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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

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ACTING DIRECTOR

[redacted]
[redacted]
[redacted], MI [redacted]

Date Mailed: November 8, 2023
MOAHR Docket No.: 23-005158
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 October 5, 2023, via conference line. Petitioner appeared for the hearing with her therapist, Lisa Schoettle, and represented herself. The Department of Health and Human Services (Department) was represented by Marci Walker, Lead Worker.

During the hearing, Petitioner waived the time period for the issuance of this decision in order to allow for the submission of additional records. Petitioner submitted additional records which were received, marked, and admitted into evidence as Exhibit 1. The record was subsequently closed on November 3, 2023, and the matter is now before the undersigned for a final determination on the evidence presented.

ISSUE

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

FINDINGS OF FACT

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

1. On [redacted], 2023, Petitioner submitted an application seeking cash assistance benefits on the basis of a disability (Exhibit A, pp. 7-12).

2. On or around August 2, 2023, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program (Exhibit A, pp. 681-694).

3. On August 3, 2023, 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. 695-699).

4. On August 23, 2023, Petitioner submitted a timely written Request for Hearing disputing the Department's denial of her SDA application (Exhibit A, pp. 5-6).

5. Petitioner alleged disabling impairments due to Brain stem stroke, Wallenberg's Syndrome, post-traumatic stress syndrome (PTSD), visual and hearing impairment, attention deficit hyperactive disorder (ADHD), bipolar disorder, anxiety and fine motor functioning.

6. As of the hearing date, Petitioner was [redacted] years old with an [redacted], 1993 date of birth; she was [redacted]" and weighed roughly [redacted] pounds.

7. Petitioner obtained a high school diploma and has reported employment history of work as a cashier as a fast-food worker, dog groomer and retail customer service.

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 and in response to the Interim Order was thoroughly reviewed and is briefly summarized below.

On [redacted], 2023, Petitioner had a neuropsychological evaluation with Par Rehab Services (Exhibit A, pp. 186-197). Petitioner had presenting symptoms of depressive disorder, trauma-stress/adjustment disorder, and anxiety/panic disorder. Petitioner expressed concerns about ongoing and historical difficulties with memory and a decline in mental function following a stroke. Petitioner also reported problems with word finding, understanding directions, the concept of time, disassociation, and hyper vigilance. Petitioner had appropriate dress and grooming, a normal gait, good coordination, appropriate insight and judgment, adequate level of eye contact, her language was normal, she had no abnormal movements, she had sustained attention, had an appropriate level of effort, and a normal affect. Petitioner appeared fidgety, pleasant and anxious. An intellectual assessment was performed, and Petitioner demonstrated very superior abilities on verbal comprehension tasks, including word knowledge, verbal concept formation, verbal reasoning, and general factual knowledge. In addition, her perceptual reasoning skills were within the superior range. Petitioner also demonstrated above average abilities on auditory working memory tasks. Petitioner’s processing speed was within range. Petitioner’s overall cognitive abilities were superior and in the 95th percentile. Petitioner had an academic assessment. Petitioner’s reading abilities were superior. Petitioner’s reading skills equated to a 12th grade equivalency. Petitioner’s mathematical abilities were average. Petitioner had a memory assessment completed. Petitioner scored average to superior in both immediate and delayed memory. Petitioner also had a psychomotor assessment. Petitioner was administered a test to assess manual dexterity, complex coordination, motor speed, and fine motor skills. In Petitioner’s dominant right hand, she scored in the moderately impaired range. In Petitioner’s non-

