

**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.: 2010-50978  
Issue Nos.: 2009, 4031  
Case No.: [REDACTED]  
Hearing Date: December 8, 2010  
DHS County: Wayne (82-35)

**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 telephone hearing was conducted from Detroit, Michigan, on Wednesday, December 8, 2010. The Claimant appeared, along with [REDACTED], and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The records were received, reviewed, and entered as Exhibit 4. This matter is now before the undersigned for a final decision.

**ISSUE**

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

**FINDINGS OF FACT**

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

1. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on March 14, 2010.
2. On May 13, 2010, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, p. 1)

3. On June 21, 2010, the Department sent an Eligibility Notice to the Claimant informing her of the MRT determination. (Exhibit 1, p. 2)
4. On August 9, 2010, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
5. On September 1, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)
6. The Claimant alleged physical disabling impairments due to back pain, hand/feet numbness, and renal mass.
7. The Claimant alleged mental disabling impairments due to bipolar disorder, anxiety, and schizophrenia.
8. At the time of hearing, the Claimant was 51 years old with a [REDACTED], birth date; was 5'1" in height; and weighed 105 pounds.
9. The Claimant is a high school graduate with some vocational training and an employment history as a waitress.
10. The Claimant's impairments have lasted, or are expected to last, continuously, for a period of 12 months or longer.

### **CONCLUSIONS OF LAW**

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, formerly known as the Family Independence Agency, 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-related 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 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).

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 (e.g., 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 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). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 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 4 and 5. 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 are 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 and, therefore, is not ineligible for disability benefits 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 due to back pain, hand/feet numbness, renal mass, bipolar disorder, anxiety, and schizophrenia. In support of her claim, some older records from 2008 were submitted which document treatment for bipolar disorder.

For the period of [REDACTED], the Claimant's diagnoses were bipolar disorder and generalized anxiety disorder. The Global Assessment Functioning ("GAF") was 40.

On [REDACTED], the Claimant underwent a cystoscopy, right ureteroscopy, laser lithotripsy, stone basket extraction, and stent exchange without complication.

On [REDACTED], a CT of the abdomen revealed a calcified mass of the medial aspect of the inferior pole of the right kidney and three hypodense lesions within the hepatic parenchyma.

On [REDACTED], the Claimant sought treatment for flank pain. A CT scan revealed a right renal cystic mass. The Claimant was treated and discharged with the diagnoses of flank pain and ureteral spasm.

On [REDACTED], the Claimant sought treatment for back pain. The Claimant was treated and discharged with the diagnoses of acute right severe flank pain and right renal mass. A urinary tract infection was not ruled out.

On [REDACTED], the Claimant was treated for shortness of breath and flank pain. The records note a CT scan of the thorax for a recent diagnosis of metastatic breast cancer with a questionable lung nodule. The Claimant was treated and discharged with the diagnoses of acute flank pain, history of kidney stones; and renal cyst (stable).

On [REDACTED], the Claimant was treated for flank pain. The diagnoses were urinary tract infection and abdominal pain.

On [REDACTED], the Claimant was treated for back pain and frequent urination.

On [REDACTED], the Claimant was treated for and diagnosed with flank pain and renal cyst.

On [REDACTED], the Claimant sought treatment for recurring chronic right flank pain. A CT of the right kidney revealed mild right-sided hydronephrosis.

On [REDACTED], the Claimant was diagnosed with hematuria, chronic right kidney cystic mass, and recurrent right flank pain. A CT revealed small right renal cyst with calcifications within the wall.

On [REDACTED], the Claimant was diagnosed with hematuria and calcified right renal cyst.

On [REDACTED], the Claimant was treated for/diagnosed with hematuria, flank pain, and history of renal cyst.

On [REDACTED], the Claimant was treated for hematuria.

On [REDACTED], the Claimant was treated for back pain, hematuria, and history of renal mass.

On [REDACTED], the Claimant sought treatment for blood in her urine. The Claimant was treated and discharged with the diagnoses of hematuria and low back pain.

On [REDACTED], the Claimant sought treatment for right flank pain. A CT scan revealed a complex cystic mass within the right kidney.

On [REDACTED], a Psychiatric/Psychological Examination Report was completed on behalf of the Claimant. The Claimant's medications interfere with her daily functioning and she previously had four suicide attempts. The diagnosis was bipolar disorder. The Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was markedly limited in her ability to understand and remember detailed instructions. The Claimant was moderately limited in 13 of the 20 factors. The Claimant was found unable to function without her medication; however, the medications affect her ability to function normally.

