointment with Dr. Kelly, Petitioner's gastroenterologist, indicate that Petitioner has had an extensive workup for fecal incontinence that occurs daily with some days a small amount occurring during her sleep, but on the day of the appointment, Petitioner reported a large amount. Petitioner had leaking fecal contents, with abdominal pain on the left side usually and at times, total body pain. Petitioner has also been treated for anxiety and has been recently titrated up to 80 mg of an SSRI. Petitioner reported that the only time that she does not have fecal incontinence is when she is so constipated that she is admitted to the hospital for severe bowel obstructions related to constipation. Notes also indicate that Petitioner had been treated with opiates, since 2013 at the time of her hysterectomy surgery following cancer diagnosis. The assessment of the doctor indicated that Petitioner has fecal incontinence of unclear etiology with the two likely causes either constipation illness with overflow, or some anal sphincter problem not detected on physical exam, but still present when she is sleeping or something else of that nature, or possibly a neurologic issue.

Progress notes from Petitioner's [REDACTED], 2022, appointment with Dr. Morreale indicate that Petitioner reported her mood is more down. It was noted that there are similar themes presented as her thoughts in the past, including feeling like a burden and distress surrounding an inability to participate in events due to chronic diarrhea. Petitioner reported being afraid to follow up with her G.I. tests as she has concerns that there will be nothing to do for her. Petitioner's Prozac was increased to 80 mg a day and is referred to Dr. Harper for psychotherapy. During an [REDACTED] 2022, appointment Petitioner indicated she had a very difficult two weeks following a denial of her disability claim and a difficult appointment with Dr. Kelly regarding her G.I. distress. She described passive suicidal ideations but no active suicidal intent or plan to harm herself. Her mood was stressed and affect was tearful. It was noted that petitioner was having a major depressive episode, was to maintain her medications, return for a two week follow-up, attend psychotherapy with Dr. Harper and look into additional support groups. Notes from Petitioner's [REDACTED] 2022 appointment show that Petitioner continued to experience difficulties due to nausea and increased pain, requiring her to stick to a liquid and soft food diet. She reported difficulty sleeping, feeling exhausted during the day, and admitted to her mind running. She reported attempting relaxation techniques without any success. Petitioner reported she is frustrated and cannot control her life. Additional findings from the [REDACTED], 2022 appointment were similar to those previously noted.

Pain management records from Dr. Smith on [REDACTED] 2022 indicate that Petitioner presented for a scheduled follow-up appointment, during which she reported chronic abdominal pain, mostly in the left side. She reported that the pain is sore and aching in

nature and that it occasionally radiates across to her right side. Notes indicate that Petitioner underwent hernia repair surgery in [REDACTED] 2022 and now that her surgery is over wants to pursue the DRG trial. Notes indicate that additional treatments could potentially include TAP or Plexus blocks for pain management. Similar findings were noted during Petitioner's [REDACTED] 2022 appointment.

Records from Petitioner's [REDACTED] 2022 evaluation with Dr. Harper, Clinical Psychologist indicate that Petitioner reported feeling very tired of dealing with constant and chronic diarrhea and fecal incontinence secondary to her cancer treatment. Petitioner reported having 20 or more bowel movements on a bad day and five on a good day. Petitioner reported being hospitalized on four occasions due to bowel obstructions, with two episodes requiring an NG tube. Petitioner reported significant social withdrawal because she never knows when she is going to have an accident and reported frequently being woken in the night by either fecal urgency or incontinence, and as a result feels fatigued all day. She reported poor sleep quality and daytime sleepiness. She reported feeling especially overwhelmed and hopeless, as there does not seem to be an answer, and by extension, a plan of treatment for her symptoms. Petitioner reported relying on her mother for financial help and living with her brother because she cannot afford her own housing. Petitioner was tearful throughout the examination and it was noted that she was to return for follow-up for her major depressive episode.

