

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

IN THE MATTER OF:



Reg. No.: 2014 15197
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: March 17, 2014
County: Wayne County DHS 55

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 March 17, 2014 from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payment Worker.

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional records. The records were received, reviewed, and forwarded to the State Hearing Review Team (SHRT) for consideration. On July 23, 2014, this office received the SHRT determination which found Claimant not disabled. This matter is now before the undersigned for a final determination.

ISSUE

Did the Department properly determine that 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 September 19, 2013, Claimant submitted an application for public assistance seeking MA-P and SDA benefits.

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2. On November 5, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On November 12, 2013, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.
4. On November 19, 2013, the Department received Claimant's timely written request for hearing.
5. On January 22, 2014 and July 23, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. The Claimant did not allege physically disabling impairments.
7. Claimant alleged mental disabling impairments due to schizophrenia, paranoid type antisocial personality disorder with auditory hallucinations and depression.
8. At the time of hearing, Claimant was 53 years old with a [REDACTED] birth date, Claimant is now [REDACTED] he was 5'11" in height and weighed 171 pounds.
9. Claimant has a GED.
10. Claimant does not have an employment history other than working as a janitor while incarcerated.
11. Claimant's impairments 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 the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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 MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

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

MA-P and SDA benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2014); BEM 261 (July 2013), p. 1. In order to receive MA benefits based upon disability, Claimant must be disabled as defined in Title XVI of the Social Security Act. 20 CFR 416.901. Disability for MA purposes 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).

In order to determine whether or not an individual is disabled, federal regulations require application of a five-step sequential evaluation process. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider (1) whether the individual is engaged in substantial gainful activity; (2) whether the individual's impairment is severe; (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) whether the individual has the residual functional capacity to perform past relevant work; and (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to 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)

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is substantial gainful activity (SGA), then the

individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under step 1 and the analysis continues to step 2.

Step Two

Under step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities mean the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may 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). However, under the *de minimus* standard applied at step 2, an impairment is not severe only if it is a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs* at 862.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant alleges disability due to his mental condition. Claimant was initially diagnosed as having a mood disorder, and paranoid schizophrenia. The Claimant has a life long history of mental impairments, with episodes of decompensation with auditory hallucinations and with polysubstance abuse which is in remission. The Claimant despite treatment continues to have daily auditory hallucinations with voices.

A summary of the medical evidence follows.

A consultative Mental Status Examination was conducted on March 27, 2014. The Claimant reported prescriptions for Trazodone and Risperdal. Claimant reported being medication compliant. The Claimant's affect presented as constricted and his mood was serious, downcast without change in expression and he spoke in a monotone, quiet voice with inconsistent eye contact. The Claimant reported sleep disturbance and paranoid feelings with voices telling him he is no good and sometimes to hurt other people. The Claimant did not express suicidal ideation. The medical source statement concluded that the Claimant's history and objective data are more consistent with a diagnosis of substance induced mood disorder and personality disorder with antisocial, paranoid features. At the time of this exam, he is not evidencing any acute psychotic symptoms, was able to follow simple two and three step directions, and should be able to do at least routine work related activities. The diagnosis was substance induced mood disorder; polysubstance abuse, in remission; personality disorder with antisocial, paranoid features. The prognosis was guarded. The patient was deemed unable to manage his funds.

The Claimant has been provided limited mental health treatment by a community health organization, but due to his lack of insurance, is unable to receive individual therapy, group therapy or case management services. The Claimant has been involved with this organization since 2009, and remained so at the time of the hearing for monthly psychiatric medication reviews.

A psychiatric evaluation was completed on March 11, 2014 by the Claimant's community health care provider's Psychiatrist who has seen him monthly for medication review. At the evaluation, Claimant reported a history of being treated for mental health issues since the age of 31, and attempted to cut his wrists while in prison. The Claimant had been seen by this provider since around January 21, 2009. On February 11, 2014, the Claimant stopped using his Risperdal as he felt he no longer needed antipsychotic medication and refused any medications except for sleep. The Claimant reported difficulty sleeping due to running out of medication. The Claimant was in remission with regard to alcohol abuse and drug use. The Claimant was deemed compliant with his outpatient treatment. At the time of the evaluation, the Claimant was or well oriented; his memory was intact, he was alert, and presented with normal concentration. His

judgment was rated as fair. The Claimant reported auditory hallucinations daily when he is stressed out. At that time, the Claimant stated his mood was pretty good. The Claimant presented with a GAF score of 55. The diagnosis was schizophrenia, paranoid type antisocial personality disorder, and chronic hepatitis C. The Claimant was not assessed as being a risk to himself. The examiner noted that the Claimant received a review of the potential benefits and side effects of remaining off antipsychotic medications which he has chosen to do at this time.

A psychiatric evaluation was performed on the October 8, 2013 by the Claimant's treating psychiatrist. At the time, he continued to complain of auditory hallucinations and depressed mood. The Claimant's speech was fluent and non-pressured, thought content was linear and goal directed, and the Claimant did not appear to be responding to any internal stimuli. The Claimant was noted as capable of performing his activities of daily living independently. The diagnosis was schizophrenia, paranoid type polysubstance dependence in remission, and antisocial personality disorder with a GAF score of 60.

