

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: 2010-50945
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 29, 2010
Sanilac County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on September 29, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) 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 February 22, 2010, claimant filed an application for Medical Assistance and State Disability Assistance benefits alleging disability.
- (2) On July 19, 2010, the Medical Review Team denied claimant's application stating that claimant could perform prior work.
- (3) On July 27, 2010, the department case worker sent claimant notice that her application was denied.
- (4) On August 16, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On September 2, 2010, the State Hearing Review Team again denied claimant's application stating that the claimant sustained a broken jaw in 2007, and has had several surgeries to her jaw. In May 2010, the claimant reported that her jaw feels misaligned and she has chronic left temporal pain, numbness in the left nasal area and a foul taste in her mouth. She sustained a left femoral head fracture in 2009, with surgical repair, but reported for healing (p. 18). On examination in May 2010, the claimant had some tenderness over the mandibular area and her jaw did appear to be misaligned. She has been able to maintain a stable weight. She has pain in her left hip with good range of motion. Motor strength was 4/5 in the left lower extremity but tone was normal. She walked with a moderate left limp without the use of an assist device (p. 20). The claimant had a jaw fracture and multiple surgeries. She has pain and the jaw appeared to be misaligned but she has been able to maintain her weight. She also had a left hip fracture and has pain in that area. She is able to walk with a moderate left limp without the use of an assist device. The claimant retains the physical residual functional capacity to perform at least sedentary work. The claimant's past work in accounts payable and booking is typically performed at a sedentary exertional level. Therefore, the claimant retains the capacity to perform her past relevant work. MA-P is denied per 20 CFR 416.920(e). Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 due the capacity to perform past relevant work.
- (6) The hearing was held on September 29, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (7) Additional medical information was submitted and sent to the State Hearing Review Team on September 30, 2010.
- (8) On October 19, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the objective medical evidence supports that the claimant would reasonably retain the ability to perform sedentary exertional, simple and repetitive tasks. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of sedentary exertional work of a simple and repetitive nature. Therefore, based on the claimant's vocational profile of 38 years old, at least a high school education and a history of sedentary, skilled employment, MA-P is denied using Vocational Rule 201.27 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Listings 1.02,

1.03, 1.04, 11.14, 12.04, 12.06, and 12.09 were considered in this determination.

- (9) Claimant is a 38-year-old woman whose birth date is [REDACTED] Claimant is 5'4" tall and weighs 140 pounds. Claimant has an Associates Degree in [REDACTED] Claimant is able to read and write and does have basic math skills.
- (10) Claimant last worked at a Party Store doing stocking. Claimant has also worked as a bookkeeper and secretary for approximately 8 years and has also worked in factories.
- (11) Claimant alleges as disabling impairments: broken jaw in 2007, a broken leg in 2009, difficulty with eating, hip and lower back pain because of a motor vehicle accident, depression, and constant pain.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 Program Reference Manual (PRM).

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. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

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).

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).

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).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and has not worked since 2008. Claimant is not disqualified from receiving disability at Step 1.

The objective medical evidence on the record indicates that claimant testified that her fiancé supports her and she lives with her fiancé in a house and she is single with no children under 18. Claimant has no income and receives Food Assistance Program benefits. Claimant does not have a driver's license because she has a DUI. Her fiancé or her mother takes her where she needs to go. Claimant testified that she does not cook, grocery shop or clean her home and her fiancé does all those things and she watches TV 4-5 hours per day and uses a computer 30 minutes per day. Claimant testified that she can stand for 5-10 minutes, sit for 20 minutes, and can walk to the living room. Claimant does not use a cane or a walker. Claimant testified that she cannot squat, cannot bend at the waist, cannot tie her shoes and cannot touch her toes but she is able to shower and dress herself. Claimant testified that her level of pain on a scale from 1-10 without medication is a 10 and with medication is a 3-4. Claimant is right handed and stated that her hands and arms are fine and her left leg has been broken. Claimant testified that heaviest weight that she can carry is a gallon of milk and she does smoke less than a pack of cigarettes per day and her doctor has told her to quit and she is not in a smoking cessation program. Claimant testified that she does not drink alcohol and she does smoke medical marijuana. Claimant is able to engage in sexual relations on a rare basis. Claimant testified that on a typical day she gets up to go to the couch, drinks coffee, watches movies, and goes on the internet and watches movies and talks. Claimant testified that she needs to write sticky notes to remind her of things and she needs surgery because of the rod in her leg.

A medical source statement of ability to do work related activities indicates that claimant could occasionally lift 21-50 pounds, frequently lift 11-20 and continuously lift up to 10 pounds. Claimant could never lift 51-100 pounds. Claimant could carry 21-50 pounds occasionally, 11-20 frequently and up to 10 pounds continuously. Claimant could sit for 6 hours in an 8 work day, could stand 30 minutes at a time, and walk 30 minutes at a time. Claimant could sit for 6 hours total in an 8 hour work day and could stand and walk for 2 hours each in a work day. Claimant did not require the use of a cane to ambulate. Claimant could do reaching overhead frequently with her right and left hand and she could continuously reach, handle, finger, feel and push and pull with both upper extremities. Claimant could continuously operate foot and leg controls with her right