dominant, left hand, she scored in the mildly impaired range. Petitioner was also administered a test to assess her motor speed. Petitioner generated a score with the dominant, right hand, in the severely impaired range and her non-dominant, left hand, generated a score in the severely impaired range. Petitioner also had a speech and language assessment. Petitioner's verbal comprehension was superior, and her complex verbal fluency, verbal set shifting, and production of phonetic naming skills were in the average range. Petitioner was administered a test to assess confrontational visual naming to provide information about the ease and accuracy of word retrieval. Petitioner scored in the superior range. Petitioner also had a visual motor integration assessment. Petitioner scored in the normal range. Petitioner also had an attention assessment. Petitioner's auditory attention ability was average. Petitioner's mental arithmetic attention and working memory was in the superior range. Petitioner had an information processing assessment and was in the mild to moderately impaired range. Petitioner had an executive functioning assessment, which includes testing of mental operations, such as planning, organizing, novel problem solving, set shifting, and self-monitoring. Petitioner scored in the mildly impaired range. Petitioner completed a test on abstract thinking and novel problem solving. Petitioner's overall result fell within the average range. Petitioner had a psychological assessment. On a depression scale, Petitioner scored consistent with individuals with a severe level of depression. Petitioner had symptoms of depression including being sad all the time, believing she is a failure, having anhedonia, feeling guilty most of the time, expecting to be punished, and being disappointed in herself. Other symptoms of depression for Petitioner included blaming herself for every bad thing, being more emotional and agitated, losing interest in others, indecisiveness, and worthlessness. Petitioner also reported a lack of energy, sleep disturbances, irritability, changes in appetite, lack of concentration and feeling exhausted as symptoms of depression. Petitioner also reported having thoughts of killing herself but would not carry them out. At the time of testing, Petitioner was not feeling suicidal. On an anxiety level, Petitioner generated a score consistent with moderate levels of anxiety. However, Petitioner's level of anxiety was determined to occasionally interfere with information processing functions and resulted in insignificantly planned responses to environmental pressures. Petitioner reported several symptoms of anxiety including the inability to relax, fear of the worst happening, and being terrified on a severe level. Petitioner reported moderate anxiety symptoms, including feeling hot, experiencing a pounding heart, nervousness, a fear of losing control, breathing difficulties, and a fear of dying. Petitioner reported mild anxiety symptoms, including unsteadiness, shakiness, being scared, and becoming diaphoretic. The conclusion of the overall exam revealed that Petitioner had a normal profile across measurements of intellectual functioning, academic abilities, speech and language, visual motor integration, and immediate and delayed visual and auditory memory. The test revealed that Petitioner had impairments in psychomotor speed, manual dexterity, and fine motor skills bilaterally. Testing also revealed deficits in attention. It was indicated that Petitioner would have difficulty with focus and concentration. Petitioner would also have difficulties with developing or completing tasks. Petitioner may be forgetful or disorganized and have difficulty remaining on one task for long periods. Petitioner was also restless and fidgety, impulsive, and had low tolerance for frustration. Petitioner could also potentially have quick and frequent mood changes and become easily annoyed or irritated by others. Petitioner's symptoms were consistent with an attention deficit hyperactivity disorder combined presentation. From a

psychological perspective, Petitioner had elevated levels of depression and anxiety. Petitioner's anxiety manifested by worrying about many things, overacting to minor stresses, increasing irritability, and racing thoughts that interfered with her sleep acquisition. Petitioner's symptoms were consistent with generalized anxiety disorder. Petitioner's depressive history was long standing and included hospitalizations and suicidal ideations. Petitioner experienced a depressed mood for most of the day, nearly every day, and has lasted at least two years. Petitioner experienced feelings of hopelessness, difficulties making decisions and changes in sleep and appetite. Petitioner's mood was primarily irritable, and she has little self-esteem. Petitioner also experienced intrusive thoughts and had voices in her head. Petitioners' primary diagnoses were persistent depressive disorder with psychotic features, generalized anxiety disorder, and ADHD.