A [REDACTED] 2022, letter from Dr. Maura Bradley, who was Petitioner's treating physician indicates that Petitioner suffers from chronic abdominal pain, chronic dumping syndrome characterized by frequent stools (8-12 per day), many of which she has no control of, and is therefore considered "incontinent of stool" and lastly, worsening depression. Petitioner's chronic pain is significant despite treatment with pain medications, and this pain is worse with increased physical activity. The level of chronic pain and subsequent sedating pain medication serves as a constant distraction on limiting Petitioner's ability to concentrate, process data, interact with others, and make decisions such that her ability to work at even a non-physical job/desk job successfully and safely is not possible. The doctor indicated that Petitioner's incontinence of stool and frequent stewing serves as a further barrier to her ability to work, as much of her day is spent hovering around the bathroom or recovering in the bathroom after episode of incontinence, which for obvious reasons is a significant barrier to work. The doctor noted that Petitioner suffers from severe depression as a result of her chronic pain, and the negative impact her pain and incontinence have on her. Petitioner is on very high doses of antidepressants and participates in counseling regularly with the therapist. The doctor indicated that Petitioner's depression further impacts her mental capacity to focus, attend to tasks, and problem solve. (Exhibit A, p.58)

Petitioner was admitted to St. Mary Mercy Hospital on [REDACTED] 2021 and discharged on [REDACTED] 2021. Records show that Petitioner had previous mental health history of depression, GERD hypothyroidism, history of cervical cancer in 2013 with hysterectomy, radiation/chemo, history of small bowel obstructions, a right hemicolectomy/low anterior resection for small bowel and sigmoid colon stricture from

radiation and that she presented to the emergency department with complaints of abdominal pain, nausea, and vomiting. Records show Petitioner had at least three previous bowel obstructions. Petitioner had a nasogastric tube placed due to a small bowel obstruction, abdominal pain, with nausea and vomiting. Upon discharge, the tube was removed. (Exhibit A, pp. 59-142).

Records from Petitioner's treatment with her primary care physician (PCP) Dr. Bradley, were presented and reviewed. In [REDACTED] 2021, records show that Petitioner's chronic medical issues include history of cervical cancer for which she underwent surgery and radiation, resulting in injury to the distal colon and a partial colectomy colostomy bag with reversal in 2019. Notes indicate that since receiving radiation treatment, Petitioner has continual abdominal pain and since the colostomy reversal in 2019, she has had four episodes of bile obstructions requiring 3 to 5 days in the hospital each time. The episodes of bowel obstructions are characterized by nausea/vomiting, increased pain at the abdomen, lack of bowel movement, and diaphoresis, most recently requiring a nasogastric tube upon admission for a few days. During a [REDACTED] 2021 appointment, notes indicate that following the damage to her sigmoid colon, Petitioner suffers from chronic abdominal pain and dumping syndrome which leave her nearly incontinent of stool. Petitioner also had ongoing left upper quadrant pain that persisted and caused difficulty bending with pain that radiated around her back. In [REDACTED] 2020, Petitioner appeared with complaints of arthritis, memory problems, symptoms related to hypothyroidism, B12 deficiency, carpal tunnel syndrome in the right hand, chronic abdominal pain, depression, Graves' disease, vitamin D deficiency, history of cervical cancer and partial colon resection, as well as late dumping syndrome. Notes indicate that Petitioner is being treated at Karmanos with a psychiatrist and a therapist for her depression. Petitioner was noted to have bilateral hand arthritis and reported difficulty holding and opening things. It was also noted that Petitioner struggles with her memory, is unable to remember words, and these symptoms started at the time that she was undergoing chemotherapy treatment and have worsened over time.

