

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]

Reg. No.: 2014-30999
Issue Nos.: 2009, 4009
[REDACTED]
Hearing Date: July 9, 2014
DHS County: Macomb County (36)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on July 9, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator.

ISSUE

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

FINDINGS OF FACT

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

1. On December 1, 2013, the Claimant submitted an application for public assistance seeking MA-P and SDA benefits.
2. On February 20, 2014, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant of the MRT determination on February 24, 2014.

4. On March 3, 2014, the Department received the Claimant's timely written request for hearing.
5. On February 13, 2014, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleges physical disabling impairments due to back and leg pain, due to chronic kidney disease, proteinuria and Vitamin D deficiency. The Claimant does not have a left kidney.
7. The Claimant alleged no mental disabling impairments. At the time of hearing, the Claimant was 21years old with a [REDACTED] birth date. Claimant is 5'4" in height; and weighed 130 pounds.
8. The Claimant completed the high school and currently attends college full-time, and is studying for a degree in surgical nursing and has one semester remaining.
9. The Claimant's past work is performing hotel desk clerk part time and assisting her grandfather performing light house work and medications. The Claimant work does not amount to substantial gainful employment as it is under the \$1070 threshold.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI 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.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and, (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the

limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

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 as her work is part time and does not reach the SSA 2014 earnings threshold, and therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities mean 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 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 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). 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).

The Claimant alleges physical disabling impairments due to chronic kidney disease, proteinuria, vitamin D deficiency and pain in her back and legs.

The Claimant has not alleged mental disabling impairments as a basis for disability.

A summary of the Claimant's medical evidence presented follows.

A Medical Examination Report was completed in January 2014, by the Claimant's nephrologist who has seen the Claimant since November 2011. At the time of the exam, the doctor had not seen the Claimant since June 2013. The diagnosis was chronic kidney disease, Proteinuria, and Vitamin D deficiency. The Claimant's condition was rated as stable. Limitations of kidney disease were indicated as continuing and ongoing; however, no limitations with regard to specific lifting, use of hands arms and standing, walking, and sitting were provided in any detail. The Claimant was evaluated as capable of meeting her needs in the home.

The Claimant was examined by a doctor of Internal Medicine in a consultative examination on December 27, 2013. An examination of the Claimant's abdomen noted that the Claimant's liver, spleen and kidney were not enlarged and there was no tenderness or masses. An examination of the Claimant's back noted that straight leg raising was negative and that there was no paravertebral spasm or point tenderness. The impression was chronic kidney disease and hypertension. The medical source statement noted the patient's blood pressure is fairly controlled without any medication. She has no angina or signs of congestive heart failure. Her creatine went up a little bit from 16 to 18. The range of motion examination was normal in all categories. As regards the Claimant's current physical abilities, no restrictions were imposed with respect to sitting, standing, bending, stooping, and the remaining categories. Her reflexes were all normal.

The Claimant was seen by her nephrologist on June 13, 2013. She was seen for follow-up regarding her chronic kidney disease, proteinuria and hypertension. At the time of the exam chronic kidney disease stage III (moderate), proteinuria and unspecified

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Vitamin D deficiency with leg pain of uncertain etiology and benign essential hypertension were noted.

The Claimant was seen in November 28, 2012, for a follow-up examination with regard to chronic kidney disease, proteinuria and hypertension and complaints of right sided flank pain with leg pain occasionally. The diagnosis and impression was chronic kidney disease stage III, moderate, proteinuria, unspecified Vitamin D deficiency, and benign essential hypertension.

On March 8, 2012, the Claimant was seen by a specialist in nephrology. At the time, the Claimant presented with pain on both sides which was characterized by the doctor as very nondescript. Her inquiry results were noted and a hypoplastic left kidney was seen. Claimant was started on vitamin D supplementation. With regard to complaints of abdominal pain, the doctor noted they could not be explained on the basis of her kidney disease and the possibility of endometriosis or other abnormalities, and a referral to a gynecologist was considered. Subsequently on April 25, 2012, the Claimant did have laparoscopic cyst removal from her uterus.

Claimant's medical records support the fact that she has chronic kidney disease stage III related to an absent left kidney and chronic glomerulonephritis of the right kidney. She is on ACE inhibitors related to the presence of proteinuria. Her hypertension is related to her chronic kidney disease and is controlled with ACE inhibitors. An assessment in January 2012 did not connect chronic back pain with or as related to the Claimant's kidney. In December 2011, the Claimant was hospitalized relative to current concerns by her doctor of worsening renal failure. An ultrasound was done at that time and showed absent left kidney, and the right kidney was small and did not have a smooth contour.

An MRI of the lumbar spine and kidney area was performed on March 5, 2012. The examination findings were essentially normal, (curvature of the lumbar spine, no disc bulges, herniations or central canal or foraminal stenosis of the lumbosacral spine).