Petitioner has been under the care of her therapist, Lisa Schoettle, for the three previous years (Exhibit A, pp. 454-642). Petitioner has diagnoses of persistent depressive disorder with anxiety, ADHD, and PTSD. Petitioner consistently reported complaints of hypersomnia, low energy, fatigue, poor concentration, feelings of hopelessness, despair, internal anxiousness, melancholy, feelings of being overwhelmed, and ruminations. On [redacted], 2022, Petitioner discussed separating from her husband at the time. Petitioner stated that her husband demeaned her and made her feel unworthy. Petitioner conceded that she needed to make a radical change in her life in order to improve her mental health. On [redacted] 2022, Petitioner reported she had separated from her husband. Petitioner reported that she was feeling safe and living with a friend. Petitioner reported that she was sad and uncertain about her future. [redacted], 2022, Petitioner described feelings of depression and anxiety. Petitioner conveyed that her husband had made no effort to contact her since she left the home. Petitioner had reported that her eating had improved. On [redacted], 2022, Petitioner was emotional and described her husband as being cold. Petitioner pronounced feelings of being hurt. On [redacted], 2022, Petitioner reported that she was feeling depressed and anxious. Petitioner stated that she had an appointment with her psychiatrist. Petitioner was hopeful that she could find a psychiatrist that she trusted to help her with her symptoms. On [redacted], 2022, Petitioner stated she was feeling depressed. Petitioner was attempting to reconnect with her grandparents and family members and increase her primary supports. Petitioner described that she still had no communication with her husband. On [redacted] 2022, Petitioner reported that she was emotional. Petitioner stated she was depressed and concerned about the future. Petitioner was worried about her ability to provide for herself financially. On [redacted], 2022, Petitioner specified that she was exhausted and beyond hopefulness of recovery. Petitioner was distressed about being alone and without family. On [redacted], 2022, Petitioner reported that she was overwhelmed by her financial stress, the end of her relationship, and the uncertainty about her future. Petitioner stated that she was developing new friends but was feeling rejected and abandoned by old friends. Petitioner conveyed that her primary support person was the friend with which she resided. On [redacted], 2022, Petitioner reported that she was overwhelmed and stressed. Petitioner still had no communication with her soon to be ex-husband. Petitioner stated that she believed that her husband's family systematically demeaned and diminished her. Petitioner indicated that she continues to experience pain, dizziness, and constipation issues. On [redacted] 2022, Petitioner reported that she was depressed and anxious.

Petitioner notified her husband that she was filing for divorce, and he did not respond. Petitioner reported that she had a really emotional week. On [redacted], 2022, Petitioner described that she felt trapped, depressed, exhausted, and anxious. Petitioner reported that she did obtain food assistance benefits, which was a huge source of relief. On [redacted] 2022, Petitioner detailed feelings of sadness, uncertainty, and emotional angst. Petitioner reported that it was extremely difficult for her to rely on others. On [redacted], 2022, Petitioner stated that she was not doing well. Petitioner detailed that she was moved out of the home but had nowhere to go. Petitioner stated that she felt extraordinary pressure from the friend with which she was residing, causing them not to get along. On [redacted], 2022, Petitioner reported she was feeling more grounded. Petitioner conveyed that she had a civil and productive conversation with the individual with which she resides. On [redacted], 2022, Petitioner reported that she was angry and felt trapped in her situation. On [redacted] 2022, Petitioner stated she had feelings of being isolated. Petitioner detailed that she was trying to recall who she was prior to the stroke and prior to her abusive relationship. Petitioner stated she attended a festival, even though it was physically challenging, due to her not being able to stand all day. Petitioner reported that she had to sit most of the time. On [redacted] 2022, the Petitioner reported that her financial situation was dire. Petitioner stated that her soon to be ex-husband still had no communication. On [redacted] 2022, Petitioner conveyed that she was anxious about her future and the ability to provide for herself financially. Petitioner reported that due to her chronic pain issues, fatigue and inability to maintain focus and concentration, she was feeling trapped and in despair. On [redacted], 2022, Petitioner reported that she had never gained her equilibrium back post stroke and had difficulty with chronically feeling off balance. Petitioner described that she had feelings of anxiety and being trapped. On [redacted], 2022, Petitioner reported that she was anxious and depressed. Petitioner stated she felt trapped and helpless. On [redacted], 2022, Petitioner reported that she was in chronic pain. Petitioner stated that the pain was debilitating. Petitioner was in the process of obtaining a primary care physician but could not find one that took her insurance. On [redacted], 2022, Petitioner reported that she was feeling depressed and anxious. Petitioner continued to experience fatigue and leg pain related to her stroke. On [redacted], 2022, Petitioner stated that she was happy that she was filing for divorce. Petitioner was anxious and feeling fearful that her soon to be ex-husband would not sign the paperwork. On [redacted], 2022, Petitioner reported that she was angry and anxious. Petitioner stated she was trying to use her mindfulness and art therapy as a way to stay calm. On [redacted], 2022, Petitioner reported that she was anxious and uncertain about her financial future. Petitioner stated that she was not communicating with her sister and felt as though she had lost the primary support person. On [redacted], 2022, Petitioner was feeling anxious about her grandfather's heart surgery. Petitioner stated she was still in conflict with her sister. On [redacted] 2022, Petitioner reported having flashbacks from the days leading up to her stroke, especially as it pertained to a wrongful diagnosis by her chiropractor, and the delay in obtaining help. On [redacted] 2022, Petitioner conveyed that she was feeling as though she was slipping into a depressive state and experiencing flashbacks from past traumas. On [redacted], 2022, Petitioner reported that she was anxious and depressed. Petitioner stated she was overwhelmed by her life stressors. On [redacted] 2022, Petitioner detailed that she had an emotional break and felt as though she was in crisis. Petitioner reported having night terrors. On [redacted], 2022, Petitioner described feeling anxious about her future. On [redacted], 2022,