A [REDACTED] 2021, report completed by Dr. Winer, psychiatrist with the medical oncology department at Karmanos cancer center indicates that Petitioner continues to feel down, which is attributable to the death of her father on [REDACTED], her lack of clarity regarding disability, and her feeling that she is a burden on her family. She admits to having passive suicidal ideations but denies any intent or plan to harm herself. Notes indicate that she continues to struggle with fecal incontinence and feels very limited because of this. Petitioner was assessed as having a major depressive episode and chronic pain. Her Prozac medication was increased to 60 mg a day and she was provided information about support groups and instructed to follow up with her therapist and to return for a visit with the doctor in six weeks. During a [REDACTED], 2021, visit Petitioner was distressed due to the death of her father. She noted having a small bowel obstruction and being hospitalized for several days in the week prior to the appointment. Petitioner's mood was sad and her affect was tearful. A psychiatric evaluation from 2019 shows that Petitioner's depression was being managed with Prozac and that Petitioner reported since being diagnosed with cancer, she does not feel like the same person anymore and that she used to be outgoing, social, and capable, but not

anymore. She reported no longer wanting to engage with others and leaves the house less than she used to. Petitioner reported anhedonia, decreased energy, insomnia, and passive suicidal ideations. Records from Petitioner's mental health treatment in prior years were also reviewed.

On [REDACTED] 2021, Petitioner was seen at the Karmanos Cancer Center pain management clinic. Petitioner was evaluated by the doctor conducting the clinical trial and was told that she could proceed, however it was recommended that she follow up with a general surgeon to address her abdominal incisional hernia first. [REDACTED] 2021 records indicate that Petitioner had been receiving pain management treatment for her chronic abdominal pain and recently underwent bilateral T11 and T12 transforaminal epidural bupivacaine diagnostic injections. Notes indicate that Petitioner's pain was being managed by taking Norco medication and that the pain is worse after more active days with lots of bending and moving. Petitioner was to follow up regarding participation in a clinical trial for her pain and with general surgery for possible hernia. Similar findings were made during her February 2021 appointment.

Petitioner's records from her gastroenterology treatment were presented and reviewed. On February 15, 2021, Petitioner reported continuing fecal incontinence, sometimes multiple times per day. Notes indicate that Petitioner had a history of radiation injury to the sigmoid colon which required surgery. During this appointment, Petitioner reported recently being admitted to the hospital again for another bowel obstruction. The doctor recommended additional treatment including a Sitz study and anorectal manometry. Records from her [REDACTED] 2022 visit indicate that Petitioner was following up for her fecal incontinence, and note that Petitioner has tried multiple things including agents to increase sphincter tone and slowing agents, as well as tried constipation medicine in case this is constipation overflow, however, none have worked. She has also tried adding fiber to bulk her stool, but this is not working. Petitioner reported that she has three episodes a day, and fecal urgency and cannot get to the bathroom in time. Petitioner reported history of colonic diversion, which she indicated was unbearable and had multiple complications with her ostomy and does not want to go through that again. Petitioner's fecal incontinence was noted to be severe with chronic fecal urgency.

On [REDACTED] 2021, Petitioner participated in a consultative examination, during which petitioner reported that her depression and anxiety began at the time of her cancer diagnosis and treatment. Petitioner thought that her condition would normalize after she was free from cancer, however, she has been free from cancer, but the abdominal pain has been a consistent reason of not being able to work, having no income, and the death of her father causes symptoms of depression. Petitioner described her symptoms of sadness, crying a great deal, and notes indicate Petitioner was crying during the examination. Petitioner was anxious and unable to sleep, and reported suffering from panic attacks with difficulty leaving the home. Petitioner reported that she does not go anywhere, and cannot do anything outside of the house due to her bowel problems. Petitioner indicated that she does not eat before leaving the house in order to prevent accidents and her previous social life decreased a great deal, as she feels very overwhelmed when she is in public because of the diarrhea and abdominal problems.

Petitioner reported that most of the day she is lying down due to pain. Petitioner's contact with reality was intact but her self-esteem not good. Petitioner lacked motivation, indicating that she was limited by pain. She noted that after activity, her abdominal pain is exacerbated and impacts her bowel issues. Petitioner reported that her sleeping is not great, and that she has death wishes but no intent or plan to harm herself. Petitioner was diagnosed with major depressive disorder, single episode, and additional medical problems. Her prognosis was noted to be related to the physical and abdominal pain. (Exhibit 2)

