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

IN THE MATTER OF:

Reg No.: 2012-18628 Issue No.: 2009, 4031 Case No.:

Hearing Date: February 21, 2012

Oakland County DHS (04)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administ rative 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 D etroit, Michigan on T uesday, February 21, 2012. The Claimant appeared and te stified.

Harris 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 submis sion of additi onal medical evidence. The records were received, reviewed, and forw arded to the State Hearing Review Team ('SHRT") for consideration. On July 12, 2012, this office received the SHR T determination which found the Cla imant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

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

FINDINGS OF FACT

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

 The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on May 27, 2011.

- 2. On September 23, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 3, 4)
- 3. The Department notified the Claimant of the MRT determination.
- 4. On December 1, 2011, the Department received the Claimant's written request for hearing. (Exhibit 1, p. 52)
- 5. On January 25 th and July 9, 2012, the SHRT f ound the Claimant not disabled. (Exhibit 2)
- 6. The Claimant alleged physical disabling impairments due to back pain with nerve root impingement, radiculopathy, carpal t unnel syndrome ("CTS"), trigger thumb, asthma, high blood pressure, gastroes ophageal reflux disease ("GE RD"), hypothyroidism, muscle weakness, migraines, and fibromyalgia.
- 7. The Claim ant alleged mental disabling impairments due to anxiety and depression.
- 8. At the time of hearing, the Claimant was years old with a birth date; was 5'1" in height; and weighed 200 pounds.
- 9. The Claimant has a limited educ ation with an employment history as a machine operator and in retail management.

CONCLUSIONS OF LAW

The Medical Assistance 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, formerly known as the Family Independence Agency, pursuant to MCL 400.10 et seq. and MCL 400.105. Department policies are found in the Bridge's Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Tables ("RFT").

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental im pairment which can be expected to result in death or which has lasted or can be expect ed 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/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An

individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y 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 cons ider an individual's current work activit y; 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 det ermine whether an individual can perform past relev ant work; and residual functional capacity along with vocational factors (i .e. age, education, and work experienc e) 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 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 indi vidual'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 f unctional capacity is the most an indiv idual can do d espite the limitations based on all rele vant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity ass essment is ev aluated at both steps four and five. 20 CFR 41 6.920(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. general, the individual has the responsibility to prove 20 CFR 416.994(b)(1)(iv). In disability. 20 CFR 4 16.912(a). An impair ment or combination of impairments is not severe if it does not signific antly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The in dividual 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. 2 0 CFR 41 6.920a(a). First, an i ndividual's pertinent sym ptoms, signs, a nd 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 whic h the impairment(s) interferes with an tion independently, appropriately, effectively, and on individual's ability to func а Id.; 20 CFR 416.920a(c)(2). Chronic m ental disorders, structured sustained basis. 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 f unctioning; concentration, persistence or pace; and episodes of decompensat ion) are consider ed when deter mining 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 repr esents a degree of limitation t hat 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 CF R 416.920a(d)(2). If the severe mental im pairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CF R 416.920a(d)(3).

As outlined above, the first step looks at the i ndividual'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.

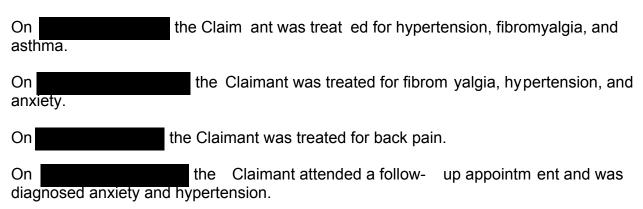
The severity of the Claimant 's alleged impairment(s) is considered under St ep 2. The Claimant bears the burden to pr esent sufficient objective medical evidenc et o substantiate the alleged disa bling impairments. In order to be considered disabled for MA purpos es, the impairment must be se vere. 20 CFR 416. 920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