A Mental Residual Functional Capacity Assessment was also completed. The treating doctor identified the Claimant as moderately limited in his Understanding and Memory in his (i) ability to remember locations and work like procedures; and (ii) ability to understand and remember detailed instructions. The Claimant showed moderate limitations in Sustained Concentration and Persistence in his (i) ability to carry out detailed instructions; and (ii) ability to maintain attention and concentration for extended periods. The Claimant was also moderately limited in his (i) ability to perform activities within a schedule, maintain regular attendance, and be punctual within normal tolerances; (ii) ability to sustain an ordinary routine without supervision; (iii) ability to work in coordination with or proximity to others; (iv) ability to make simple work related decisions; (v) ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms; and (vi) ability to perform at a consistent pace without unreasonable number and length of rest periods. As regards Social Interaction, the Claimant was moderately limited in his (i) ability to accept instructions and respond appropriately to criticism from supervisors; and (ii) get along with coworkers or peers without distracting them. The Claimant was capable of interacting appropriately with the general public and maintain socially appropriate behavior, and to adhere to standards of neatness and cleanliness. As regards Adaptation, the Claimant was moderately limited in his (i) ability to respond appropriately to change in work setting; (ii) ability to be aware of normal hazards and take appropriate precautions; and (iii) ability to set realistic goals or make plans independently of others. The treating psychiatrist noted that the Claimant continues to have some persistent symptoms of depressed mood and auditory hallucinations on the Mental Residual Capacity Assessment.

As summarized above, Claimant has presented medical evidence establishing that he does have some mental limitations on his ability to perform basic work activities. In consideration of the *de minimis* standard necessary to establish a severe impairment under step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments as a result of his mental condition that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under step 2, and the analysis will proceed to step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the objective medical evidence presented of the diagnosed mental disorders of mood disorder and paranoid schizophrenia, Listing 12.00, which encompasses adult mental disorders, particularly Listing 12.03 (schizophrenic, paranoid and other psychotic disorders) and Listing 12.08 (personality disorders). Claimant's condition does not evidence the degree of severity necessary to meet any of the considered listing or their medical equivalent. The disability analysis therefore proceeds to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under step 3, before proceeding to step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e). If a client's mental impairment does not meet or is not equivalent in severity to the criteria of a listing, the client's RFC to do SGA is considered. Listing 12.00A.

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands (i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling), the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning 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).

For mental impairments, 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 are 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 mental 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.*

In this case, Claimant suffers from paranoid schizophrenia, mood disorder, and suffers from lifelong mental impairment beginning at age 11. Claimant testified that he lives with his elderly mother and father who help to support him and he attempts to take care

of them. He testified that he has driver's license, but believes he should not drive. The Claimant credibly testified that he has difficulty being around people and has paranoia around some of his brothers. He testified that when he was not on medication, his hearing of voices increases. The anti-psychotic drugs he was prescribed caused vomiting and nausea with sweats and fever. The Claimant continues to take his sleep medication which he requires to sleep at all. The Claimant has made 2 suicide attempts, once in the 1970's attempting to hang himself; and in 1990's, when he slit his wrists while incarcerated. He also hears voices telling him that people are out to harm him. Both memory and concentration were fair. The Claimant was asked how he felt at the hearing and indicated he was all right, but paranoid as he had had to walk three miles.

Ultimately, after review of the entire record to include Claimant's medical evidence and testimony, it is found that Claimant's mental conditions results in an RFC of moderate limitations in his activities of daily living, concentration and pace, and adaption and moderate limitation in social interaction. Claimant's RFC is considered at both steps four and five. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

The fourth step in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). 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). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. 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).

Claimant has no history past relevant work that was substantial gainful employment. Accordingly, the Claimant cannot be found disabled, or not disabled, at step 4 and the assessment continues to step 5.

Step 5

In step 5, an assessment of Claimant's RFC 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 this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain 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). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work. *Id.*

In this case, Claimant's mental RFC shows primarily a significant number moderate limitations in his ability to function, and characteristics which would likely cause Claimant to be unable to sustain a 40-hour work week. The fact is that the Claimant is impaired in many of his abilities. The Claimant's abilities would also be seriously affected by his ongoing paranoia and persistence of voices telling him someone is out to get him. These circumstances in combination, seriously affect Claimant's ability to adjust to other work. Accordingly, Claimant is found *disabled* at Step 5. Although there were some references in the record indicating substance use by Claimant, such use was not material to the disabilities alleged and was reported in remission and, therefore, does not affect the conclusion that Claimant is disabled.

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. BEM 261 (July 2013), p. 2.

In this case, Claimant is found disabled for purposes of the MA-P program and, therefore, 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 Claimant disabled for purposes of the MA-P and SDA benefit programs.

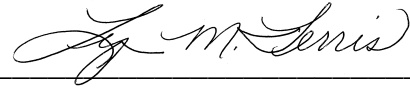
Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Process Claimant's September 19, 2013, MA application to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination;

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2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified;
3. Review Claimant's continued eligibility in November 2015.



LYNN M. FERRIS
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: November 14, 2014

Date Mailed: November 14, 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. 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

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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:

