STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [redacted]

Claimant

Reg. No: 2007-16343
Issue No: 2009
Case No: [redacted]
Load No: [redacted]
Hearing Date:
August 20, 2008
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on August 20, 2008. The Claimant appeared and testified.

A prior hearing scheduled January 30, 2008 was started but adjourned part way into the hearing per the Claimant's request to allow him time to consult with an attorney.

ISSUE

Whether the department properly determined the claimant is not "disabled" for purposes of Medical Assistance (MA)?

FINDINGS OF FACT

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

1. On May 31, 2006, the Claimant representative applied for MA-P and Retro-MA.
2. On August 22, 2006, MRT denied the Claimant's request for MA-P and Retro- MA.

3. On January 3, 2007, the Claimant's representative submitted to the Department a request for hearing.

4. On April 3, 2007, the State Hearing and Review Team (SHRT) denied MA.

5. The Claimant is 51 years old.

6. The Claimant completed schooling up through the 12th grade education.

7. The Claimant has employment experience in auto body and collision work.

8. The Claimant's limitations have lasted for 12 months or more.

9. The Claimant suffers from arthritis, cervical radiculopathy, nerve root impingement, migraine headaches, carpal tunnel, and bone spur.

10. The Claimant has significant limitations on physical activities involving sitting, standing, walking, lifting, bending, stooping.

11. On August 14, 2008, the Social Security Administration found the Claimant was disabled as of July 18, 2007 (he attained age 50) after considering an alleged onset date of December 31, 2005. The Claimant has filed a timely appeal of this partially favorable decision.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20

R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. (20 CFR 416.905).

Because disability must be determined on the basis of medical evidence, Federal regulations have delineated a set order entailing a step sequential process for evaluating physical or mental impairments. When claimant is found either disabled or not disabled at any point in the process, the claimant is not considered further.

Addressing the following steps:

The first step to be consider is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, the Claimant is not currently working per his testimony he stopped working after the hearing on January 30, 2008.

On January 30, 2008, the Claimant appeared before this Administrative Law Judge and testified he was operating a business out of his home. The Claimant testified he only made enough to cover his household expenses. It should be noted at that time that was thought to be at least [redacted] monthly. On August 20, 2008, the Claimant testified his income was more limited. Tax records submitted for 2006 demonstrate income of $6200. The Claimant's business is a cash operation according to his testimony and the amount of income fluctuates. The Claimant testified he returned to operating his business as early as April 2006 by definitely by May 2006 and it continued to operate until January 30, 2008. The Claimant testified friends of his completed the

repairs on the vehicles and he simply supervises and obtains the cars to be worked on. At the hearing held on January 30, 2008 it should be noted the Claimant appeared to have a substance consistent with bondo under his finger nails. While the testimony and credibility is questionable in regards to the Claimant's employment this Administrative Law Judge will proceed to the next step in the evaluation.

It should be further noted the Claimant's appearance and conduct during the two hearing dates differed greatly. On January 30, 2008, the Claimant appeared without any braces or slings and appeared to have no difficulty walking in the room and sitting in the office chair provided. However, on August 20, 2008 the Claimant appeared with a back brace and one arm in a sling. He presented as though he had difficulty walking and sitting during the hearing.

The second step to be determined in considering whether the Claimant is considered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, reaching carrying or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. 20 CFR 416.921(b).

In this case, the Claimant's medical evidence of record supports a finding that Claimant has significant physical limitations that limit his ability to perform basic work activities such as

sitting, standing, walking, bending, lifting, and stooping. Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

This Administrative Law Judge reviewed the entire medical packet which included Claimant's exhibits in their entirety. Below is a brief outline of some of those documents listed chronologically.

> **March 5, 2004** [redacted] found the following upon exam: Noted Claimant returned to work doing auto collision work avoiding heavy lifting on March 4, 2004. Impression: subacute neck pain with radicular symptoms down the left arm and symptoms in the leg most consistent with a cervical radiculopathy. The patient has no clinical evidence of a stroke. MRI, carotid duplex, etc., were all negative. Recommended the Claimant stop working until April 15, 2004 and not to lift more than 10 lbs. Department exhibit 1 page 81-82. Electrodiagnostic showed mild left C8 radiculopathy and very mild left carpal tunnel syndrome. Department exhibit 1 page 79.
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> **March 26, 2004** [redacted] Impression: The dominant finding occurs at C6-7 where nerve root impingement morphologically compresses both exiting C7 nerve root sleeves. The cord has a normal appearance. Department exhibit 1 page 76.
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> **April 2, 2004** [redacted] found the following upon exam: examination similar to before. He has had slight improvement of his strength. Left C7-8 radiculopathy and pathology at C6-7; a bony abnormality. Recommended epidural blocks for two weeks, physical therapy. Department exhibit 1 page 84.
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> **May 3, 2004** [redacted] found the following upon exam: Physical exam: patient's strength is 5/5. He has very mild weakness in the left hand in the C8-T1 distribution, which is slightly better than before. There is no severe spasticity. There are no long tract signs. Sensation is intact. He has mild neck pain, modestly better. Impression: Cervical pain with C6-7 pathology and left C7-8 radiculopathy. The patient has had slight improvement after physical therapy and epidural blocks.