On [REDACTED], the Claimant sought treatment for flank pain.

On [REDACTED], the Claimant sought treatment for low back pain, cough, congestion, and increased hematuria. An ultrasound revealed the complex cystic lesion about the right lower pole.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were blood in urine, back pain, and renal mass noting possible cancer. The Claimant's condition was deteriorating and she was found able to lift/carry less than 10 pounds; sit about 6 hours in an 8-hour work day with low back pain, and able to perform simple grasping and reaching with her upper extremities. Mentally, the Claimant's memory and sustained concentration were limited.

On this same date, [REDACTED] [REDACTED], the Claimant sought treatment for ear pain. The Claimant was treated and discharged with the diagnoses of hematuria and upper respiratory infection.

On [REDACTED], the Claimant sought treatment for abdominal pain. An ultrasound noted that the cyst of the lower pole, right kidney was not visualized.

On [REDACTED], the Claimant sought treatment for right flank pain and urinary tract infection.

On [REDACTED], the Claimant sought treatment for flank pain. The CT of the abdomen revealed stable-appearing thick-walled peripherally calcified cyst of the

inferior pole of the right kidney and stable mild prominence of the right renal pelvis and pelvocaliceal system.

On [REDACTED], the Claimant was treated for bilateral flank pain and hematuria.

On [REDACTED], the Claimant was admitted to the hospital with complaints of abdominal and flank pain. A CT scan of the abdomen and pelvis revealed mild intrahepatic biliary dilation with a mild prominence of the intrapancreatic duct without common hepatic or common bile duct dilation or pericholecystic fluid. The appearance was stable when compared with the September 2008 scan. Another CT of the abdomen and pelvis was performed which revealed degenerative disc disease at L5-S1.

On [REDACTED], the Claimant presented to the hospital with complaints of abdominal and flank pain. A CT scan of the abdomen revealed a stable complex cyst in the lower pole of the right kidney.

On [REDACTED], the Claimant was treated for hematuria and headache.

On [REDACTED], the Claimant presented to the hospital with complaints hematuria. The Claimant was treated and discharged the following day with the diagnoses of sciatica and hematuria.

On [REDACTED], the Claimant was treated for pelvic pain.

On [REDACTED], the Claimant sought treatment for right flank pain and nausea. The Claimant was treated and discharged with the diagnoses of acute cystitis and low back pain.

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 some medical evidence establishing that she does have some physical limitations on 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 impairments due to back pain, hand/feet numbness, renal mass, bipolar disorder, anxiety, and schizophrenia.



Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 6.00 (genitourinary system), Listing 7.00 (hematological system), and Listing 12.00 (mental disorders) were considered in light of the objective medical evidence. Ultimately, it is found that the Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment; therefore, the Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 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 are 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 additional 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, e.g., 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 to the demands of past relevant work must be made. *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 (e.g., 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.*

Over the past 15 years, the Claimant worked as a waitress. This employment required her to stand on her feet most of the day and lift/carry approximately 40 pounds. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work history is considered unskilled, light to medium work.

The Claimant testified that she can lift/carry about 20 pounds for a brief period; walk short distances; sit for 15 – 20 minutes; stand for 10 minutes; and has difficulties bending and/or squatting. The objective medical records lists the Claimant's condition as deteriorating with restrictions of carrying/lifting less than 10 pounds; sitting up to 6 hours with pain; and able to perform simple reaching and grasping with her upper extremities. Mentally, the Claimant's memory and sustained concentration are limited. If the impairment or combination of impairments does not limit an individual's 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 unable to return to past relevant employment; thus, Step 5 of the sequential 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 51 years old and, thus, considered to be closely approaching advanced age for MA-P purposes. The Claimant is a high school graduate. 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). Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. 20 CFR 416.963(d).

In this case, the evidence reveals that the Claimant suffers from a renal mass, hematuria, low back pain, hypodense lesions, flank pain, bipolar disorder, and anxiety. Since [REDACTED], the Claimant received emergent care treatment or was hospitalized approximately 29 times. In light of the foregoing, it is found that the residual functional capacity for work activities on a regular and continuing basis includes the ability to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.12, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department 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 automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, the Claimant is found 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 finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall process the March 14, 2010, application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.
3. The Department shall supplement for any lost benefits (if any) 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 May 2012 in accordance with Department policy.

*Colleen M. Mamelka*

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**Colleen M. Mamelka**  
Administrative Law Judge  
For Maura Corrigan, Director  
Department of Human Services

Date Signed: April 20, 2011

Date Mailed: April 21, 2011

**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.

CMM/pf

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