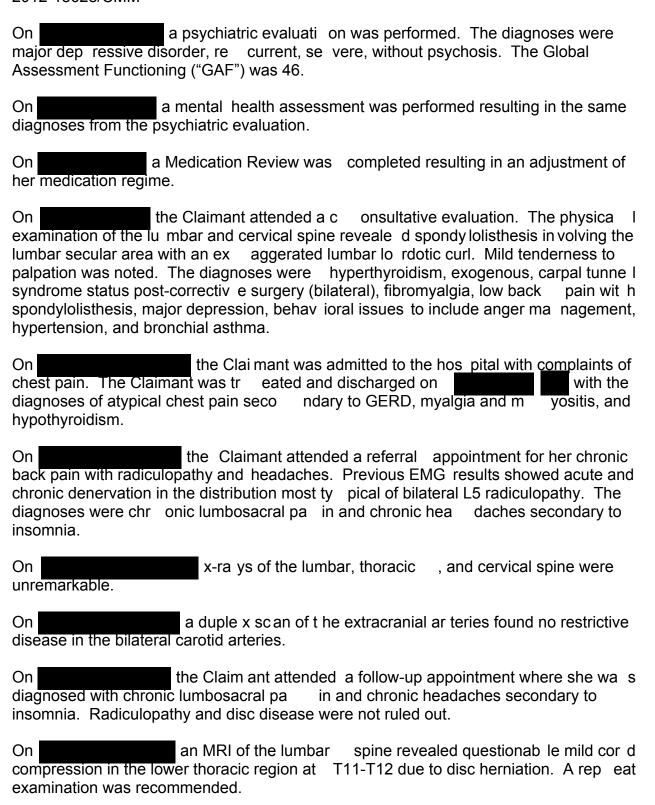
- 1. Physical functions such as wa lking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- 2. Capacities for seeing, hearing, and speaking;
- 3. Understanding, carrying out, and remembering simple instructions:
- 4. Use of judgment;
- 5. Responding appropriately to supervision, co-workers and usual work situations; and
- 6. Dealing with changes in a routine work setting.

ld.

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 admin istrative 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 Cla imant alleges disability due to back pain with nerve root impingement, radiculopathy, CTS, trigger th umb, asthma, high blood pressure, GERD, hypothyroidism, muscle weakness, migraines, fibromyalgia, anxiety, and depression.





On this date, an MRI of the cervical spine revealed midline dis c herniation at C6-7 without cord compression and neural foramina.

An MRI of the brain (reveal ed bright intensity lesion in the lef peritrigonal region possibly consistent with a single area of demyelination and was otherwise unremarkable.

As previously noted, the Claim ant 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 physical limitations on her ability to perform basic work activities. Mentally, the record shows that the degree of functional limitation on the Claimant's activities, social function, concentration, persistence, or pace is moderate. The degree of functional limitation in the fourth area (episodes of decompensiation) is 2. The Claimant's GAF was 46. Ultimately, the medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a deminimus 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 seque ntial an alysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or co mbination of impairm ents, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physic al disabling impairments due to back pain with nerve root im pingement, radiculopathy, CTS, trigger thumb, asth ma, high blood pressure, GE RD, hypothyroidism, muscle weakness, migraines, fibromyalgia, anxiety, and depression.

Listing 1.00 (musculoskeletal system), Listi ng 3.00 (respiratory syst em), Listing 4.00 (cardiovascular system), Listing 5.00 (diges tive system), Listing 11.00 (neurological disorders), and Listing 12.00 (mental disorders) were considered in light of the objective medical evidence. There were no objective findings of continued major joint dysfunction status post carpal tunnel surgery. Possible mild cord compression was noted at T11-12 and lumbar radiculopathy was not ruled ou t. There was no evidence of ongoing treatment for shortness of breath or asthma; or persistent, recurrent, and/or uncontrolled iovascular impairment or end organ damage (while on prescribed treatment) card resulting from the Claimant's high blood pressure. There was no evidence to meet the intent and severity requirem ent necessary to meet a diges tive system impairment, nor was there evidence to show an v serious neurological deficits. Additionally, there was no evidence of cardiac dysfunction, thyroi d-related weight loss, stroke, cognitive limitations, mood disorders, or anxiety as a result of the Claimant's hypothyroidism. Finally, the evidence does not show that the Claimant's symptoms persist despit prescribed treatment or that the Claimant has very serious limit ations in h er ability to independently initiate, sustain, or complete activities of daily living. Mentally, there was

