

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.: 2010-16274
Issue No.: 2009/4031
Case No.: [REDACTED]
Hearing Date: April 1, 2010
Wayne County DHS (15)

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 Detroit, Michigan on Thursday, April 1, 2010. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department.

During the hearing, the Claimant waived the time frame for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was received, reviewed, and entered as Claimant Exhibits A through J. 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 upon 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 February 7, 2008. (Exhibit 1, pp. 5 – 25; 29 – 36)
2. On May 28, 2009, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, p. 12)
3. On June 2, 2009, the Department sent an Eligibility Notice to the Claimant informing him of the MRT determination. (Exhibit 1, p. 11)

4. On August 28, 2009, the Department received the Claimant's timely written request for hearing. (Exhibit 1, p. 2)
5. On February 5, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)
6. The Claimant alleged physical disabling impairments due to chronic obstructive pulmonary disease ("COPD"), asthma, congestive heart failure, and headaches.
7. The Claimant alleged mental disabling impairment due to anxiety.
8. At the time of hearing, the Claimant was 53 years of age with a [REDACTED] birth date; was 5'2" in height; and weighed 140 pounds.
9. The Claimant has a limited education and an employment history providing janitorial services, as a dishwasher, and as a general laborer.
10. The Claimant's impairment(s) 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 of Human Services ("DHS"), 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 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 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 COPD, asthma, congestive heart failure, headaches, and anxiety. In support of his claim, some older records from 2006 were submitted which document treatment for congestive heart failure, cardiomyopathy, uncontrolled hypertension, bycytopenia, anemia, history of cocaine abuse, chest pain, and shortness of breath.

On [REDACTED], the Claimant was admitted to the hospital with chest pain. The Claimant was discharged the following day with the diagnoses of congestive heart failure, systolic secondary to continued cocaine addiction and subsequent hypertensive emergency. The discharge summary noted multiple hospitalizations due to the abuse noting that the Claimant was destroying his heart.

On [REDACTED] the Claimant was admitted to the hospital with complaints of chest pain and shortness of breath. The Claimant underwent left heart catheterization, bilateral selective coronary angiography with subselective angiography to the right coronary artery secondary to patient anatomy, and left ventriculography. The Claimant's prognosis in [REDACTED] of [REDACTED] was dismal based on his continued use of cocaine. The record also noted that if the Claimant was unwilling or unable to quit, death was imminent. The Claimant was discharged on [REDACTED] with the diagnoses of recurrent chest pain and cardiomyopathy due to the cocaine abuse.

On [REDACTED], the Clamant was admitted to the hospital with uncontrolled hypertension and "deadly" cardiomyopathy due to the Claimant's continued cocaine use. The ejection fraction was 35 to 40 percent. The Claimant was discharged on

██████████ with the diagnosis of congestive heart failure. The prognosis remained dismal considering his inability to remain abstinent from cocaine. The physician opined that the Claimant would have multiple re-hospitalizations until his untimely death.

The Claimant was admitted to the hospital on ██████████ with complaints of uncontrolled hypertension due to his continued cocaine use. The Claimant was discharged on March 13th with the diagnoses of congestive heart failure, uncontrolled hypertension, and continued cocaine use.

On ██████████, the Claimant was admitted to the hospital with shortness of breath. The Claimant's drug screen was negative noting the Claimant's attempt at sobriety. The Claimant was discharged on ██████████ with the diagnosis of reactive airway, shortness of breath.

On ██████████ the Claimant attended a follow-up appointment for his chest pain.

On ██████████, the Claimant was evaluated for dyspnea (shortness of breath). The diagnoses were hypercholesterolemia (stable), mitral regurgitation, chronic diastolic heart failure, COPD, and gastroesophageal reflux disease ("GERD").

On ██████████, an echocardiogram and Doppler report noted the ejection fraction of 72 percent. The diagnosis was minimal left ventricular hypertrophy.

On ██████████, the Claimant attended a follow-up appointment for his chest pain. The diagnoses were chronic diastolic heart failure (stable), hypercholesterolemia, mitral regurgitation, coronary artery disease, and hypertension.