Petitioner reported feeling depressed and anxious. On [redacted], 2022, Petitioner stated that she was sad and anxious. Petitioner detailed that she and her significant other had separated. On [redacted], 2022, Petitioner reported that she was exhausted and overwhelmed. On [redacted], 2022, Petitioner stated that her feelings of depression had increased. On [redacted] 2022, Petitioner specified that she was sad and experiencing symptoms of depression. On [redacted], 2022, Petitioner was emotional throughout the session and described her inability to financially care for herself. Petitioner reported she was anxious about the future. On [redacted], 2022, Petitioner described being uncertain and anxious. On [redacted], 2022, Petitioner reported that she was devastated. Petitioner received a denial from the Social Security Administration and had feelings of numbness. On [redacted], 2022, Petitioner reported that she was in crisis. Petitioner stated that once again she was denied Social Security disability benefits. On [redacted], 2022, Petitioner reported that she was still in crisis. Petitioner stated that she had barely slept for days. On [redacted], 2022, Petitioner described that she was anxious and afraid. Petitioner reiterated that her Social Security disability denial was devastating. On [redacted] 2023, Petitioner reported being depressed. Petitioner stated she had no energy, but the Trazodone was helping her to sleep. On [redacted]9, 2023, Petitioner stated that she felt exhausted and overwhelmed. On [redacted], 2023, Petitioner stated she was doing better than the previous week. Petitioner reported she had obtained a psychiatry appointment. On [redacted] 2023, Petitioner reported that she was depressed and overwhelmed. On [redacted] 2023, Petitioner stated that she was depressed. Petitioner was uncertain about her future due to her chronic pain and limited mobility. On [redacted], 2023, Petitioner conveyed that she had a new psychiatrist. Petitioner reported that she started Buspirone, a medication to treat anxiety, and increased her ADHD medication. On [redacted], 2023, Petitioner reported that she was anxious and suffering from depression. On [redacted], 2023, Petitioner stated that she was feeling an array of emotions and was having a difficult time calming herself and self-centering. On [redacted], 2023, Petitioner reported that she was anxious. On [redacted], 2023, Petitioner described that she was feeling depressed because her physical limitations were keeping her from being able to thrive financially. On [redacted] 2023, Petitioner reported feeling overwhelming pain and fatigue. On [redacted] 2023, Petitioner described feeling depressed and fatigued. On [redacted], 2023, Petitioner reported that she was in crisis. Petitioner stated that she was not suicidal, but she felt as though she was dying inside. On [redacted], 2023, Petitioner reported that she was anxious but feeling more confident. On [redacted], 2023, Petitioner stated that she continues to set healthy boundaries with others. Petitioner indicated that she has unresolved emotional pain regarding her relationships with her parents. On [redacted], 2023, Petitioner reported that she was having a difficult time coping with her severe anxiety. On [redacted], 2023, Petitioner indicated that she was overwhelmed by her financial issues and did not have a means to care for her own needs. On [redacted], 2023, Petitioner reported that she was spiraling and having a severe panic attack. On [redacted], 2023, Petitioner stated that she was depressed. On [redacted], 2023, Petitioner reported that she had chronic fatigue and continued to disassociate. On [redacted], 2023, Petitioner reported that she was overwhelmed and immobilized by her financial insecurity. On [redacted] 2023, Petitioner created treatment goals, including wanting to be able to cope with her depression and handle life stressors in a healthy way.