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 application date, listings 1.18 (abnormality of a major joint(s) in any extremity), 5.00 (digestive system), 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders), and 13.23 (cancers of the female genital tract—carcinoma or sarcoma) 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 in 2013, she was diagnosed with cervical cancer and underwent treatment including surgery, radiation, and chemotherapy. Petitioner testified that while her cancer has not returned, she has suffered complications following her cancer treatment including chronic daily abdominal pain, fecal incontinence, depression, and anxiety. Without medication, records indicate that Petitioner's pain is constant, sharp shooting pain that is debilitating which is rated at a 10 out of 10 in nature. With pain medication intervention, Petitioner's pain level is rated at a 6/10 on average. Petitioner testified that she cannot bend and must lay down due to pain, stating that during the hearing she was laying down throughout her testimony. Petitioner asserted that she has been hospitalized on more than one occasion due to small bowel obstructions and previously underwent surgery for a colostomy as well as subsequent removal. Petitioner testified that her daily life is affected by her pain and fecal incontinence. Petitioner testified that on a good day, she has fecal incontinence and severe diarrhea five times but on a bad day up to 20 times. Petitioner testified that she does not like to go places or leave her home due to anxiety and worry that she will have an accident. She testified that if she does need to leave home, she does not eat prior to leaving her home because she does not know how it'll affect her. She testified that she wears adult diapers. Petitioner testified that she is able to walk one block, and can sit and stand for about a ½ hour before needing to lay down due to pain. She is unable to bend or squat and testified she is able to lift only a gallon of milk. Due to arthritis in her hands, Petitioner reported difficulty gripping and grasping items. Although Petitioner testified that she is able to bathe herself and care for her own personal hygiene, she testified that she has trouble with her socks and shoes due to an inability to bend. Petitioner testified that she lives with her brother and tries to perform light chores around the home but is unable to complete all tasks including vacuuming because she is unable to push and pull due to pain. Petitioner testified that she receives mental health treatment including psychiatry and psychotherapy due to her depression and anxiety. Petitioner testified that she suffers from anxiety attacks, however, these have been less severe as she no longer leaves her home. Petitioner testified that she is hesitant to leave her home because she needs to be close to a bathroom and while at home, knows that her condition is not affecting anyone else. Petitioner expressed difficulty with concentration and memory following her cancer treatment. Petitioner testified that she has difficulty remembering words and focusing. Petitioner testified that she writes things down otherwise she will forget. She reported suffering from crying spells that sometimes last an entire day. Petitioner also testified that she has thoughts of hurting herself but denied suffering from auditory or visual hallucinations.

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. Petitioner's statements are supported by the extensive medical records presented for review and documented impairments. Based on a thorough review of Petitioner's medical record and in consideration of the reports and records presented from Petitioner's treating physicians, 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, as a result of chronic abdominal pain, fecal incontinence, and arthritis in her hands/fingers. Additionally, records indicate that Petitioner suffers from daily symptoms associated with major depressive disorder, and anxiety which have resulted in Petitioner's passive suicidal ideations, memory loss, difficulty concentrating, fear of leaving the home due to fecal incontinence, sleep disturbances, fatigue, crying spells, panic attacks, and feelings of helplessness and hopelessness. The records from the Petitioner's mental health treatment indicate, among other things, mild to moderate 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 employment as a cook, a waitress/server in a restaurant, an assistant manager at a fast-food restaurant, and a medication technician at an assisted living facility. Upon review, Petitioner's past employment is characterized as requiring light to medium 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 Five

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 ■ years old at the time of hearing, and thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. She completed high school and due to her impairments, is limited to unskilled work. 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, Petitioner has a nonexertional RFC imposing moderate limitations on her 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, as a result of chronic abdominal pain, fecal incontinence, and arthritis in her hands/fingers, as well as, mild to moderate 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.

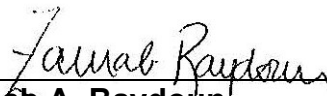
DECISION AND ORDER

Accordingly, the Department's SDA 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. Re-register 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 from the application date, ongoing; and
3. Review Petitioner's continued SDA eligibility in July 2023.

ZB/ml



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 :

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