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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

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██████████, MI ██████████

Date Mailed: November 4, 2022  
MOAHR Docket No.: 22-004204  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**HEARING DECISION**

Following Petitioner'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. After due notice, a telephone hearing was held on October 12, 2022, from Detroit, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

**ISSUE**

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

**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 ██████████, 2022, Petitioner submitted an application seeking cash assistance benefits on the basis of a disability.
2. On or around July 29, 2022, the Disability Determination Service (DDS) found Petitioner not disabled for purposes of the SDA program.
3. On September 9, 2022, Petitioner was verbally notified that his application for SDA benefits was denied.
4. On ██████████, 2022, Petitioner submitted a timely written Request for Hearing disputing the Department's decision to deny his SDA application.
5. Petitioner alleged disabling impairments due to fibromyalgia, inflammatory arthritis, chronic bilateral lower back pain, gastroesophageal reflux disease (GERD) and chronic obstructive pulmonary disease (COPD).

6. As of the hearing date, Petitioner was 25 years old with a [REDACTED], 1986 date of birth.
7. Petitioner obtained a high school degree and a bachelor's degree in accounting and business administration. Petitioner has a reported employment history of work as a limousine driver, security guard, financing/accounting work and basic training with the [REDACTED]. Petitioner has reportedly not been employed since June 4, 2019.
8. Petitioner has a pending disability claim with the [REDACTED].

### **CONCLUSIONS OF LAW**

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

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.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (April 2017), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment, for 90 or more days. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) 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)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, 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). The duration requirement for purposes of SDA eligibility is 90 or more days. BEM 261 (April 2017), p. 2.

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, are insufficient to establish disability. 20 CFR 416.927(d).

### **Step One**

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 SGA, then the individual must be considered 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, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he is not ineligible under Step 1, and the analysis continues to Step 2.

### **Step Two**

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for SDA 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 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (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. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.



Petitioner was seeking treatment at [REDACTED]. On [REDACTED], 2021, Petitioner had an office visit (Exhibit A, pp. 54-63 and pp. 110-174). Petitioner had diagnoses of undifferentiated inflammatory arthritis, cervicalgia, and chronic bilateral low back pain, without sciatica. Petitioner was provided Celebrex to manage his inflammation. Petitioner reported his undifferentiated inflammatory arthritis was doing well. A review of Petitioner's symptoms revealed that he was negative for fever and chills. Petitioner was negative for shortness of breath. Petitioner was positive for neck pain and back pain. Petitioner was positive for tingling sensations to bilateral hands and feet. There was no swelling cyanosis or clubbing in Petitioner's extremities. Petitioner did have flat feet noted bilaterally. Petitioner's neurological exam revealed he was alert and oriented, his mental status was intact to conversation, with grossly normal mood and affect. Petitioner had full proximal length in his lower extremities. Petitioner had numbness and tingling along the bilateral arms and legs. Petitioner had pain in the cervical spine with range of motion. Petitioner had generalized back pain noted. Petitioner had no active inflammation noted in the distal extremities or knees. On [REDACTED], 2022, Petitioner had an office visit with a chief complaint of arthritic pain. A physical examination revealed Petitioner had no swelling, cyanosis or clubbing in his extremities. Petitioner had full proximal strength in his lower extremities. Petitioner's deep tendon reflexes were intact and symmetric. Petitioner's sensation to light touch was intact in his distal extremities. Petitioner had no synovitis, limitation or tenderness in the small or large joints of his upper and lower extremities. Petitioner did have a diminished range of motion in the cervical spine toward the right side. Petitioner had mild tenderness in the lumbar spine with slight restriction with flexion of the spine. It was recommended that Petitioner continue Celebrex for his inflammatory arthritis, follow up with his chiropractor and neurologist for his cervicalgia and lower back pain.

Petitioner was seeking treatment at [REDACTED] (Exhibit 1, pp. 20-38) and (Exhibit A, pp. 182-217). On [REDACTED] 2021, Petitioner had an electroencephalogram (EEG) test and a videonystagmography (VNG) test. All of Petitioner's nerve conduction studies were within normal limits. All of Petitioner's examined muscles showed no evidence of electrical instability. Petitioner had no electrodiagnostic evidence of bilateral cervical radiculopathy. On [REDACTED], 2021, Petitioner had another EEG test. The test revealed that all of Petitioner's remaining nerves were within normal limits. Petitioner's left vs. right (L-R) comparison data for the tibial motor nerve indicated abnormal L-R latency difference (3.7 ms) and abnormal L-R amplitude difference (81%). All of Petitioner's remaining L-R side differences were within normal limits. Petitioner's needle electrode examination demonstrated reduced recruitment with increased proportion of high amplitude, long duration and polyphasic motor unit action potential (MUAP) in some of the muscles sampled. It was determined that there was electrodiagnostic evidence of chronic, bilateral S1 radiculopathies, without ongoing denervation. On [REDACTED], 2022, Petitioner had a follow-up visit. Petitioner complained of chronic neck and lower back pain, with neuropathic pain. Petitioner's subjective symptoms were out of proportion to the objective findings and diagnostic studies. Petitioner presented in a soft C-collar, but the MRI of his C-spine was unremarkable, and his neurological examination was normal. Petitioner was

referred to an orthopedist and encouraged to follow up with his primary care doctor, as well as hematology.

Petitioner was also seeking treatment at [REDACTED] (Exhibit 1, pp. 61-65) and (Exhibit A, pp. 162-176 and pp. 280-294). Petitioner had a history of dry eyes and allergic conjunctivitis. On [REDACTED], 2022, Petitioner had an eye examination. It was determined that Petitioner had allergic conjunctivitis of both eyes, bilateral dry eyes and was a glaucoma suspect in both eyes. It was recommended that Petitioner follow up in a 1-year period.

Petitioner was also seeking treatment at [REDACTED] (Exhibit A, pp. 74-100). On [REDACTED] 2020, Petitioner presented with chief complaints of pulmonary distress. Petitioner was diagnosed with cigarette nicotine dependence; COPD; hypertension; shortness of breath and Atelectasis. Petitioner was counseled on smoking cessation; diet education; and starting Ventolin. Petitioner had follow-up examinations on [REDACTED], 2020; [REDACTED], 2020; and [REDACTED], 2020. On [REDACTED], 2021, Petitioner had another follow-up examination with chief complaints of aggravations due to COPD. Petitioner was diagnosed with COPD; shortness of breath; cigarette dependence; Atelectasis; snoring; psychophysiological insomnia; hypertension; and hypersomnia. Petitioner was displaying all of the manifestations of significant obstructive sleep apnea syndrome, including loud snoring, choking at night, disturbed sleep, and significant excessive daytime sleepiness, which could ultimately cause significant cardiac morbidity and mortality. A diagnostic sleep study to investigate was completed and there was no finding of significant obstructive sleep apnea. Petitioner's physician determined there was no further investigation needed at the present time. On [REDACTED], 2022, Petitioner completed another follow-up examination. Petitioner was advised to continue on Ventolin and an Albuterol nebulizer; counseled on smoking cessation; improve sleep hygiene techniques; and to lose weight to reach ideal bodyweight. Petitioner had another follow-up on [REDACTED], 2022. Petitioner had an additional diagnosis of GERD. It was also determined that Petitioner's symptoms of shortness of breath at exertion, and occasional cough was highly suspicious for asthma. Petitioner was advised to avoid precipitating factors such as extreme temperatures, high humidity, animals, odors, and perfumes. Petitioner was advised to continue with his previous treatment plan, as well as ordered to continue Omeprazole for his GERD. On [REDACTED], 2022, Petitioner completed another follow-up examination. Petitioner had no new diagnoses and was advised on continuing his treatment. Petitioner was also educated on exercise and Body Mass Index (BMI) management.

Petitioner has a history of procedures related to his gastrointestinal issues. On [REDACTED] 2020, Petitioner presented at [REDACTED] for epigastric pain and changes in bowel habits (Exhibit A, pp. 182-199 and pp. 265-272). An esophagogastroduodenoscopy (EGD) and colonoscopy were performed. The EGD revealed Petitioner's esophagus, duodenum and gastroesophageal junction were normal. Examination of Petitioner's stomach revealed moderate diffused gastritis and biopsies were taken. It was recommended that Petitioner follow up with the pathology

reports of the biopsies and continue Pepcid. The colonoscopy revealed Petitioner's colon and terminal ileum were normal.

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 Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner 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 medical evidence presented in this case and the listing criteria applicable at the time of Petitioner's assessment date, listings 3.02 (COPD) and 14.09 (inflammatory arthritis) were considered. A thorough review of the medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3 and the analysis continues 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 Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, 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); 20 CFR 416.945(e).

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 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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments 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).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). 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 and occasionally walking and standing. 20 CFR 416.967(a). 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 the light 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). 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). 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). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, 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., unable to 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).