He still has symptoms down the arm, less down the leg. Recommended: continued physical therapy. Department exhibit 1 page 83.

February 25, 2005 [redacted] y report Department exhibit 1 page 126 found the following: degenerative changes of the lower cervical spine but no evidence of acute fracture. Noted loss of normal curvature of cervical spine suggesting possible muscle spasm. No acute fracture or dislocation seen and vertebral body heights are all maintained. Some anterior spur formations and there is a decrease disc space at C6-7. Impression some degenerative changes present but no evidence of any acute fracture.

May 12, 2005 [redacted] found the following upon exam: Physical exam: patient's strength is adequate. He does have a positive Spurling's maneuver. Impression: Significant Cervical pathology at the level of C6-7. The patient has bilateral radicular symptoms. He should not be lifting anything. He is unable to work. Department exhibit 1 page 86.

September 16, 2005 Consultative exam by [redacted]. found: Fine and gross dexterity is intact, General neurological evaluation revealed the patient has limitation of range of motion of his shoulders and neck significantly. With rotation of the next the left, there is numbness and tingling and paresthesias in the left upper extremity. However, there was no functional loss, Gait and stance were satisfactory. There was limitation with squatting. Unable to do tiptoe or heel walking secondary to back problems. As the patient works with his upper extremities, I believe his radiculopathy will continue until he has a surgical procedure to relieve the pain and radiculopathy in both upper extremities. Department exhibit 1 page 75.

October 13, 2005 [redacted] found the following upon exam: Physical exam: The patient has weakness in the C6-7 distribution, as before. Impression: The patient has C6-7 nerve impingement, which intractable. He should not be working. He is totally restricted. Department exhibit 1 page 86.

December 5, 2005 [redacted] found the following upon exam: Physical exam: There is weakness in the arms. He has mildly brisk reflexes in the legs. The remainder of the neurological examination is unchanged. Impression: Significant cervical pathology at C6-7 with bilateral

cervical radiculopathy. He also has back pain. He is to stay off work secondary to the above (MRI). Department exhibit 1 page 88.

June 20, 2005 [redacted]rt Depart exhibit 1 page 119 noted positive results for cocaine metabolites and cannbinoids.

June 20, 2005 [redacted] report Department exhibit 1 page 114 found the following: Axial imaging through the head is compared with a study from February 24, 2005. Impression unremarkable CT of the head without IV contrast. No significant interval change from 2/24/05.

June 21, 2005 [redacted] report found the following: left ventricle grossly normal size; left ventricular ejection fraction grossly normal (55%-60%); mitral valve grossly normal; mild tricuspid regurgitation; aortic valve is normal in structure and function. Department exhibit 1 page 112.

June 21, 2005 [redacted]esi [redacted]. impression as follows: Vasovagal syncope, likely precipitated by pain. No evidence of a stroke, transient ischemic attack, or seizures. In the past he has had a significant workup last year including MRI, carotids in [redacted] for about 10 days, which did not reveal anything at that time. His clinical symptoms were consistent with cervical radiculopathy. His chronic cervical radiculopathy which is unchanged. The patient likely will need surgical intervention. Department exhibit 1 page 110.

October 12, 2005 [redacted] completed a DHS 49 which revealed the following: [redacted] found the Claimant to be normal in all areas except for musculo-skeletal and neuro. He listed bilateral C6-C7 radiculopathy and weakness in arms. The DHS 49 lists Claimant's condition as stable and should improve after surgery within 2-4 months. Limited lifting to less than 10 lbs occasionally and standing and walking to 2 hours in a 8 hour work day. No comment listed for the Claimant's ability to sit. No assertive devices were found necessary. He could use both hands and arms for simple grasping and fine manipulation. He should not use his hands and arms for reaching, pushing/pulling. He could use both feet for operating foot/leg controls. No limitations were noted for his mental state. Department exhibit 1 page 102.