At the hearing, Ms. Schoettle testified that she has been treating Petitioner for the previous three years. Ms. Schoettle stated that Petitioner has severe depression, anxiety and disassociation. During their sessions, Petitioner reported chronic feelings of fatigue, confusion, lack of focus and concentration, panic attacks, depression, and feelings of being trapped. Ms. Schoettle indicated that throughout treatment, Petitioner would have periods of improvement followed by the resurfacing and increasing of her mental impairments. Ms. Schoettle testified that Petitioner had profound derealization and struggles to feel a sense of control. Ms. Schoettle stated that pre-stroke, Petitioner suffered from mental health issues, but the stroke exacerbated her symptoms. Ms. Schoettle conveyed that she did not believe Petitioner could work due to her physical symptoms, such as low stamina, but also because of her emotional health and her inability to focus and her dissociative patterns.

Petitioner was also under the care of a psychiatrist (Exhibit 1). On [redacted], 2023, Petitioner had a medication management appointment. Petitioner reported issues with depression, anxiety, ADHD and sleeping difficulties. Petitioner was prescribed Seroquel (treats mood disorders), Intuniv (treats ADHD symptoms), Straterra (treats ADHD symptoms), Buspar (treats anxiety symptoms) and Effexor (treats major depressive and anxiety disorders). Petitioner had a follow-up appointment on [redacted], 2023, where she reported that her ADHD and anxiety symptoms were not well controlled. Petitioner had an appointment on [redacted], 2023, where she reported that she was sleeping 10 hours at night but did not feel awake or well rested. On [redacted], 2023, Petitioner had an appointment for a medication review. Petitioner's prescription for Buspar was increased. On [redacted] 2023, Petitioner presented for a medication review. Petitioner reported that her depression was moderate in intensity, her anxiety was moderate in intensity, improvement with her ADHD symptoms, but that her sleep quality was poor, as she suffers from night terrors. Prazosin (treats PTSD-related nightmares) was added to Petitioner's medication regimen. On [redacted], 2023, Petitioner reported she was released from an outpatient psychiatric unit. Petitioner reported that she admitted herself to Saint Louis behavioral health unit. Petitioner stated that she was admitted for 10 days. Petitioner stated that her medications were adjusted, and her Seroquel was increased to 200 milligrams. Petitioner reported that she was feeling better but was still having a hard time maintaining boundaries. Petitioner stated that she binge eats sugar before going to bed and then she wakes up in the middle of the night. Petitioner reported that she has intrusive thoughts and that she has PTSD surrounding her bed and did not feel safe in bed. Petitioner stated that she felt safe in her home for the first time ever last summer. Petitioner stated that her eating fluctuated and that the Intuniv and Strattera were allowing her to function. Petitioner stated that she stress cleans. Petitioner was instructed to consider tapering off Effexor and replacing the medication with Wellbutrin. On [redacted]1, 2023, Petitioner presented for a medication review. Petitioner reported that she was doing ok, and that she was taking B12 injections, which she believed were helping. Petitioner stated that she was exercising and gardening. Petitioner also reported that her diet was ok, but that she was craving sugar. Petitioner's prescription for Prazosin was increased. On [redacted]4, 2023, Petitioner had a medication review. Petitioner reported that decreasing her Effexor had been ok, and that she did not feel bad. On [redacted], 2023, Petitioner had a medication review. Petitioner reported that she was having a hard time sleeping. Petitioner stated she was having intrusive thoughts that were persistent and