On ██████████, the Claimant presented to the hospital with complaints of chest pain. The Claimant was discharged on ██████████ with the diagnoses of hypertension, congestive heart failure (diastolic dysfunction), coronary artery disease, coronary artery disease, GERD, and polysubstance abuse.

On ██████████, a Pulmonary Function Test was performed which showed the Claimant's (best) Forced Expiratory Volume at 1 ("FEV₁") of 2.75 and the Forced Vital Capacity ("FVC") of 3.48. The FVC and FEV₁ were normal with moderately reduced FEV₁/FVC ratio. The Claimant was found to have mild obstructive ventilatory defect which was acutely responsive to a bronchodilator. The reduced diffusing capacity was suggestive of emphysema.

On ██████████, the Claimant attended a consultative mental status evaluation. The Psychologist opined that the Claimant's abilities to understand, remember, and carry-out instructions at the difficulty level are moderately to severely impacts; his abilities to relate to others appropriately to others such as supervisors and coworkers are severely

impacted; and with his abilities to adapt to changes in a work setting and to perform work related activities in a reliable, responsible, consistent, and persistent manner are severely impacted. Further, the Psychologist believed that it was doubtful that any serious employer would hire him given the polymorbid, cognitive, and emotional disorders and their limiting effect on him. The diagnoses were post-traumatic stress disorder; major depressive disorder chronic with possible psychotic features of auditory and visual hallucinations; learning disorder (not otherwise specified, functional illiteracy, subnormal cognitive functioning; narcolepsy with features of breathing related sleep disorder; nicotine addiction; cannabis addiction, crack cocaine addition (alleging 3 ½ years full sustained remission; and cognitive disorder (not otherwise specified). The Global Assessment Functioning (“GAF”) was 45.

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 he does have some physical limitations on his 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 and mental disabling impairments due to COPD, asthma, congestive heart failure, headaches, and anxiety.

Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 11.00 (neurologic), and Listing 12.00 (mental disorders) were considered in light of the objective medical evidence. The Claimant’s FEV₁ of 2.75 and the FVC of 3.48 exceed the limitations found in Listing 3.00. The Claimant’s ejection fraction in February 2008 was between 35 and 40 percent during an unstable period and was 72 percent in June of 2009 which does not meet the intent and severity requirements contained in Listing 4.00. There was little or no evidence to support a finding of disabled under Listing 11.00 or 12.00. 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 can not 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 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.*

Over the past 15 years, the Claimant worked providing janitorial services, as a dishwasher, and as a general laborer. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work history is considered unskilled, light work.

The Claimant testified that he can lift/carry about 5 pounds; can walk approximately 3 ½ blocks; can stand for a couple of hours; can sit for three or four hours; and is able to bend and/or squat. The objective medical records do not document any physical limitations however the Claimant's abilities to understand, remember, and carry-out instructions at the difficulty level are moderately to severely impacts; his abilities to relate to others appropriately to others such as supervisors and coworkers are severely impacted; and with his abilities to adapt to changes in a work setting and to perform work related activities in a reliable, responsible, consistent, and persistent manner are severely impacted. 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 mental restrictions, it is found that the Claimant is not able to return to past relevant employment thus the fifth step in 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 53 years old thus considered to be closely approaching advanced age for MA-P purposes. The Claimant has a limited education. 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 with COPD, asthma, congestive heart failure, headaches, and anxiety. In the consultative evaluation, the Psychologist opined that the Claimant's abilities to understand, remember, and carry-out instructions at the difficulty level are moderately to severely impacts; his abilities to relate to others appropriately to others such as supervisors and coworkers are severely impacted; and with his abilities to adapt to changes in a work setting and to perform work related activities in a reliable, responsible, consistent, and persistent manner are severely impacted. In light of the foregoing, the Claimant's residual functional capacity for work activities on a regular and continuing basis would include 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 and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.09, the Claimant is found 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. 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 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 SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based upon 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 initiate review of the February 7, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and her Authorized Representative 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, in light of the Claimant's history of substance abuse, evaluate the need for a protective payee in accordance with department policy.
5. The Department shall review the Claimant's continued eligibility in March 2012 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 2/9/2011

Date Mailed: 2/9/2011

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.

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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