

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-41435
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 4, 2010
Oakland County DHS (03)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Walled Lake, Michigan on Wednesday, August 4, 2010. The Claimant appeared, along with [REDACTED], and testified. The Claimant was represented by [REDACTED] of Medicaid Assistance Service, Inc. [REDACTED] and [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P and SDA benefits on June 23, 2009. (Exhibit 1, pp. 58 – 77)
2. On July 10, 2009, the Medical Review Team ("MRT") determined the Claimant was not disabled. (Exhibit 1, pp. 4, 5)
3. On July 17, 2009, the Department sent a Notice of Case Action to the Claimant informing her that she was found not disabled. (Exhibit 1, p. 3)
4. On November 16, 2009, the Claimant's Authorized Representative received a copy of the denial notice.

5. On February 8, 2010, the Department received the Claimant's timely written request for hearing. (Exhibit 8)
6. On July 9, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
7. The Claimant's alleged physical disabling impairments are due to back spasms, hearing loss, shortness of breath, acute and chronic pancreatitis, diabetes mellitus, pancreatogenic diabetes, chronic pain, hypertension, chronic kidney disease (stage III), closed head injury (1993), and seizures/tremors.
8. The Claimant's alleged mental disabling impairment(s) are due to anxiety and depression.
9. At the time of hearing, the Claimant was 44 years old with an [REDACTED] birth date; was 5' ½ " in height; and weighed 110 pounds.
10. The Claimant is a high school graduate with some college and a has an employment history working as a field auditor and sales representative.
11. The Claimant's impairment(s) has lasted, or is expected to last, continuously for a period of at least 12 months.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by the 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 Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("BRM").

Disability is defined as the inability to do any substantial gainful activity 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(a) 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 his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 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, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need 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) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) 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 is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability based on back spasms, hearing loss, shortness of breath, acute and chronic pancreatitis, diabetes mellitus, pancreatogenic diabetes, chronic pain, hypertension, chronic kidney disease (stage III), closed head injury (1993), seizures/tremors, anxiety, and depression.

On [REDACTED], x-rays of the cervical spine revealed mild sic degenerative change within the mid-cervical spine, worst at the level of C5-C6 with uncovertebral osteophytes causing mild foraminal stenosis bilaterally. Kyphotic angulation of the cervical spine at C5-C6 was also shown.

On [REDACTED], an MRI of the abdomen revealed a cystic lesions in the lower and upper poles of the left kidney.

On [REDACTED], the Claimant attended a mental status examination. The Claimant was diagnosed with major depression and generalized anxiety. The Global Assessment Functioning ("GAF") was 60.

On [REDACTED], the Claimant attended a follow-up appointment for her stage III chronic kidney disease.

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On [REDACTED], the Claimant presented to the emergency room with complaints of abdominal pain. The Claimant was admitted and treated for acute pancreatitis, acute renal failure, and hyperglycemic crisis. The Claimant was discharged on February 24th.

On [REDACTED], the Claimant attended a follow-up examination. The Claimant experienced recurring abdominal pain and vomiting. The current diagnoses were uncontrolled diabetes with hyperglycemia, recurring acute to chronic pancreatitis.

On [REDACTED], the Claimant attended a follow-up appointment regarding her uncontrolled diabetes. The Claimant's insulin prescription was increased.

On [REDACTED], the Claimant attended a follow-up appointment for dietary recommendations to assist in controlling her diabetes.

On [REDACTED], the Claimant had an infected cyst removed from her right breast.

On [REDACTED], the Claimant attended a follow-up appointment for her abdominal pain.

On [REDACTED], the Claimant attended an appointment regarding her type 2 diabetes.

On [REDACTED], the Claimant was admitted to the hospital with complaints of left quadrant pain. A CT of the abdomen showed a larger area of focal pancreatic calcification within the pancreatic body. The Claimant was discharged on [REDACTED].

On [REDACTED], the Claimant presented to the hospital with complaints of involuntary leg movements. Extreme and unusual right leg movement was observed. The Claimant was found to have unusual leg movements, chronic pancreatitis, chronic kidney disease-Stage III, acid reflux, hypercholesterolemia, and pain.

The Claimant was admitted to the hospital on or about [REDACTED]. On [REDACTED] a CT of the abdomen and pelvis were performed which revealed a modest but increased stranding about the pancreas compared to an earlier study and suggested acute pancreatitis. On [REDACTED], the Claimant attended a consultative evaluation. The Claimant's past medical history includes chronic pancreatitis with multiple stenting, diabetes, chronic kidney disease (Stage III), hypertension, cholesterol, and head trauma (1993). After evaluation, pain management and possible repeat of the pancreatic duct stent was recommended. The Claimant was discharged on [REDACTED] with the diagnosis was acute pancreatitis.

On [REDACTED], a Medical Examination Report was completed by an internist on behalf of the Claimant. The current diagnoses were acute and chronic pancreatitis,

diabetes mellitus, chronic kidney failure, depression, and anxiety. The Claimant's condition was deteriorating and she was found unable to lift/carry any weight and able to stand less than 2 hours during an 8 hour workday. The Claimant's pain was also noted. The Internist opined that the Claimant would never be able to return to work.

On [REDACTED], a Medical Examination Report was completed by an endocrinologist on behalf of the Claimant. The current diagnosis was pancreatic diabetes. The physical examination documented daily acute pain, constant fatigue, abdominal tenderness with a history of seizures. The Claimant's condition was deteriorating and she was found able to occasionally lift/carry less than 10 pounds and able to stand and/or walk less than 2 hours in a 8 hour workday. The Claimant was also found to have brittle diabetes with high and low blood sugars. The Endocrinologist opined that the Claimant would never be able to return to work.

On [REDACTED], the Claimant presented to the hospital with complaints of abdominal pain. A CT confirmed acute and chronic pancreatitis. The Claimant was treated and discharged on March 26th.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses was chronic pancreatitis. The physical examination revealed daily pain, fatigue, deafness, sleep apnea, high blood pressure, acute abdominal pain, seizures, and a limited mental capacity noting depression and anxiety. The Claimant's condition was deteriorating and she was found unable to lift/carry any weight and stand and/or walk less than 2 hours during an 8 hour workday.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that she does have some physical and mental impairments that effect her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months, therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, 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. The Claimant has alleged physical disabling impairment(s) due to back spasms, hearing loss, shortness of breath, acute and chronic pancreatitis, diabetes mellitus, pancreatic diabetes, chronic pain, hypertension, chronic kidney disease (stage III), closed head injury (1993), seizures/tremors, anxiety, and depression.

Listing 1.00 (musculoskeletal impairments), Listing 2.00 (special senses and speech), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 6.00 (Genitourinary impairments), Listing 9.00 (endocrine system), Listing 11.00 (neurological impairments), and 12.00 (mental disorders) were considered in light of the objective medical evidence. Based on the medical evidence alone, the Claimant's physical impairment(s) do not meet or equal the intent and severity requirements of the above cited listings therefore she cannot be found to be disabled, or not disabled, for purposes of the Medical Assistance program. Accordingly, the Claimant's eligibility under Step 4 is considered. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv) An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* 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) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* 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) An individual capable of heavy work is also capable of

medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a) In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function 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. can't 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) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2) The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of work as a field auditor and sales representative. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work is considered semi- skilled, medium work.

The Claimant testified that she can lift/carry less than 10 pounds; can walk short distances; can sit for approximately ½ hour; can stand for less than ½ hour; and experiences difficulty bending and squatting. The Medical Examination Reports list the Claimant's condition as deteriorating finding her unable to lift/carry more than 10 pounds with standing and or walking at less than 2 hours during an 8 hour workday. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920 In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant therefore Step 5 of the analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant was 49 years old thus considered a younger individual for MA-P purposes. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(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). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In the record presented, the total impact caused by the combination of medical problems suffered by the Claimant must be considered to include subjective complaints of severe pain. Pain is a non-exertional impairment. *Cline v Sullivan*, 939 F2d 560, 565 (CA 8, 1991) In applying the two-prong inquiry announced in *Duncan v Secretary of Health & Human Services*, 801 F2d 847 (CA6, 1986) it is found that the objective medical evidence establishes an underlying medical condition (chronic and acute pancreatitis and chronic kidney failure) can reasonably be expected to produce the alleged disabling pain. *Id.* at 853. In this case, the Claimant has had several hospitalizations and treatments yet her condition continues to deteriorate. In light of the foregoing, it is found that the combination of the Claimant's physical and mental impairments have an affect on her ability to perform basic work activities such that the Claimant is unable to meet the physical and mental demands necessary to perform even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 et seq. and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

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In this case, the Claimant is found disabled for purposes of the Medical Assistance ("MA-P") program, therefore the Claimant's is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance and State Disability Assistance programs.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the June 23, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and her authorized representative of the determination.
3. The Department shall supplement for any lost lost benefits that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in accordance with department policy in September 2011.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 8/05/2010

Date Mailed: 8/05/2010

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.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

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