distracting. Petitioner reported that her anxiety and depression were well controlled. Petitioner was instructed to decrease the Strattera and that the plan was to replace the medication with Qelbree. On [redacted], 2023, Petitioner had a medication review. Petitioner reported that she was doing well but had some dizziness and nausea due to the decrease in Effexor. Petitioner stated that she was watching her niece, who was disabled, and it was causing her anxiety. Petitioner reported that her depression symptoms were well managed, but her anxiety was constant. Petitioner also stated that her ADHD symptoms caused her to feel tired and she was not able to manage many tasks during the day. On [redacted], 2023, Petitioner had a medication review. Petitioner stated that she was very emotional. Petitioner reported having more panic attacks. Petitioner reported having lapses in memory and feeling very stressed. Petitioner denied having hallucinations but that she was having occasional delusions. Petitioner reported that her depression symptoms were well managed but that her anxiety symptoms were constant. Petitioner stated that the Qelbree was helping her ADHD symptoms but that she had to really try to find attention. On [redacted], 2023, Petitioner had a medication review. Petitioner reported that she was doing better but that she was still emotional. Petitioner reported that her patience had been low and explosive. On [redacted], 2023, Petitioner had a medication review. Petitioner reported that she intended to get a service dog and was facing reality as to her disability.

Petitioner was previously under the care of a neurologist at Blue Water Neurology (Exhibit A, pp. 431-451). Petitioner had a diagnosis of Wallenberg Syndrome as a result of her stroke, as well as neuropathic pain. After the stroke, Petitioner continued to have complaints of dryness and ptosis in the right eye, right facial numbness and left-sided body numbness. Petitioner also expressed that she had pain in her right-side body. Petitioner was prescribed Lyrica, Plavix, Lipitor, Aspirin, and Catapres. Petitioner had consultation appointments on [redacted], 2020; [redacted], 2020; [redacted], 2021; and [redacted], 2021. On [redacted], 2021, Petitioner had a consultation and reported groin pain. Petitioner was advised to begin Trileptal for the groin pain, as well as for the increased neuropathic pain. On [redacted] 2021, Petitioner stated that she has severe exhaustion. Petitioner requested a prescription for a wheelchair and a shower chair, as she could not walk long distances or stand for long periods. Petitioner's physical examination was normal. Petitioner's neurological exam revealed normal cortical functions and speech. Petitioner's cranial nerves had no afferent pupil defect, no ptosis or nystagmus. Petitioner's extraocular movement (EOM) examination revealed Petitioner's visual fields were full, she did not have asymmetry or weakness, her acuity was intact, her palate rose in midline, her sternocleidomastoid and trapezius strength were intact, and her tongue protruded midline without atrophy or fasciculations. Petitioner's motor strength was normal in all limbs. Petitioner had decreased light touch in her right face and left body. Petitioner had bilaterally symmetrical reflexes. Petitioner had no present cerebellar signs. Petitioner had no tremors. Petitioner's coordination in regard to finger-to-nose and rapid alternating movements were intact, with no ataxia. Petitioner's gait and station was also within normal limits.

On [redacted], 2022, Petitioner presented at New Hope Community Center to establish care, but only had one visit (Exhibit A, pp. 423-430). Petitioner's depression symptoms

were scored as moderately severe, and her anxiety symptoms were scored as severe. Petitioner was advised to seek counseling and continue her medications.

