

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-10601

Issue No: 2009; 4031

[REDACTED]

Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong on behalf of Ivona Rairigh

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, an in-person hearing was held on January 27, 2010. Claimant personally appeared and testified. The record was left open at Claimant's request until April 27, 2010, to allow Claimant to submit additional medical documentation. As of April 27, 2010, the only information Claimant submitted was from his primary care physician at the VA Medical Center that he was attending the gym three times a week for exercise.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro MA and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

- (1) On October 15, 2009, Claimant filed an application for MA and SDA benefits alleging disability.
- (2) On November 9, 2009, the Medical Review Team (MRT) denied Claimant's application for MA-P, Retro-MA and SDA stating that Claimant's physical impairment will not prevent employment for 90 days or more. MRT denied Claimant's MA application stating Claimant is capable of performing other work, pursuant to 20 CFR 416.967(b).

- (3) On November 9, 2009, the department caseworker sent Claimant notice that his application was denied. A corrected notice was sent to Claimant on November 23, 2009, because the first notice had the incorrect denial reason.
- (4) On November 13, 2009, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On December 19, 2009, the State Hearing Review Team (SHRT) again denied Claimant's application stating Claimant retains the residual functional capacity to perform light work per 20 CFR 416.967(b).
- (6) Claimant has a history of post traumatic arthritis of the right knee, Hepatitis C, COPD, bilateral osteoarthritis of the left hip, tobacco addiction, impotence, alcohol abuse, intravenous drug use (cocaine), marijuana use and chronic pain syndrome.
- (7) Claimant was first seen by the VA in October 2007 complaining of swelling and pain in his right knee. X-rays were taken and compared to an exam from April 12, 2007, and no changes were observed. The right knee was diagnosed as stable since April 12, 2007, with post traumatic arthritis.
- (8) Claimant was again seen in November 2007, for increased pain and swelling in his right knee. Claimant had had recurrent episodes of effusions requiring aspiration and flare-ups of pain and had received steroid injections in the past, the last in 2005, with good relief of symptoms. Claimant was using a cane on the left side and an elastic knee support.
- (9) On April 4, 2008, Claimant reported to the VA that he had fallen and was suffering pain in the left hip area and left clavicle. X-rays were taken of his left hip and showed bilateral osteoarthritis of the left hip, no fracture. X-rays of Claimant's left clavicle showed a fracture of the distal clavicle with displacement of distal fragments. Fracture of the eighth left posterior rib not well seen in the study.
- (10) On June 2, 2008, a follow-up x-ray showed downward displacement of distal fragment with early callus. No change in position since April 4, 2008. Claimant was diagnosed with a fracture of left distal clavicle, contusion to his left hip and post traumatic arthritis of right knee.
- (11) On September 2, 2008, Claimant complained of pain and stiffness in both knee joints and x-rays were taken. The right knee showed osteoporosis, patellofemoral narrowing, and small spur at attachment of quadriceps to patella. Findings were stable since the exam that was made on April 12, 2007. Claimant was diagnosed with mild arthritis based on the minor abnormality.

- (12) On February 23, 2009, Claimant was seen for a Rheumatology consult on a follow-up for Hypercholesterolemia, degenerative joint disease in knees, hips and thumbs, impotence, COPD, tobacco addiction since age 20, history of Hepatitis-C, alcohol abuse, intravenous drug use (cocaine), smoking marijuana since age 16 and old fracture of distal femur at age 25. Claimant complained of sore wrists, elbows, knees and left shoulder he has had for years. Claimant stated his shoulder hurts in damp weather and with use. Claimant thought his wrists, elbows and knees may swell. Claimant gets his right knee aspirated every six months which helps for a couple of months. Claimant wears glasses and is asthmatic. Claimant has been treated for Hepatitis C from using intravenous drugs (cocaine). Claimant uses a cane and has limited wrist range of motion, but no synovitis. Claimant's left elbow is tender and lacks 5 to 10 degree extension. His right elbow lacks 15 degree extension with tenderness. His right knee range of motion crepitus, and his ankles and MTP's were fine. After reviewing the laboratory reports and x-rays, the examining doctor's impression was that Claimant suffers from post traumatic arthritis, which may also be a component of inflammatory arthritis. Claimant has hepatitis-C and other problems.
- (13) On March 19, 2009, the State of Michigan performed a Disability Determination based only on information provided by Claimant. Claimant has medical issues mostly involving arthritis and the fractured clavicle. Claimant smokes about four cigarettes a day and was a problem drinker, with excessive drinking used to aid sleep or decrease his pain. Claimant stated his drinking problem has been resolved through treatment. Claimant does not use illicit drugs. Claimant was diagnosed on Axis I: 296.80, a bipolar disorder, not otherwise specified. On Axis II: 799.9, diagnosis deferred. Axis III: Arthritis. Axis IV: Stressors: Unemployed, medical issues. Axis V: Current GAF: 58. Claimant's depressive disorder needs close management and he may be appropriate for some sort of job retraining.
- (14) On March 31, 2009, Claimant was evaluated for Hepatitis C. Claimant stated he was last seen in 2004. Claimant stated he was doing fair, has chronic pain in his back and shoulders and has been drinking alcohol to help with the pain. Claimant reported he still has mood swings, sleep problems, and needs a psychiatric evaluation. Reported he last used alcohol 6 weeks ago. His other medical problems included COPD, DJD and poly substance abuse. He has a history of depression. The doctor's assessment was Claimant suffered from chronic Hepatitis C, chronic pain syndrome, COPD and had a history of alcohol dependence. The doctor found Claimant was not currently an optimal candidate for interferon and ribavirin therapy because of his alcohol use, and he needed to be re-evaluated for depression.
- (15) On April 10, 2009, Claimant was treated at the VA for a frozen left shoulder. Claimant has Hepatitis C and has to limit his pain medications

and NSAID use. Claimant had difficulty with abduction being limited to 85 degrees both active and passive range of motion. Claimant was referred to physical rehabilitation to evaluate whether a steroid injection could be used to free the shoulder.