For mental disorders, 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). Where the evidence establishes a medically determinable mental impairment, the degree of functional limitation must be rated, taking into consideration chronic mental disorders, structured settings, medication, and other treatment. The effect on the overall degree of functionality is evaluated under four broad functional areas: (i) understand, remember, or apply information; (ii) interact with others; (iii) concentrate, persist, or maintain pace; and (iv) adapt or manage oneself. 20 CFR 416.920a(c)(3), to which a five-point scale is applied (none, mild, moderate, marked, and extreme). 20 CFR 416.920a(c)(4). The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c)(4).



In this case, Petitioner alleges exertional limitations due to his impairments. Petitioner reported he is able to walk, but less than 1 mile at a time. Petitioner stated he uses the assistance of a motor wheelchair and cane. Petitioner is able to grip and grasp. Petitioner can stand for up to 25 to 30 minutes and can sit for up to 2 hours. Petitioner is able to bend and squat, but experiences pain when completing the motion. Petitioner stated he is able to lift a few hundred pounds, as he maintains physical fitness. Petitioner can ascend and descend stairs. Petitioner lives alone, completes his own personal hygiene, can dress himself, can complete chores indoors and outdoors, as well as grocery shops. Petitioner is capable of driving but uses a bicycle to get to the grocery store. Petitioner was repeatedly questioned as to how his disability interferes with his ability to work and was generally unresponsive. Petitioner continued to provide confusing testimony regarding retirement, his pension, criminal charges and other matters that were not relevant to his ability to maintain employment or his physical impairments.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

The evidence presented is considered to determine the consistency of Petitioner's statements regarding the intensity, persistence and limiting effects of his symptoms. A thorough review of Petitioner's medical records, including records presented from Petitioner's treating physicians, was completed. Petitioner complained of chronic back pain, as well as pain due to his inflammatory arthritis and nerve issues. An MRI completed in 2020 revealed Petitioner did have some disc bulging, and in 2021 an EEG test revealed Petitioner had some lower spinal root nerve damage/injury. However, on ██████████ 2022, Petitioner's rheumatologist indicated Petitioner only had mild tenderness in the lumbar spine. On ██████████ 2022, Petitioner's neurologist indicated that Petitioner's reported C-spine pain was objectively less than Petitioner's reported subjective pain, as the MRI of his C-spine was unremarkable.

Additionally, on ██████████ 2022, Petitioner reported to his chiropractor that on a scale of 1 to 10, his pain level was only a 3 in the cervical area, 3 in the thoracic area and 4 in the lumbar area. Petitioner's chiropractor indicated he was steadily improving. It should also be noted that Petitioner's medical evidence from his chiropractor is not considered an acceptable medical source, as chiropractors are not licensed physicians. 20 CFR 404.1502. Evidence from a chiropractor is considered evidence from "other sources," which can help show the extent to which a person's impairments affects his or her ability to function. 20 CFR 404.1502. As such, some of Petitioner's chiropractic assessments were considered, but none of the diagnoses made were contemplated.

Also, Petitioner's own testimony indicated that his physical ailments were not seriously inhibiting. Petitioner reported at the hearing that his back pain limits his ability to work

but also indicated he is able to walk up to a mile, can stand for up to 25-30 minutes, sit for 2 hours and lift significant amounts of weight of up to several hundred pounds.

Per the medical records provided, due to Petitioner's physical limitations, he had some loss of mobility, but it was not significant. Petitioner also experienced some pain but was also not significant. With respect to Petitioner's exertional limitations, it is found based on a review of the entire record, that Petitioner maintains the physical capacity to perform medium work as defined by 20 CFR 416.967(a).

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

#### **Step Four**

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed by Petitioner (as actually performed by Petitioner or as generally performed in the national economy) within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) and (2). 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).

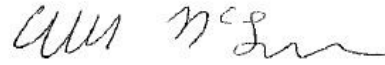
Petitioner stated he had a work history as a security guard, limousine driver and worked in accounting/finance. Petitioner's employment in accounting/finance is defined by the Dictionary of Occupational Titles as requiring sedentary work. As a security guard, Petitioner's employment required light work. As chauffeur, Petitioner's employment required light work. Therefore, Petitioner's past employment requires sedentary to light work.

Based on the RFC analysis above, Petitioner's exertional RFC limits him to medium work activities. Therefore, Petitioner is not precluded from performing past relevant work due to the exertional requirements of his prior employment. Because Petitioner is capable of performing past relevant work, it is found that Petitioner is not disabled at Step 4 and the assessment ends.

### **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 Petitioner **not disabled** for purposes of the SDA benefit program.

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



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**Ellen McLemore**  
Administrative Law Judge

**NOTICE OF APPEAL**: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

Michigan Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**Via-Electronic Mail :**

**DHHS**  
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**Interested Parties**

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**Via-First Class Mail :**

**Petitioner**

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