



GRETCHEN WHITMER  
GOVERNOR

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

MARLON I. BROWN, DPA  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: October 28, 2024  
MOAHR Docket No.: 24-006553  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Linda Jordan**

**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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a hearing was held on July 9, 2024, via teleconference. Petitioner appeared and represented herself. Carrie Zeleznik, Family Independence Specialist, and Pamela Bruce, Family Independence Manager, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department). MDHHS’ Hearing Packet was admitted as MDHHS Exhibit A, pp. 1-774. Petitioner’s proposed exhibit was admitted as Petitioner’s Exhibit 1, pp. 1-22.

On July 17, 2024, the undersigned Administrative Law Judge issued an Interim Order Extending the Record, which allowed the parties additional time to submit medical evidence. The parties waived any violation of statutory or policy time standards. Pursuant to the Interim Order, all additional medical evidence was due by August 8, 2024. On July 31, 2024, Petitioner submitted additional documents, which were admitted as Petitioner’s Exhibit 2, pp. 1-6. The Michigan Office of Administrative Hearings and Rules (MOAHR) received documents from Petitioner on October 10, 2024. However, these documents were received outside of the extension and were not admitted into evidence.

**ISSUE**

Did MDHHS properly determine that Petitioner was not disabled for purposes of State Disability Assistance (SDA)?

**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 applied for SDA (Exhibit A, p. 10).

2. On [REDACTED] 2024, the Medical Review Team (MRT)/Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program because her physical/mental impairments did not prevent employment for 90 days or more, and she was capable of performing other work (Exhibit A, pp. 19-20).
3. On April 16, 2024, MDHHS sent Petitioner a Notice of Case Action denying the application for SDA, effective January 1, 2024 ongoing, because MRT found Petitioner not disabled (Exhibit A, pp. 4-5).
4. On April 29, 2024, Petitioner submitted a timely hearing request to dispute MDHHS' determination that Petitioner was not disabled (Exhibit A, p. 3).
5. The medical records reflect the following:
  - a. On [REDACTED] 2022, a physician at Superior Eye Health and Vision Therapy Center examined Petitioner (Exhibit A, p. 194) Petitioner complained of blurred or double vision, severe headaches, migraines and pressure behind the eyes (Exhibit A, p. 194). The physician diagnosed her with benign neoplasm of the pituitary gland (Exhibit A, p. 199).
  - b. On [REDACTED] 2022, Petitioner was examined by the UP Health System Marquette Emergency Department for abdominal pain and vomiting (Exhibit A, p. 437). Petitioner reported vomiting every day, up to twenty times per day (Exhibit A, p. 442).
  - c. On [REDACTED] 2023, Petitioner was examined by the UP Health System Marquette Emergency Department for pain in right arm (Exhibit A, p. 455).
  - d. On [REDACTED] 2023, Petitioner was treated by UP Health System Rehab Services for right quad/knee pain (Exhibit A, p. 223). The treating therapist noted weakness in right hip and knee, and swelling under her kneecap (Exhibit A, p. 223). The therapist found a mildly antalgic gait pattern and that she transferred safely and independently (Exhibit A, p. 224). Petitioner attended ongoing physical therapy appointments.
  - e. On [REDACTED] 2023, Petitioner was treated by Marquette Behavioral Health for generalized anxiety disorder (Exhibit A, p. 526). Petitioner attended ongoing therapy appointments.
  - f. On [REDACTED] 2023, a physician at Superior Eye Health and Vision Therapy Center examined Petitioner and diagnosed her with chronic giant papillary conjunctivitis (Exhibit A, p. 206).
  - g. On [REDACTED] 2023, Petitioner was treated by Marquette Behavioral Health for generalized anxiety disorder (Exhibit A, p. 521).

- h. In [REDACTED] 2023, Petitioner met with a counselor at Suunta Integrative Health and was diagnosed with F43.23 Adjustment Disorder with mixed anxiety and depressed mood (Exhibit A, p. 333). The counselor noted an anxious and depressed mood, a tearful and labile affect (Exhibit A, p. 338).
  - i. On [REDACTED] 2023, Petitioner was admitted to the UP Health System Marquette Emergency Department for persistent right hip pain related to a labrum tear (Exhibit A, pp. 141-147).
  - j. On [REDACTED], 2023, Petitioner was examined by Garret Kerns, DO, who noted a right hip labral tear (Exhibit A, p. 731). The treating physician noted that Petitioner had progressively worsening symptoms and that she had not responded to physical therapy (Exhibit A, p. 732).
  - k. On [REDACTED], 2023, Petitioner was examined by the UP Health System Marquette Emergency Department for shoulder and jaw pain (Exhibit A, p. 500).
  - l. On [REDACTED] 2023, Petitioner was examined by medical professionals at OB-GYN Associates of Marquette regarding pain in pelvis, irregular periods and hyperprolactinemia (Exhibit A, p. 157-160).
  - m. On [REDACTED] 2024, a physician examined Petitioner and noted that Petitioner could not see to her side and her vision was obstructed (Exhibit A, p. 44).
  - n. On [REDACTED] 2024, Petitioner was examined by a therapist at UP Health System Rehab Services (Exhibit A, p. 299). The therapist noted pain in hip/quad/knee was causing her to have poor sitting and standing posture, limited and poor walking pattern, and weakness with functional loss pers LEFS of 95% impairment (Exhibit A, p. 299). The therapist noted that she had an 18-month history of muscle strain with recent onset of right hip pain (Exhibit A, p. 299). The therapist noted a recent diagnosis of dysplasia and labral tear in right hip (Exhibit A, p. 299).
  - o. On [REDACTED] 2024, a physician at Superior Eye Health and Vision Therapy Center examined Petitioner (Exhibit A, p. 210) Petitioner complained of worsening peripheral vision (Exhibit A, p. 210). The physician noted a worsening of Petitioner's vision and confirmed the diagnosis of benign neoplasm of the pituitary gland (Exhibit A, p. 211).
  - p. On [REDACTED], 2024, Petitioner had gallbladder surgery.
6. On the date of the hearing, Petitioner was [REDACTED] years old, born [REDACTED] [REDACTED] [REDACTED] tall and weighed approximately [REDACTED] pounds.

7. Petitioner is a high school graduate and attended college for one year at [REDACTED].
8. At the time of application, Petitioner was not employed.
9. Petitioner was previously employed as a [REDACTED] from [REDACTED] 2023 to [REDACTED] 2023. Petitioner was also employed as an associate at a [REDACTED] from [REDACTED] 2020 to [REDACTED], 2023.
10. Petitioner alleged disabling impairments due to various medical conditions, including depression, anxiety, PTSD, ADHD, OCD, bipolar, personality disorder, Raynaud syndrome, IBS, hernia, GERD, liver disease, TMJ, right hip disorder, L labral tear, myopia, asthma, eczema, pituitary disorder, gallbladder disorder (Exhibit A, p. 42). Petitioner alleged that she had pituitary tumor that was putting stress on her body, causing weakness and affecting her hormones. Petitioner had her gallbladder removed and had hernia complications that caused her to have severe digestive problems. Petitioner alleged partial tear in her shoulder, thigh and hip, which caused mobility issues. Regarding mental health, Petitioner alleged severe depression, PTSD, uncontrollable anger and unclear thinking.
11. Petitioner has a pending disability claim with the Social Security Administration (SSA) (Exhibit A, p. 9).

### **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. MDHHS administers SDA pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. MDHHS administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

In this case, Petitioner applied for SDA 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 that has lasted or is expected to last for a continuous period of 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). 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. RESCINDED BY SSR 16-3.

Here, Petitioner alleged disabling impairments due to various medical conditions, including depression, anxiety, PTSD, ADHD, OCD, bipolar, personality disorder, Raynaud syndrome, IBS, hernia, GERD, liver disease, TMJ, right hip disorder, L labral tear, myopia, asthma, eczema, pituitary disorder, gallbladder disorder (Exhibit A, p. 42). DDS found that Petitioner had several severe medically determinable impairments, involving the musculoskeletal system, the cardiovascular system, and special senses and speech (Exhibit A, p. 48). DDS also found medically determinable impairments related to digestion and mental disorders that it categorized as non-severe (Exhibit A, p. 48).

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. Petitioner's mental and physical disorders are documented and expected to continue throughout Petitioner's life. The impact of her disorders on her ability to work is more than slight based on the evidence presented. 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 of whether 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 1.18 (abnormality of major joints of any extremity); 4.12 (peripheral arterial disease); 12.04 (depressive bipolar related disorders); 12.06 (anxiety and obsessive-compulsive disorders); 12.15 (trauma and stressor related disorders) 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 objective medical 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 nonexertional 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 [REDACTED]

[REDACTED] 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). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).* 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).

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.

DDS found that Petitioner had physical limitations and that she could occasionally lift and/or carry 20 pounds and frequently lift and/or carry 10 pounds (Exhibit A, p. 50). DDS found that Petitioner could stand and/or walk with normal breaks for a total of four hours and sit for a total of six hours in an eight-hour workday (Exhibit A, p. 50). Based on the seven strength factors, DDS found that Petitioner was capable of sedentary work (Exhibit A, p. 53).

Regarding postural limitations, DDS found that Petitioner had occasional limitations climbing ramps or stairs, balancing, stooping, kneeling, crouching, and crawling (Exhibit A, p. 50). Regarding manipulative limitations, DDS found that Petitioner had frequent



limitations reaching in front or laterally, and occasional limitations reaching overhead (Exhibit A, p. 51). DDS found environmental limitations and indicated that Petitioner must avoid concentrated exposure to extreme cold, avoid concentrated exposure to extreme wetness, avoid even moderate exposure to vibration and avoid all exposure to hazards (Exhibit A, p. 51). DDS noted that Petitioner must avoid uneven terrain (Exhibit A, p. 51). Despite the presence of mental disorders, DDS did not assess Petitioner's mental residual functional capacity (Exhibit A, p. 52). DDS rated Petitioner's mental disorders as "non severe" (Exhibit A, p. 48).

To support its findings, DDS summarized examinations which found that Petitioner suffered from poor posture and shortening of the scalene muscles, pectoralis major/minor tightness, weakness in the right shoulder with winging scapula and grip strength loss, and brachial plexus, resulting in severe functional loss (Exhibit A, p. 52). DDS also noted problems walking and standing, with a reduced stride and stance and weakness of the right hip and knee (Exhibit A, p. 52).

Regarding Activities of Daily Living (ADL), DDS noted that Petitioner alleged that her pituitary tumor caused malnourishment, weak muscles/bones, stomach issues, difficulty with personal care, problems sleeping due to pain, and difficulty holding items to cook (Exhibit A, p. 51). Petitioner reported that she was able to drive and shop in stores but could not carry her purse (Exhibit A, p. 51). At the hearing, Petitioner testified that her pituitary tumor was worsening and putting stress on her body and altering her hormone levels. Petitioner testified that her gallbladder was removed and that she suffered from severe stomach issues, which cause her to vomit several times per day. Petitioner testified that she had a partial tear in her shoulder, thigh and hip, which caused her severe pain and limited her range of motion. Petitioner further testified that she suffered from mental health conditions, which affected her mood, that she had uncontrollable anger and unclear thinking.

Petitioner further testified that she was homeless, and that she occasionally stayed with friends and family. During a typical day, Petitioner described waking up in pain and having difficulty getting out of bed. Petitioner reported that she loses her balance getting up. She further testified that her digestive problems require her to make frequent visits to the bathroom. Petitioner reported difficulty cleaning herself due to her inability to use her hands. Regarding nutrition, Petitioner testified that she sustains herself with protein shakes and supplements because she cannot use her hands to cook. Additionally, she reported that other food makes her nauseous. Petitioner reported that she could drive herself to appointments with difficulty. Petitioner reported that she could not do any household chores, prepare meals or grocery shop due to difficulty using her hands and arms. Petitioner reported feeling severely depressed and having a hard time paying attention.

Petitioner disputed DDS' contention that she could do sedentary work. Petitioner testified that she could only stand for approximately one minute before she needed to sit down. Petitioner testified that she could walk with extreme difficulty and that she could walk for three-five strides before having to rest. Petitioner reported that she could not kneel and

that she could sit with difficulty and that it might be one minute before the pain sets in. However, Petitioner's testimony regarding her ability to stand and walk is not supported by the medical evidence presented.

Petitioner submitted additional documentation that was entered as Petitioner's Exhibits 1 and 2. The narrative provided by Petitioner in these documents suggests several new or worsening conditions and describes the severity of her conditions. However, these documents are not medical records from the treating physicians for these ailments. An individual bears the burden of presenting sufficient objective medical evidence to substantiate the alleged disabling impairments, and therefore, the evidence that she submitted falls short of establishing the new and/or worsening conditions.

Thus, DDS properly determined 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 the postural, manipulative and environmental limitations, and thus, the occupational base is eroded by her additional limitations or restrictions. SSR 96-9p.

#### **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 work as a cosmetologist, a receptionist, a certified nursing assistance (CNA), a day care provider and work in the food service industry (Exhibit A, p. 29). Petitioner has a certificate in cosmetology (Exhibit A, p. 29). Petitioner testified that she is no longer able to work as a cosmetologist because she is not able to stand for long periods of time due to her leg pain, which is exacerbated by extended use. Additionally, she has limitations reaching in front or laterally, which are movements required of a cosmetologist.

Petitioner has a RFC of sedentary work, which is limited by postural, manipulative and environmental limitations. Cosmetology, CNA, day care provider and food service jobs require more than a sedentary level of exertion. Thus, Petitioner is no longer able to meet the demands of those professions. The strength needed for a receptionist position is sedentary. However, receptionist work requires typing, filing and other functions that require reaching in front or laterally or reaching overhead. Given Petitioner's manipulative limitations, the record shows that she is not able to work as a receptionist. As such, Petitioner is incapable of performing past relevant work. Because Petitioner is unable to

perform past relevant work, she cannot be found disabled, or not disabled, at Step 4, and the assessment continues to Step 5.

### **Step 5**

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

At this point in the analysis, the burden shifts from Petitioner to 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 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 considered to be a younger individual (██████████) for the purposes of Appendix 2. She is a high-school graduate with a vocational degree in cosmetology. 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, Petitioner also has non-exertional impairments imposing additional limitations. DDS determined that she had postural limitations related to climbing, balancing stooping, kneeling, crouching and crawling (Exhibit A, p. 50). Additionally, Petitioner had manipulative limitations regarding reaching in front and/or laterally and reaching overhead (Exhibit A, p. 51). DDS found that Petitioner had environmental limitations and must avoid all exposure to hazards, avoid even moderate exposure to vibration and avoid concentrated exposure to extreme cold and wetness (Exhibit A, p. 51).

MDHHS 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**

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. Accordingly, MDHHS's determination is **REVERSED**. MDHHS IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER.

1. Reprocess Petitioner's [REDACTED] 2023 SDA application to determine if all the other non-medical criteria are satisfied in accordance with Department policy;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified; and
3. Notify Petitioner of its decision in writing.

LJ/pt

  
\_\_\_\_\_  
**Linda Jordan**  
Administrative Law Judge

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**Via-Electronic Mail:**

**DHHS**  
Pam Bruce  
Marquette County DHHS  
234 West Baraga Ave.  
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**Interested Parties**

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**Via-First Class Mail:**

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