Petitioner was also completing physical therapy with Orthopaedic Rehab Specialists (Exhibit A, pp. 277-416). Petitioner had repeated complaints of pain in her thoracic spine and right shoulder. Petitioner had made steady progress since starting physical therapy, including improvements in range of motion, strength and tissue extensibility. However, despite improvements, Petitioner continued to present with thoracic back pain and right shoulder pain. Petitioner's remaining impairments were leading to functional limitations with sleeping, carrying objects, completing activities of daily living, and participating in recreational activities. Petitioner had physical therapy sessions on [redacted]. Petitioner had range of motion and manual muscle tests on her shoulders on [redacted] 2023; [redacted] 2023; and [redacted], 2023. As of [redacted] 2023, Petitioner's range of motion in her shoulder on her left side were within normal limits. The manual muscle test of Petitioner's left shoulder revealed minimal pain in the shoulder during flexion, mild pain in the shoulder during abduction and no pain during internal rotation. On [redacted], 2023, Petitioner reported that her remaining deficits were stiffness and stability. Petitioner continued to have soreness in her upper back and right shoulder, as well as difficulty with lifting, reaching and carrying objects. Petitioner's assessment revealed that she was able to perform her exercises with difficulty but no pain. Petitioner was able to tolerate progressions. Petitioner experienced some fatigue following the session but with no increased pain.

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 11.04 (vascular insult to the brain), 12.04 (depressive, bipolar and related disorders), 12.06 (anxiety and obsessive-compulsive disorders), and 12.15 (trauma and stressor related disorders) 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. In regard to Petitioner's exertional limitations, Petitioner testified that she continues to have physical manifestations as a result of her stroke. Petitioner testified that she was diagnosed with Wallenberg's syndrome, which causes a dampening of sensations and numbness on her left side. Petitioner reported that she has pain in her left side, as well as significant impairment of her fine motor skills. Petitioner testified that she requires the assistance of a cane when walking. With the assistance of the cane, Petitioner reported that she could walk up to 1 block but without the cane, she could only walk around her small home. Petitioner stated that she can only sit for 20 minutes at a time before she has to stand up due to pain. Petitioner reported that she can stand for less than five minutes. Petitioner testified that she has difficulty bending and squatting, as she gets lightheaded. Petitioner reported that she can lift up to 50 pounds. Petitioner indicated she cannot ascend or descend stairs, as it requires too much coordination. Petitioner stated that she has a hearing aid, as a result of hearing loss due to a genetic condition. Petitioner also reported that she is nearsighted and has blind spots in her right eye as a result of her stroke. Petitioner reported that she lives with a friend, as she cannot financially support herself. Petitioner indicated that she is able to perform her own personal hygiene but that she requires a shower chair. Petitioner can dress herself and can perform basic household chores, including a load of dishes and picking up after herself. Petitioner testified that she cannot perform chores outside. Petitioner stated she can grocery shop but requires the use of a motorized scooter. Petitioner reported that she also cannot drive. Petitioner reported that she takes Lyrica for pain management but was currently out of her prescription. Petitioner testified that her shoulder and back pain is a

result of falling out of a two-story window when she was a child. Petitioner stated that she sustained nerve damage during the fall.

In regard to Petitioner's nonexertional limitations, Petitioner reported that she had issues with anxiety and depression prior to her stroke, but that the stroke exacerbated her symptoms. Petitioner testified that she has daily anxiety attacks, including the inability to sit still, racing/intrusive thoughts, disassociation and self-harm in the form of picking at her skin. Petitioner stated that she has difficulty concentrating due to her ADHD diagnoses, and also extreme fatigue. Petitioner stated she has a good memory but suffers from short term memory loss as a result of her disassociation. Petitioner stated she has appetite issues in that she undereats followed by binging. Petitioner testified that she has no real social interactions, other than with her roommate. Petitioner reported that her medications help, in the fact that they make her rest. Petitioner stated that without her medications, she cannot keep calm.