foot but never operate foot and leg controls with her left foot. Claimant can occasionally climb stairs and ramps, never climb ladders or scaffolds, frequently balance, never stoop, never kneel, but could occasionally crouch and crawl. Claimant could never do unprotected heights but could occasionally use moving mechanical parts and operate a motor vehicle. She could continuously work in humidity and wetness, dust, odors, fumes, and pulmonary irritants, extreme cold, extreme heat, and vibrations. She could tolerate moderate noise and office work. Claimant could travel without a companion for assistance, could ambulate without using a wheelchair, walker, or two canes or two crutches. She could not walk a block at a reasonable pace on rough or uneven surfaces, but she could use standard public transportation and can climb a few steps at a reasonable pace with the use of a single hand rail. She can also prepare a simple meal and feed him/herself. The report was conducted September 11, 2010, by internal medicine. The physical examination from November 11, 2010, indicates that the claimant was well-developed, well-nourished female in obvious distress, judged from the asymmetry from her face. She was alert, cooperative in answering questions and following requests and well-oriented. Affect, dress and effort were all appropriate. The claimant's immediate, recent and remote memory was intact with normal concentration. The claimant's insight and judgment were both appropriate. The blood pressure in her left arm was 118/62 and her pulse was 68. Respiratory rate was 17, weight was 144 pounds, and her height was 63" without shoes. Her skin was normal except for mild facial scarring. Her eyes and ears and her visual acuity in the right eye was 20/25 and the left eye was 20/25 without corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversational speech without limitation or aides. The neck was supple without apparent masses. Breath sounds were clear to auscultation and symmetrical. There was no accessory muscle use. There was a regular rate and rhythm without enlargement. There was a normal S1 and S2. There were no apparent organomegaly or masses. No clubbing, cyanosis or edema was detected. Peripheral pulses were intact. In the musculoskeletal, there was no evidence of joint laxity, crepitance, or effusion. Grip strength remains intact. Dexterity was unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant was unable to heel and toe walk or hop because the left lower leg was weak, but was able to squat 1/2 of the distance and arise. There was no problem climbing onto the exam table. Range of motion was impaired in the cervical and dorso lumbar spine the left hip and in the flexion of the left knee as shown on the range of motion tables. In the neurological area, cranial nerves were intact and motor strength was decreased to 4/5 in the left lower extremity. Sensory appeared intact to light touch. Reflexes were intact and symmetrical. Plantar responses were flexor. Romberg testing was negative. The claimant walked with a moderate left sided limp, without the use of an assistive device. Straight leg raising was accomplished to 90 degrees on the right and 30 degrees on the left (pp. A1-A10).

A Michigan Disability Determination Services psychiatric report dated May 19, 2009, indicates that claimant seemed to be in contact with reality throughout the examination. Her motor activity appeared to be normal. Her gait and posture were affected by her pain. She used crutches on that day. She described problems walking because of pain. She reported being unable to walk long distances. Her speech was unimpaired.

Her stream of mental activity was spontaneous and organized. There was no significant evidence of hallucinations, delusions, perceptions, obsessions, thoughts controlled by others, or unusual powers. Claimant denied any recent suicidal or homicidal ideations. She reported suicidal behavior at the age of 16 where she cut both her wrists. Claimant denied current suicidal or homicidal intent. Claimant reports problems sleeping. Her affect was appropriate to good. She reported feeling down a lot and stated that she used to be a go-getter. She appeared slightly depressed during the exam. She laughed and smiled at times during the exam. She used humor appropriately. Claimant appeared to be oriented to time, place and person. She named past presidents of Bush, Clinton and Regan. Numbers forward; 1, 2, 3, 4, 5, 6 and backwards 4 numbers in immediate memory, and in past memory she gave her correct birth date. She gave the current president as Obama, 3 large cities as; Muskegon, Detroit, and Flint, two current famous people are Brad Pitt and Angelina Jolie and current events and the economy. Her serial calculations were $3+4=7$, $8-5=3$, $3*4=12$, and $12/6=6$. Subtracting 7's from 100; 93, 85, 78, 71, 64, and 57. Subtracting 3's from 30; 27, 24, 21, and 18. In abstract thinking the proverb the grass always looks greener on the other side of the fence was interpreted that you think that it's better than what it is. Don't count your chickens before they hatch, means you shouldn't because something could happen. Similarities and differences with a bush and a tree, they both have wood, and they are different because one is taller and one is shorter. If she found a fire in a theatre, she would yell fire, and if she found a stamped addressed envelope, she would probably mail it. Her future plans were to hopefully get better and get off the medication. It was determined that claimant was moderately impaired and her current GAF was 56. Her prognosis was guarded, and she would be able to manage her own benefit funds (pp. A11-A14).

This Administrative Law Judge did consider the over 130 pages of medical records submitted in this case in making this decision.

At Step 2, claimant has the burden of proof of establishing that she has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are no laboratory or x-ray findings listed in the file. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical impairment.

Claimant alleges the following disabling mental impairments: depression.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence in the record indicating claimant suffers severe mental limitations. There is no mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that claimant suffers a severely restrictive mental impairment. For these reasons, this Administrative Law Judge finds that claimant has failed to meet her burden of proof at Step 2. Claimant must be denied benefits at this step based upon her failure to meet the evidentiary burden.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny her again at Step 4 based upon her ability to perform her past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in, in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again 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 some other less strenuous tasks than in her prior jobs.

At Step 5, the burden of proof shifts to the department to establish that claimant does not have residual functional 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.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have

the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that he is physically unable to do light or sedentary tasks if demanded of her. Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with her impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent her from performing any level of work for a period of 12 months. The claimant's testimony as to her limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with her impairments. Under the Medical-Vocational guidelines, a younger individual (age 38), with a more than high school education and an unskilled work history who is limited to light work is not considered disabled.

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.

Claimant's testimony and the information indicate that claimant has a history of tobacco, and drug 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 her substance abuse is material to her alleged impairment and alleged disability.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The department's Program 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 the 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, the 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. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/

Y. Lain

Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 18, 2010

Date Mailed: November 19, 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.

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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