no evidence of any marked limitations in any of the functional areas. Although the objective medical records establish some physical and mental impairments, these records do not meet the intent and severity requirements of a listing, or its equivalent. Accordingly, the Claimant cannot be found disabled, or not disabled at Step 3; therefore, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she canstill do on a sustained bas is despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are c lassified as sedentary, light, medium, hea vy, and very heavy. 2 0 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 r equired occasionally and other sedentary criteria are met. Light work involves li fting no more than 20 pounds at a 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 invo lves sit ting 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. A n individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fin 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 object is weighing up to 50 pounds. 20 CFR 416.967(d). A n individual capable of heavy work is also c apable 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, walk ing, lifting, carrying, pushing, or pulling) are consider ed nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparis on of the individual's residual functional c apacity 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 a ge, 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 to 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 so me physical feature(s) of certain work settings (i.e. ca n't tolerate dust or fumes); or di fficulty performing the manipulative or postur al functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 4 16.969a(c)(1)(i) – (vi). If the imp airment(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 bas ed upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. ld.

In this case, the evidence confirmed in relevant part, diagnoses of hypertension, fibromyalgia, asthma, anxiet y, back pa in with sp ondylolisthesis, major depressiv e disorder, atypical chest pain, GERD, headaches, and insomnia. The Claim ant testified that she is able to walk short distances; gr ip/grasp with pain; sit for less than 2 hours; lift/carry approximately 5 pounds; stand for about 10 minutes; and is unable to bend and/or squat. The objective medical ev idence does not contain any limitations. After review of the entire record and considering the Claimant's testimony, it is found, at this point, that the Claimant maintains the residual functional capacity to perform at least unskilled, limited, sedentary work as defined by 20 CFR 416.967(a). Limitations being the alternation between sitting and standing at will.

The fourth step in analyzing a dis ability claim requires an assessment of the Claimant's residual f unctional capacity ("RFC") and pas t relevant em ployment. 20 CF R 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 lear n the position. 20 CFR 416.960(b)(1). Vocational fact ors 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).

The Claimant's prior employment was as a machine operator in retail (cashier, stocking, inventory, supervisor, etc.) In consideration of the Claimer ant's testimony and Occupational Code, the prior employment as a machine oper ator is considered unskilled medium work while here employment in retail is classified as semi-skilled, medium work. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability

does not exist. 20 CFR 416.92 0. As noted abov e, the obj ective evidence does not contain any physical or mental restrictions that would preclude employment. In light of the entire record and the Claimant's RFC (see above), it is found that the Claimant is unable to perform pa st relevant work. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 4.

In Step 5, an asses sment of the Claimant's residual functional capacity and age, education, and work experience is consider ed to determine whet her an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant years old and, thus, considered to be a younger individual for MA-P purposes. The Claim ant has a limited education. Disability is found if an individual is unable to *Id.* At this point in the analysi s, the burden shifts from the adjust to other work. 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 Se rvices, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has th vocational qualifications to perform specif ic jobs is needed to meet the burde n. 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 nation al 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). The age for younger individuals (under 50) generally will not serious ly affect the ability to adjust to other work. 20 CF 416.963(c).

In this case, the objective findings reveal that the Claimant suffers with hypertension. fibromyalgia, asthma, anxiet y, back pa in with sp ondylolisthesis, major depressiv e disorder, atypical chest pain, GERD, headaches, and insomnia. The Claim ant testified that she was able to perform physic al acti vity comparable to less than sede ntary activity. Conversely, the medical evidence does not contain any physical limitations nor were there any marked limitations relating to the Claimant's mental abilities. In light of the foregoing, it is found that the Claimant maintains the re sidual functional capacity for work activities on a regular and continuing basis to me et the physica I and menta I demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, finding no contradiction with the Claimant's nonexertional limitations, and in consideration of the Claimant's age, education, wo rk experience, and RFC, the Claimant is found not disabled at Step 5.

The State Disability Assist ance program, which pr ovides financia I assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policie s are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a phys ical or menta.

impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefit s 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 cas e, the Claimant is found not disabled for purposes of the MA-P program; therefore, she is found not disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

Colleen M. Mamuka

Colleen M. Mamelka

Administrative Law Judge

For Maura Corrigan, Director

Department of Human Services

Date Signed: July 25, 2012

Date Mailed: July 25, 2012

NOTICE: Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not or der a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration <u>MAY</u> be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at Michigan Administrative Hearings

Re consideration/Rehearing Request

P. O. Box 30639

Lansing, Michigan 48909-07322

CMM/cl