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 objective medical evidence establishing that she does have moderate chronic kidney disease Stage III, and does have some physical limitations on her ability to perform basic work activities. Accordingly, 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.

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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 asserts disabling impairments due chronic kidney disease, moderate and Proteinuria, and Vitamin D deficiency, and leg and back pain. Listing 6.00 Genitourinary Impairments was reviewed.

Listing **6.02 Impairment of renal function**, due to any chronic renal disease that has lasted or can be expected to last for a continuous period of at least 12 months. With:

A. Chronic hemodialysis or peritoneal dialysis (see 6.00E1).

OR

B. Kidney transplantation. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 6.00E2).

OR

C. Persistent elevation of serum creatinine to 4 mg per deciliter (dL)(100 ml) or greater or reduction of creatinine clearance to 20 ml per minute or less, over at least 3 months, with one of the following:

1. Renal osteodystrophy (see 6.00E3) manifested by severe bone pain and appropriate medically acceptable imaging demonstrating abnormalities such as osteitis fibrosa, significant osteoporosis, osteomalacia, or pathologic fractures; or

2. Persistent motor or sensory neuropathy (see 6.00E4); or

3. Persistent fluid overload syndrome with:

a. Diastolic hypertension greater than or equal to diastolic blood pressure of 110 mm Hg; or

b. Persistent signs of vascular congestion despite prescribed therapy (see 6.00B5); or

4. Persistent anorexia with weight loss determined by body mass index (BMI) of less than 18.0, calculated on at least two evaluations at least 30 days apart within a consecutive 6-month period (see 5.00G2).

6.06 Nephrotic syndrome, with anasarca, persisting for at least 3 months despite prescribed therapy (see 6.00E5). With:

A. Serum albumin of 3.0 g per dL (100 ml) or less and proteinuria of 3.5 g or greater per 24 hours.

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OR

B. Proteinuria of 10.0 g or greater per 24 hours.

A careful review of the medical evidence was made and it was found that the listing was not met as there is insufficient evidence and treatment with test results to support such a finding. Therefore, the Claimant cannot be found disabled at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

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

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of only part time employment performing as a hotel desk clerk working part time, attending school full-time, and daily performing light household work and giving medications to her grandfather. Most of the work requires no heavy lifting and some standing, which the Claimant is performing ongoing. It does not, however, appear that the work is full time. Therefore, a Step 5 analysis is required.

In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's work is classified as unskilled work based upon the Claimant's testimony and a review of the work tasks which she is capable of currently performing.

The Claimant testified that she is able to walk about a block. The Claimant testified that she could stand 10 to 15 minutes, and sit 10 to 15 minutes. The Claimant testified that she could not bend at the waist, and cannot squat due to leg and back pain. The Claimant can shower and dress herself, touch her toes and tie her shoes. The Claimant testified that there was nothing wrong with her hands or arms. The Claimant further testified that the heaviest weight she could carry was limited to 5 to 10 pounds. The Claimant's treating doctor completed a DHS 49, and imposed no limitations or restrictions. A consultative examiner also found no range of motion restriction and imposed no limitations. In light of the lack of any medical restrictions or limitations placed upon the Claimant, it appears some but not all of her testimony is supported by the medical evidence. The objective medical evidence places the Claimant as capable of performing sedentary work activity. In light of Claimant's age and the fact that the past work was unskilled, transferability is not an issue.

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 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not currently engaging in full time employment, and thus no Step 4 determination can be made. 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). The Claimant is 21 years old and, thus, is considered to be an individual of younger age for MA purposes. The Claimant graduated from high school and has almost completed a two year college level degree as a surgical nurse. 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 for 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).

In this case, the evidence reveals that the Claimant has a medical impairment due to chronic kidney disease rated as moderate due to no left kidney, Proteinuria associated with the kidney disease, Vitamin D deficiency, and leg and back pain. Notwithstanding

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these conditions, and based upon the foregoing objective medical evidence completed by her treating doctor, i no limitations were required or imposed with respect to the Claimant's activities.

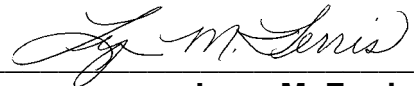
In consideration of the foregoing and in light of the Claimant's diagnosed chronic kidney disease and the objective limitations, and her current capability to attend school full-time, work as a hotel clerk part-time, and perform light household duties for her grandfather, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing basis to meet at the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.27, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the MA-P and/or SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the MA and/or SDA benefit program.

Accordingly, the Department's determination is **AFFIRMED**.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 28, 2014

Date Mailed: July 29, 2014

NOTICE OF APPEAL: 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 timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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.

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MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the Claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LMF/tm

cc:

