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

GRETCHEN WHITMER
GOVERNOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

, MI

Date Mailed: October 18, 2023
MOAHR Docket No.: 23-004340
Agency No.:
Petitioner:

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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; 42 CFR 438.400 to 438.424; and 45 CFR 205.10. After due notice, a hearing was scheduled via telephone conference on August 21, 2023. Petitioner appeared and was self-represented. Petitioner's husband, appeared and testified on Petitioner's behalf. The Department of Health and Human Services (MMDHHS) was represented by Michelle L. Morley, Assistance Payment Supervisor. The hearing was held as scheduled on August 21, 2023 before Administrative Law Judge (ALJ) Zainab Baydoun. Exhibit A, consisting of 230 pages of documents presented by MDHHS, was offered and admitted into evidence as MDHHS's Exhibit A.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records, specifically additional records she stated she had in her possession that were not included with the documents presented by MDHHS. On September 20, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's 132 pages of documents, which were marked and admitted into evidence as Petitioner's Exhibit 1. The record closed on September 21, 2023. Because ALJ Baydoun is unavailable, the undersigned ALJ has reviewed the complete record, including the hearing recording and the admitted exhibits, for a final determination based on the evidence presented. Mich Admin Code, R 792.10106(7).

ISSUE

Did MDHHS 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 February 3, 2023, Petitioner applied for cash assistance on the basis of a disability (Exhibit A, pp. 193-201).

2. On April 24, 2023, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 16-17).

3. On April 24, 2023, MDHHS sent Petitioner a Notice of Case Action denying the application based on DDS's finding of no disability (Exhibit A, pp. 7-11).

4. On May 12, 2023, MDHHS received Petitioner's timely written request for hearing (Exhibit A, pp. 1-6).

5. Petitioner alleged disabling impairment due to complex regional pain syndrome (CRPS) affecting her right side arm and leg and her ability to concentrate.

6. The medical record reflects the following:

   a. On [redacted] and [redacted], 2014, Petitioner had office visits with a podiatrist complaining of intense right foot pain and was diagnosed with hallux bunion, equinus/pronation, calcaneal spur, plantar fasciitis, and joint degeneration. Surgery was scheduled on [redacted], 2014 at Grayling Mercy Hospital. (Exhibit 1, pp. 15-18) At a [redacted], 2014 office visit with the podiatrist, Petitioner reported her pain had lessened. (Exhibit 1, pp. 19-21)
   b. On June 19, 2014, Petitioner had right foot bunionectomy surgery with surgery to repair stress fractures in the fifth and second toes and an Achille's tendon release because she could not fully dorsiflex her foot. The surgery involved bunions, MCJ fusion, tailors bunion, endoscopic gastrocnemius recession, second metatarsal osteotomy, and 5 metatarsal osteotomy. (Exhibit 1, pp. 8-14, 22-28, 47)
   c. Between [redacted] and [redacted] 2014, Petitioner had 11 post-op visits with the podiatrist. The last visit concluded that the post right foot surgery status was going well although Petitioner to have a positive Tinel's sign but reduced since the last visit. No edema was noted. (Exhibit 1, pp. 29-44)
   d. An [redacted], 2015 letter from a pain management doctor showed that Petitioner had numbness and an inability to walk without a brace following foot surgery on [redacted], 2014. (Exhibit 1, pp. 117-124)
   e. An [redacted] 2015 physical examination for post-operative right foot and ankle pain showed limited range of motion at the toes, forefoot and ankle on the right with pain inhibition significantly influencing the exam, and mild erythema in the right foot. A right lower extremity electromagnetic (EMG) exam was ordered to confirm CRPS. (Exhibit 1, pp. 125-126)
   f. A [redacted] 2015 right ankle MRI showed no significant abnormality, and a [redacted], 2015 right foot x-ray showed postop first tarsal-metatarsal fusion and distal second and fifth metatarsal osteotomies; bony demineralization; and osteoarthritis of the first MTP joint with prior osteotomy of the head of the first metatarsal. There was no evidence of osteomyelitis. (Exhibit 1, pp. 5-7)

g. A [redacted] 2015 letter from the doctor who performed an electrodiagnostic consultation concerning Petitioner's right foot pain concluded that Petitioner had signs and symptoms consistent with CRPS type I (RSD) likely related to her previous surgical procedure. (Exhibit 1, pp. 122-123).
h. Notes from Petitioner's [redacted], 2015 appointment with a pain management doctor showed that she had received sympathetic ganglion block injections with short-lived pain reduction of her current onset of CRPS in the right lower extremity and suggested that Petitioner explore evaluation for a spinal cord stimulator. (Exhibit 1, pp. 127-131)
i. In [redacted], 2016 progress notes from the University of Michigan, a psychologist from the University's Department of Neurosurgery concluded that Petitioner presented with evidence for adjustment disorder with depressed mood, although her depression was not severe and did not require psychiatric care. The psychologist recommended a first spinal cord stimulator trial for her right lower extremity and right upper extremity pain. The nurse practitioner, noting decreased pain relief with each of three sympathetic blocks on the right foot, only 40% pain relief for a few days following osteo-manipulation from her toes to head every one to two weeks, and her symptoms likely being CRPS by history and pain description, concluded that Petitioner was a good candidate for spinal cord stimulator. (Exhibit 1, pp. 45-48, 98-99)
j. Medical records from [redacted] 2016, following Petitioner's right foot and ankle surgery showed that she had CRPS type 1 affecting the right upper and right lower extremities. It was noted that her range of motion of the right shoulder was lacking about 10 degrees when compared to the left shoulder, there was a positive Tinel's at the ankle, the right foot continued to have swelling in the right ankle and mild effusion of the joint, and there was restriction in range of motion of the right foot and ankle. She was doing well with 40 milligrams per day of Cymbalta. She was referred to follow up with the University of Michigan for a trial spinal cord stimulator. (Exhibit 1, pp 1-4)
k. Notes dated [redacted] 2016 from Petitioner's pain management doctor showed continued pain radiating down Petitioner's right arm and hand with numbness in the hand and stabbing pain in the right leg with discomfort radiating from the back of the leg and burning and tingling in the foot. (Exhibit 1, p. 132)
l. On [redacted] 2016, Petitioner had a preoperative exam that indicated that Petitioner was able to perform activities of daily living. (Exhibit 1, pp. 100-108)
m. On [redacted], 2016, Petitioner was admitted for surgery for the spinal cord stimulator and was discharged on [redacted] 2016. (Exhibit 1, pp. 49-57, 58-70, 71-81, 109-116)
n. The [redacted], 2016 progress notes with the nurse practitioner showed that the spinal cord stimulator procedure was successful and Petitioner was doing well. (Exhibit 1, pp. 70-71)
o. A [redacted], 2021 surgical pathology report showed that two specimens removed from Petitioner's neck and shoulder were irritated seborrheic keratosis. (Exhibit A, pp. 182-183)
p. An [redacted] 2021, colonoscopy showed that Petitioner had no polyps, masses or areas of ulceration or inflammation and no significant diverticulosis. (Exhibit A, pp. 172-181)

q. An [redacted] 2021 mammogram was negative. (Exhibit A, p. 184)
r. An [redacted], 2021 computerized tomography (CT) of Petitioner's cervical spine showed cervical spondylosis without high-grade central canal or neural foraminal stenosis and moderate narrowing of the neural foramina bilaterally at C6-C7. (Exhibit A, p. 168-169)
s. A [redacted] 2021 bone density test was normal. (Exhibit A, p. 185-186)
t. A [redacted], 2022 mammogram showed no mammographic abnormality. (Exhibit A, p. 167)
u. On [redacted], 2023, Petitioner went to the emergency room complaining of left neck pain and left upper extremity pain, noting a shooting pain from the left neck radiating to the left upper extremity, nausea, and dizziness. Past medical history noted CRPS. The physical exam noted that the bilateral upper extremities had symmetric grip strength and intact sensation and the bilateral lower extremities had symmetric strength and intact sensation. A head CT showed no acute process or intracranial abnormality. A C-spine CT was stable with mild to moderate disc narrowing at C6-C7 and mild disc space narrowing at C5-C6 and favoring radiculopathy-like symptoms to the left upper extremity. A chest x-ray showed no acute cardiopulmonary process. Petitioner's electrocardiogram (ECG) was normal. Petitioner was prescribed troponin for pain control and advised to follow up with her primary care physician. (Exhibit A, pp. 152-166)
v. A [redacted], 2023 ultrasound of the bladder was unremarkable. (Exhibit A, p. 145.
w. The [redacted], 2023, progress notes from Kalkaska Medical Associates indicated Petitioner had a long history of neck and radicular arm pain with CRPS on the right leg/foot and right arm and current complaints of some symptoms on the left side. The notes indicated that Petitioner had had extensive physical therapy in the past for her neck and arm pain, last done one to two years ago, involving some traction and manual muscle manipulation and strengthening that resulted in Petitioner regaining a lot of range of motion. Petitioner also benefited from cervical traction and would greatly benefit from a home cervical traction device. At the visit, she received an injection to treat the de Quervain's tenosynovitis in the left thumb and was referred for cervical x-rays. A physical exam of the cervical spine showed: (1) good overall range of motion of the cervical spine, noting that the left shoulder is hiked up a bit higher with slight head tilt towards the left; (2) good rotation; (3) some right-sided posterior neck pain when tilting the head back to the right; (4) no radicular symptoms with movement; (5) no noticeable muscular cultural abnormalities; (6) nontender to palpitation midline and through proper cervical musculature; (7) some variations with sensation on the left mostly in the C5 and C6 distribution and on the right more diffuse likely due to old CRPS issues; (8) improved range of motion of the right arm and neck over prior; (9) no major range of motion issues on the left; and (10) full strength in arms C5 through T1. The neurological exam showed negative bilaterally Spurling's; deep tendon reflexes 2+ bilaterally at biceps, triceps, and brachioradialis; clonus absent at the ankles bilaterally; and Hoffmans and Palmomental negative bilaterally. It was noted that Petitioner had pain with extension on the left hand, no pain on the right. (Exhibit 1, pp. 84-97)