February 23, 2006 [redacted]. results: Unenhanced computed tomography was performed, and comparison is made to

the prior study on March 2004. The examination reveals the ventricles to remain normal in size and position. There is no evidence of intracranial mass, hemorrhage, or infarct. Conclusion: A normal unenhanced CT study. Department exhibit 1 page 61.

February 24, 2006 [redacted] results: Negative test with and without isoproterenol. Department exhibit 1 page 59.

February 24, 2006 [redacted] performed by [redacted] EKG channels demonstrate normal sinus rhythm, No hyperventilation was performed. Some synchronous slowing consistent with drowsiness is present, but no definite sleep architecture is noted. Photic stimulation is performed in stepwise manner demonstrating a modest, symmetric driving response. This EEG is within normal limits. Department exhibit 1 page 58.

February 24, 2006 [redacted] results: Complete 2-D study with adequate images. Complete spectral and color Doppler. Normal left ventricular systolic function. Left ventricular estimated ejection fraction = 55%. Normal diastolic function. Department exhibit 1 page 62.

February 24, 2006 [redacted] Duplex results from [redacted]: Analysis of the carotid system reveals no significant plaque at either bifurcation with no evidence of a hemodynamically stable stenosis based on velocity criteria. There is evidence of antegrade flow in both vertebral arteries with the right internal and common carotid artery peak systolic velocity ratio of 1.1 and the left .95. Impression: Normal carotid systems bilaterally. Department exhibit 1 page 60.

February 24, 2006 [redacted] report from [redacted] noted the following: During hospitalization, the patient showed significant evidence of manipulative behavior. He was evaluated by a neurologist and also by a neurosurgeon. According to the patient, he was told that the neurology doctor told him that he will need to repeat the MRI of his neck for the follow up of cervical radiculopathy. I personally checked with the neurologist the day after the patient was seen by him, and check the plan of care. According to the neurologist, he didn't suggest a MRI be done, since there is no significant evidence that cervical radiculopathy could cause the above complaints. Department exhibit 1 page 56.

May 26, 2006 [redacted] found the following upon exam: Physical exam: There are brisk reflexes in the legs. There is mild weakness, more in the left arm. Impression: Chronic C6-7 radiculopathy and cervical degenerative disease. He is unable to perform any work at this time secondary to severe cervical radiculopathy. Department exhibit 1 page 14.

May 26, 2006 [redacted] completed a DHS 49 which revealed the following [redacted] noted arm weakness, brisk reflexes, radiculopathy symptoms, nerve impingement. Found his condition to be deteriorating. Stated no amount weight should be lifted. Noted not able to do any Standing and/or walking. No comment listed for the Claimant's ability to sit. No assertive devices were found necessary. He could use both hands and arms for simple grasping. He should not use his hands and arms for reaching, pushing/pulling and fine manipulation. No use of feet for operating foot/leg controls. No limitations were noted for his mental state. Department exhibit 1 page 12.

June 23, 2006 [redacted] performed an MRI of the cervical spine, [redacted].O. findings were as follows: Small broad based disc herniation with larger left paracentral/left foraminal/left lateral component with a degree of biforaminal encroachment (left side greater than right) C6-7. Mild right biforaminal encroachment at C3-C4 and C4-C5. Cannot exclude subtle left foraminal disc herniation at t1_t2. Straightening of the normal cervical lordosis. Note is made the patient is also complaining of low back pain with left leg numbness and weakness, correlate if patient's symptoms are referable to lumbar radiculopathy and recommend dedicated MRI of the Lumbar spine if clinically warranted. Department exhibit 1 page 6.

July 14, 2006 [redacted] findings were as follows: Diagnostic studies: An MRI of the cervical spine is reviewed. There are two discs that are the most impressive. C3-4 reveals a mild central disc protrusion. For the most part, I think that is okay. C6-7 most likely reveals the most pathology. There is not really a lot of central stenosis at that level, but there is neural foraminal narrowing as a result of disc lateralization and there is some central disc protrusion there as well. Impression: Cervical and lumbar radiculopathy. Plan: Regarding his neck, there is nothing that he cannot live with. The one bad disc that I would consider operating on is C6-7. Ultimately, C6-7 could be treated with further non-operative care. At this point, two years later, it most likely will not

improve more than it is at the current time. Department exhibit 1 page 4.

August 2, 2006 [redacted] found the following upon exam: Impression: Chronic C6-7 radiculopathy and low back pain. Department exhibit 1 page 13.

November 2, 2006 [redacted] found the following upon exam: Physical Exam: The patient has no sever pain. He has low back tenderness. The remainder of the comprehensive neurological examination is nonfocal. Impression: Chronic left C6-7 radiculopathy from pathology of C6-C7. The patient needs surgical decompression. Low back pain. Plan: The patient is totally disabled until he has surgical intervention. Claimant exhibit A page 2.

July 24, 2007 [redacted] performed an MRI of the cervical spine and lower spine, [redacted] findings were as follows: There is no evidence of an acute fracture. Mild degenerative changes are seen in the cervical spine. Disc herniations are present at the C4-C5 and C6-C7 disc levels, as discussed above there is no evidence of spinal stenosis. There is some impingement upon the neural foramen bilaterally at these levels. There is no other evidence of disc herniation or spinal stenosis. The neural foramen are otherwise patent bilaterally. The overall appearance of the cervical spine is unchanged since 6/23/06. MRI results for Lumbar spine as follows: There is no evidence of an acute fracture or spondylolisthesis. Mild degenerative changes present, primarily seen in the facets. There is no clear evidence of disc herniation or spinal stenosis throughout the lumbar spine. The neural foramen are patent bilaterally throughout. The overall appearance of the lumbar spine has not changed significantly since 8/27/06 Claimant exhibit B pages 1-3.

April 16, 2008 [redacted] completed a physical residual capacity questionnaire with the following notable responses: Condition is expected to last 12 month or more. Patient should rarely twist, stoop(bend). Patient can occasionally squat. The Patient should avoid ladders and stairs. No significant limitation with respect to reaching, handling or fingering. Indicated patient can only sit/stand for less than 2 hours in a 8 hour work day. No cane or other assistive device necessary for standing/walking. Can occasionally lift and carry 10 lbs or less in a competitive work situation and rarely up to 20 lbs. But never 50lbs. Claimant's exhibit A page 4-7.

In the third step of the analysis, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to any listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. The Claimant's representative alleged the Claimant's condition met listing 1.04:

> **1.04** ***Disorders of the spine*** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:
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> A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);
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> OR
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> B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;
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> or
>
> C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

After careful review the Claimant's condition this Administrative Law Judge finds he does not meet that listing. The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make

appropriate mental adjustments, if a mental disability is being alleged. 20 CRF 416.913. A conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient, without supporting medical evidence, to establish disability. 20 CFR 416.927.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's work history auto body and collision work. As stated earlier the Claimant's testimony is questionable at best and creditability regarding his employment is highly suspect. The Claimant indicated he did return to work in May of 2006 although asserting he himself only supervised and didn't perform the work. This is highly questionable especially when considered with this Administrative Law Judge personal observation of a material similar to that of bondo appearing under the Claimant's nails during the January 30, 2008 hearing. In addition the Claimant testified he was able to run his business in a limited fashion until January 30, 2008. This Administrative Law Judge, finds based on the medical evidence and objective, physical, and psychological findings, that the Claimant is capable of the physical nor mental activities required to perform any such position. 20 CFR 416.920(e). However, this Administrative Law Judge will proceed to the next step.

In the final step of the analysis, the trier of fact must determine: if the Claimant's impairment(s) prevent the Claimant form doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations? 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and

3. the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite her limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. 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. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. 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 this 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. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once the Claimant makes it to the final step of the analysis, the Claimant has already established a prima facie case of disability. *Richardson v Secretary of Health and Human Services*, 732 Fd2 962 (6th Cir, 1984). Moving forward the burden of proof rests with the state to prove by substantial evidence that the Claimant has the residual function capacity for substantial gainful activity.

After careful review of the Claimant's medical record and the Administrative Law Judge's personal observation of the Claimant at the hearing, this Administrative Law Judge finds after considering the Claimant's exertional and non-exertional impairments the Claimant retains the capacity to perform a wide range of sedentary work. Therefore based upon the Claimant's vocational profile as a younger individual with a high school education and a history of semiskilled work with skills not transferable MA is denied based upon Rule 201.21.

The Social Security Administration (SSA) found the Claimant disabled as of July 18, 2007 notably based upon the Claimant turning 50 years old. The SSA prior to that date found the Claimant was not disabled and this Administrative Law Judge concurs with their finding.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is not medically disabled under the MA programs.

Accordingly, the Department decision is hereby AFFIRMED.

/s/
Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: [redacted]

Date Mailed: [redacted]

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JWO

cc: [redacted]