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

The evidence presented is considered to determine the consistency of Petitioner's statements regarding the intensity, persistence and limiting effects of her symptoms. Based on a thorough review of Petitioner's medical record and in consideration of the reports and records presented from Petitioner's treating physicians, including Petitioner's most recent examination by a neurologist which revealed her physical examination was normal. Petitioner's neurological exam revealed normal cortical functions and speech. Petitioner's cranial nerves had no afferent pupil defect, no ptosis or nystagmus. Petitioner's extraocular movement (EOM) examination revealed Petitioner's visual fields were full, she did not have asymmetry or weakness, her acuity was intact, her palate rose in midline, her sternocleidomastoid and trapezius strength were intact, and her tongue protruded midline without atrophy or fasciculations. Petitioner's motor strength was normal in all limbs. Petitioner had decreased light touch in her right face and left body. Petitioner had bilaterally symmetrical reflexes. Petitioner had no present cerebellar signs. Petitioner had no tremors. Petitioner's coordination in regard to finger-to-nose and rapid alternating movements were intact, with no ataxia. Petitioner's gait and station were also within normal limits. Additionally, Petitioner's most recent physical therapy session revealed that as of [redacted] 2023, Petitioner's range of motion in her shoulder on her left side were within normal limits. The manual muscle test of Petitioner's left shoulder revealed minimal pain in the shoulder during flexion, mild pain in the shoulder during abduction and no pain during internal rotation. On [redacted], 2023, Petitioner reported that her remaining deficits were stiffness and stability. Petitioner continued to have soreness in her upper back and right shoulder, as well as difficulty with lifting, reaching and carrying objects. Petitioner's assessment revealed that she was able to perform her exercises with difficulty but no pain. Petitioner was able to tolerate progressions. Petitioner experienced some fatigue following the session but with no increased pain.

Although Petitioner reported chronic pain that limited her physical function, there was little medical evidence with any diagnoses or diagnostic testing to support the assertion. However, there was evidence that remnants from Petitioner's stroke caused her to have impairments in psychomotor speed, manual dexterity, and fine motor skills bilaterally. With respect to Petitioner's exertional limitations, it is found, based on a review of the entire record, that Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a). However, Petitioner is unable to perform the full range of sedentary work due to her nonexertional symptoms. Thus, the occupational base is eroded by Petitioner's additional limitations or restrictions. SSR 96-9p.

Based on the medical records presented, Petitioner has moderate to marked limitations on her non-exertional ability to perform basic work activities, with respect to performing manipulative or postural functions of some work such as reaching, handling, bending, climbing, crawling, or stooping. Additionally, records indicate that Petitioner suffers from daily symptoms associated with PTSD, ADHD, major depressive disorder and anxiety which have resulted in at least one inpatient psychiatric treatment. 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 and in her ability to interact with others. Petitioner had had marked limitations 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 fast-food worker, dog groomer, and retail customer service. 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 [redacted] years old at the time of the hearing, and thus, considered to be a younger individual (age 18-44) for purposes of Appendix 2. She completed high school and had an unskilled work history. As discussed above, Petitioner maintains the exertional RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities, however, as referenced above, the occupational base is eroded by additional limitations or restrictions. Thus, based solely on her exertional RFC, the Medical-Vocational Guidelines, result in a finding that Petitioner is not disabled.

However, as referenced above, Petitioner also has nonexertional impairments imposing additional limitations. Based on the evidence presented, Petitioner has a nonexertional RFC imposing moderate to marked limitations on her non-exertional ability to perform basic work activities, with respect to performing manipulative or postural functions of some work such as reaching, handling, bending, climbing, crawling or stooping and mild to moderate limitations in her ability to understand, remember, or apply information and in her ability to interact with others. Petitioner has marked limitations 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. Reregister and process Petitioner's [redacted], 2023 SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;

2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified; and

3. Review Petitioner's continued SDA eligibility in August 2024.

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
Marci Walker
Clinton County DHHS
105 W. Tolles Drive
St. Johns, MI 48879
MDHHS-Clinton-Hearings@michigan.gov

Interested Parties
L. Karadsheh
BSC2

Via-First Class Mail :

Petitioner
[redacted]
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