7. On the date of the hearing, Petitioner was [redacted] years old with an [redacted] 1971 birth date; she is [redacted] in height and weighs about [redacted] pounds.

8. Petitioner has received a college associate degree in computer information systems and a certificate in computer repair.

9. At the time of application, Petitioner was not employed. She was last employed in 2014.

10. Petitioner has an employment history of work in the 15 years prior to the date of application as a computer technician intern, school tutor, and instructor of online class.

11. Petitioner is right-handed.

12. Petitioner has a pending disability claim with the Social Security Administration (Exhibit A, pp 14-16).

CONCLUSIONS OF LAW

Department policies are contained in MDHHS Bridges Administrative Manual (BAM), MDHHS Bridges Eligibility Manual (BEM), and MDHHS Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. MDHHS administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.*, and Mich Admin Code, R 400.3151 to R 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 has not engaged in SGA during the period at issue. Therefore, Petitioner cannot be assessed as not disabled at Step 1, and the evaluation 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 416.922(b).

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 Servs*, 773 F2d 85, 90 n.1 (CA 6, 1985). In assessing the severity of whatever impairments an individual may have, the impact of the combination of those impairments on the person's ability to function, rather than assess separately the contribution of each impairment existed alone, must be considered. Social Security Ruling (SSR) 85-28. 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 abilities to perform basic work activities. If such a finding is not clearly established by medical evidence, however, adjudication must continue through the sequential evaluation process. *Id*.

The medical evidence presented at the hearing was reviewed and, in consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, it is found to be 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 1.15 (disorders of the skeletal spine resulting in compromise of a nerve root), 1.18 (abnormality of a major joint in any extremity), and 11.22 (motor neuron disorders other than ALS) were considered. The medical evidence presented does **not** show that Petitioner’s impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

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

meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

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

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

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

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

Although Petitioner alleged lack of concentration due to her CRPS, there is no current medical evidence to support any significant nonexertional limitation due to lack of concentration. Accordingly, Petitioner's concentration issues have none to mild affect on her ability to (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself.

Additionally, Petitioner alleges exertional limitations due to her medical condition. Specifically, Petitioner expressed limitations on her use of her right upper and lower extremities from her CRPS. Petitioner testified that she is unable to walk more than two feet without assistance. If she uses assistance, either her mobility service dog or a cane, on a good day she can walk for 12 to 15 minutes, or a couple of hundred feet, and then will need to sit down. She also has to use a wheelchair for longer outings. She cannot sit longer than 30 minutes before needing to change her position. She has issues gripping and grabbing with her right hand and sometimes drops objects. The maximum she can lift with her right hand is limited to about a 2/3 full gallon of milk. She can stand for four minutes on her left leg if she has something to hold but cannot stand on her right leg at all. She cannot bend or squat, and she can only climb stairs with assistance on both sides (a stair rail on one side and her mobility service dog on the other). Because of her limitations, she had to move into a home with no steps or stairs and doorways large enough to accommodate her wheelchair. She bathes on a shower chair. She can dress herself but needs special shoes, has difficulties with zippers, and needs to sit down to put on her pants. She completes limited chores while seated (vacuuming, folding laundry, feeding her dog) and she helps with cooking but cannot chop. She can drive short distances but cannot shop by herself. She also has unpredictable flare ups resulting in her needing to stay bedridden for up to two weeks. She experiences ongoing pain that is on a good day a 4 or 5 out of 10. Petitioner also alleged issues with concentration due to her pain.