- (16) On April 13, 2009, Claimant had an echogram abdomen test completed based on his Hepatitis C. The ultrasound of the abdomen was normal, showing the liver, gallbladder and pancreas were normal and the kidney was imaged and appeared unremarkable.
- (17) On May 21, 2009, Claimant was seen at Physical Medicine Rehab Physicians. Claimant's pain and limited range of motion of the left shoulder had persisted for the past 2-3 months. Claimant's left shoulder had a deformity of the left clavicle with some tenderness over the distal clavicle. Range of motion of left shoulder painful, flexion 120 degrees, abduction 90 degrees, extension 45 degrees, internal and external rotation, 30 degrees. No drop arm on either side. Impingement felt on left side. Both elbows showed some limitation of extension on both sides, limited supination of right side. Puffiness of right MCP joints was noted in wrists and hands. Decreased ROM of right wrist. Claimant able to make full fists on both sides. Claimant's gait without assistive devices was good. A review of x-rays of Claimant's knees from September 2, 2008, showed he has mild arthritis based on osteoporosis in both knees. Review of x-rays from February 23, 2009, of Claimant's elbows and wrists, shows Claimant has mild degenerative disease in both elbows and wrists, greater in the right hand than the left. A review of the x-ray of Claimant's left shoulder raised the possibility of mild underlying chronic rotator cuff disease based on the degenerative changes. Claimant received a steroid injection to his left shoulder for the arthritis and tendinitis/impingement. Claimant had pain free abduction after the injection. The radiology report showed his left AC joint was fairly well maintained, and there was mild degenerative narrowing involving the glenohumeral joint as well as tiny subchondral cystic/sclerotic changes projecting over the greater tuberosity at the rotator cuff insertion side.
- (18) Claimant is a [REDACTED] man whose birthday is November 9, 1957. Claimant is 5'6" tall and weighs 156 lbs. Claimant completed eleventh grade and does not have a GED and was enrolled in Special Education.
- (19) Claimant was denied Social Security disability benefits and is appealing that determination.

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 (DHS or department) 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 Reference Tables Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity. (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA. (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe." (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms,

diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1. (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

At Step 1, Claimant is not engaged in substantial gainful activity and testified that he has not worked since 2007. Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering Claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with osteoarthritis in both knees, elbows, hands and wrists. Claimant's left hip has bilateral osteoarthritis. There is a possibility of mild underlying chronic rotator cuff disease of Claimant's left shoulder. Claimant also has Hepatitis C due to intravenous (cocaine) drug use, COPD, chronic pain syndrome and a history of alcohol dependence. The finding of a severe impairment at Step 2 is a *de minimus* standard. This Administrative Law Judge finds that Claimant established that at all times relevant to this matter Claimant had degenerative arthritis which would affect his ability to do substantial gainful activity. Therefore, the analysis will continue to Step 3.

At Step 3 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 Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, Claimant's past relevant employment has been as a banquet server and a cabinet maker. The objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent him from performing the duties required from his past relevant employment for 12 months or more. Accordingly, Claimant is disqualified from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform other jobs.

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).

At Step 5, the burden of proof shifts to the department to establish that Claimant does have residual function capacity. 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. See discussion at Step 2 above. Finding of Fact 18.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least light duties. Claimant alleges he suffers from pain in his knees and hands. However, Claimant testified during the hearing that he does his own laundry and grocery shopping and he works out at the gym and does bench presses three times a week. Claimant also suffers from chronic Hepatitis-C, contracted through his intravenous use of cocaine. But, Claimant is not an optimal candidate for interferon and ribavirin therapy because of his alcohol abuse. Furthermore, Claimant has to limit his pain medications and NSAID use because he has Hepatitis-C. Moreover, Claimant has had a tobacco addiction since the age of 20 and smoked marijuana since he was 16 years of age.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant has the residual functional capacity to perform other work. As a result, Claimant is disqualified from receiving disability at Step 5 based upon the fact that the objective medical evidence on the record shows he can perform light work. Under the Medical-Vocational guidelines, an individual age 50 - 54 (Claimant is 53 years of age), with limited education (Claimant completed the eleventh grade) and

an unskilled or limited work history is not disabled is not considered disabled pursuant to Medical-Vocational Rule 202.11.

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant. In such cases, the regulations require a sixth step to determine the materiality of DAA to a person's disability.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling. If the remaining limitations would not be disabling, the substance abuse disorder is a contributing factor to the determination of disability. (20 CFR 404.1535 and 416.935). If so, the claimant is not disabled.

Claimant's testimony and the information indicate that claimant has a history of tobacco, drug, and alcohol abuse. Applicable hearing is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because his substance abuse is material to his alleged impairment and alleged disability.

The federal law does not permit a finding of disability for persons whose primary impairment is substance abuse. P.L. 104-121. In addition, a client must follow prescribed medical treatment in order to be eligible for disability benefits. If prescribed medical treatment is not followed, the client cannot meet the disability standard. 20 CFR 416.930. Claimant has failed to follow prescribed medical treatment, including substance abuse treatment, and continues to treat himself with alcohol instead of taking the medication he was prescribed.

As a result, Claimant has not presented the required competent, material, and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach

the criteria and definition of disabled. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, Claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied Claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits.

Accordingly, the department's decision is AFFIRMED.

It is SO ORDERED.

_____/s/_____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: __7/27/11____

Date Mailed: _7/27/11_____

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 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.

VLA/ds

■ [REDACTED]