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 statements 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. Here, Petitioner has a diagnosis of CRPS that started after foot surgery in 2014. While the medical record reflects significant limitations to her use of her right arm and leg in 2015 and

2016, in March 2016, she had surgery to implant a spinal cord stimulator. The May 26, 2016 progress notes after the surgery showed that the procedure was successful and Petitioner was doing well. There are no medical records from then to [redacted] 2021. The next record, from [redacted], 2023, showed that Petitioner went to the emergency room complaining of left neck pain and left upper extremity pain, noting a shooting pain from the left neck radiating to the left upper extremity, nausea, and dizziness. Petitioner explained that this hospital visit was due to a flare up. The [redacted], 2023, progress notes from Kalkaska Medical Associates indicated Petitioner had had extensive physical therapy in the past for her neck and arm pain, last done one to two years ago, involving some traction and manual muscle manipulation and strengthening that resulted in Petitioner regaining a lot of range of motion. Petitioner also benefited from cervical traction and would greatly benefit from a home cervical traction device. A physical exam of the cervical spine showed: (1) good overall range of motion of the cervical spine, noting that the left shoulder is hiked up a bit higher with slight head tilt towards the left; (2) good rotation; (3) some right-sided posterior neck pain when tilting the head back to the right; (4) no radicular symptoms with movement; (5) no noticeable muscular cultural abnormalities; (6) nontender to palpitation midline and through proper cervical musculature; (7) some variations with sensation on the left mostly in the C5 and C6 distribution and on the right more diffuse likely due to old CRPS issues; (8) improved range of motion of the right arm and neck over prior; (9) no major range of motion issues on the left; (10) full strength in arms C5 through T1. Although the [redacted], 2021 CT of the cervical spine showed cervical spondylosis without high-grade central canal or neural foraminal stenosis and moderate narrowing of the neural foramina bilaterally at C6-C7, the neurological exam showed negative bilaterally Spurling's; deep tendon reflexes normal bilaterally at biceps, triceps, and brachioradialis; clonus absent at the ankles bilaterally; and Hoffmans and Palmomental negative bilaterally. It was noted that Petitioner had pain with extension on the left hand, no pain on the right. (Exhibit 1, pp. 84-97)

While Petitioner's CPRS diagnosis could reasonably be expected to produce her alleged symptoms, her current medical records do not support the intensity, persistence and limiting effects of symptoms that Petitioner alleged. In fact, the notes from her [redacted], 2023 physical exam showed good range of motion of the cervical spine, no radicular symptoms with movement, improved range of motion of the right arm and neck over prior and no range of motion issues on the left, and full strength in the arms. Her neurological exam did not show any abnormalities. Accordingly, with respect to Petitioner's exertional limitations, it is found based on a review of the entire record that Petitioner maintains the physical capacity to perform light work as defined by 20 CFR 416.967(b).

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 had a limited work history in the 15 years prior to the application with brief periods of employment. 20 CFR 416.965(a). Because Petitioner does not have a past relevant work history, Petitioner 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 MDHHS 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 Servs*, 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 Servs,* 587 F2d 321, 323 (CA 6, 1978).

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

In this case, Petitioner was ██ years old at the time of application and at the time of hearing and, thus, considered to be closely approaching advanced age for purposes of Appendix 2. She is a high school graduate with an associate degree with a limited history of work experience that involved 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 light work activities. Based solely on her age, education, experience and exertional RFC, the Medical-Vocational Guidelines, 202.13, result in a finding that Petitioner is **not** disabled. Her nonexertional limitations would not preclude her from engaging in simple, unskilled work activities on a sustained basis. See SSR 83-14. Therefore, Petitioner is able to adjust to other work and is **not** disabled at Step 5.

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, MDHHS's determination is **AFFIRMED.**

Alice C. Elkin
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
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Via-Electronic Mail :

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