STATE OF MICHIGAN

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

IN THE MATTER OF:

[redacted]

SOAHR: 2010-51591
DHS: 2009-20242

[redacted]

Hearing Date: June 16, 2009
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

RECONSIDERATION DECISION

This matter is before the undersigned Administrative Law Judge upon pursuant to MCL 400. 9; MCL 400.37 upon an Order for Reconsideration issued by the 30th Judicial Circuit Court of Ingham County on August 15, 2011. The Claimant was represented by [redacted], Inc.

ISSUE

The issue set forth in the original Hearing Decision mailed on August 12, 2010, is hereby incorporated by reference with further development of the analysis of the third and fifth step of the five-part test in determining whether the Petitioner is legally disabled for Medical Assistance (MA-P)?

FINDINGS OF FACT

The Findings of Fact, 1-9, as set forth in the original Hearing Decision mailed on August 12, 2010, are hereby incorporated by reference, with the following added Findings of Fact:

10. On August 12, 2010, this Administrative Law Judge upheld the department in finding that the claimant was not disabled for purposes of MA where the claimant was capable of performing simple, unskilled, light work and for SDA that the claimant was capable of working within 90 days.

11. On September 1, 2010, MAHS received a rehearing/reconsideration request.

12. On September 10, 2010, Administrative Law Judge [redacted] issued an Order of Dismissal stating there was no legal basis to grant a rehearing/reconsideration.

13. On October 1, 2010, L&S filed an appeal to the 30th Circuit Court.

14. On August 15, 2011, the 30th Circuit Court remanded the case back to MAHS for further development of the analysis of the third and fifth step of the five-part test in determining whether the Petitioner is legally disabled for MA-P.

CONCLUSIONS OF LAW

The Conclusions of Law as set forth in the original Hearing Decision that was mailed on August 10, 2010, are hereby incorporated by reference.

At the time of the decision and order, the claimant was a 48 year-old man whose date of birth is [redacted]. The claimant was 6' 3" tall and weighs 190 pounds. The claimant had lost 38 pounds in the past year as a result of surgery. The claimant completed the 10th grade of high school and has a GED. The claimant can read or write and do basic math. The claimant was last employed as a construction framer in June 2001 at the heavy level, which is his pertinent work history. The claimant's alleged impairments are back pain from a 2001 injury, liver cancer, depression, esophagus rupture, hypothyroidism, and shortness of breath.

This Administrative Law Judge finds that an analysis of Step 3 and Step 5 would not be complete without the inclusion of Step 2, which is the basis and foundation for findings found for Step 3 and Step 5.

The objective medical evidence on the record further substantiates the following that the claimant had two [redacted] visits of December 7, 2008 and October 6, 2008 where he was seen for vomiting and chronic back pain. The claimant was treated and released in stable condition to follow-up with his doctor. Department Exhibit B1-B7, Claimant Exhibit A1-A3.

The claimant had three hospital visits at [redacted]:

> Admission date June 11, 2009 – Discharge date June 12, 2009. The claimant was seen for a drug overdose where he was disoriented to speech that was slurred. The claimant was suspected of taking an unknown quantity of Xanax and methadone. The claimant was treated with a Narcan drip. The claimant was discharged with a discharge diagnosis of drug overdose, suicide attempt, hypothyroidism, COPD, and depression. The claimant was seen by his psychiatrist and was felt that this likely was an intentional overdose. Claimant Exhibit 1-2.

> On July 31, 2008, the claimant was admitted with a discharge date of August 19, 2008. His admission diagnosis was acute chest pain secondary to Boerhaave's esophageal rupture and depression. His discharge diagnosis was Boerhaave's esophageal rupture, nosocomial pneumonia, major depression, and hypothyroidism. His comorbid conditions were polysubstance abuse and chronic back pain. His CT scan on admission of July 31, 2008 showed pneumomediastinum, distal esophageal leak from a gastrografin study of a left thoracotomy, esophageal tear and repair and pleural patch. The claimant recuperated from surgery very well. He was discharged home in stable condition. Department Exhibit 36-38.
>
> An August 25, 2008 admission date with a discharge date of August 28, 2008.

On December 8, 2008, the claimant had a CT of his abdomen and pelvis performed at Online Radiology Medical Group, Inc. The radiologist's impression was spinal fusion at L3 through L5 with probable bronchiectasis right lower lobe with right posterior lung base pleural thickening. There was minimal atelectasis or scarring of left lower lobe. There was no evidence of appendicitis or other acute abnormality of the abdomen or pelvis. Claimant Exhibit B8-B9.

On November 12, 2008, the claimant underwent a psychological evaluation at Comprehensive Psychological Services, P.C. The claimant was given a GAF of 53. He was diagnosed with mood disorder with severe depression, secondary to severe medical problems and chronic pain; cocaine dependence in partial remission; and posttraumatic stress disorder. The claimant is not able to manage his own benefit funds because he has not been completely drug free for one year. The claimant's prognosis was very guarded where the claimant needs ongoing outpatient mental health treatment and substance abuse treatment. Claimant exhibited evidence of illogical, bizarre, and circumstantial ideation. There was no evidence of a thought disorder. Claimant did not exhibit evidence of hallucinations, delusions, or obsessions. He denied suicidal ideation at this time in his life, but acknowledged that as recently as February 2008 he attempted suicide. The claimant was oriented to time, place, and person. The claimant exhibited average abstract reasoning, similarities and differences, and judgment. Department Exhibit 4-7.

On October 7, 2008, the claimant's treating physician submitted a Medical Examination Report, DHS-49, on behalf of the claimant. The claimant was first examined on December 27, 2007 and last examined on September 19, 2008. The claimant had a history of impairment and chief complaint of low back pain with radiculopathy, decreased sensation, and numbness in his right leg; hypothyroidism; and emergent repair of esophageal rupture, which is also his current diagnosis. The claimant had a normal physical examination. His treating

physician did note that the claimant needed the assistance of his wife to dress and undress where he uses a cane for support and is easily fatigued. The claimant's abdomen was diffusely tender with a well-healing incision with feeding tube in place. Musculoskeletally, the claimant had an abnormal stance and gait with tenderness that was 8/10 over the LS spine. Neurologically, the claimant had sensory deficit at L3-S1. Mentally, the claimant was depressed. Department Exhibit 12.

The treating physician's clinical impression was that the claimant was stable with physical limitations that were expected to last more than 90 days. The claimant could occasionally lift less than 10 pounds, but never 10 pounds. The claimant could stand and/or walk less than 2 hours of an 8-hour workday. The assistive devices medically required or needed for ambulation was a cane. The claimant could use both hands/arms for simple grasping and fine manipulation, but neither for reaching or pushing/pulling. The claimant could use neither foot for operating foot/leg controls. The medical findings that support the above physical limitations were abdominal tenderness diffusely 5/1 with local infection at feeding tube sites. The claimant has lost 14 pounds in one month while hospitalized. He has a long history of low back trauma since 2001. The claimant had no mental limitations, but could not meet her needs in the home as a result of his activities of daily living until stable enough to care for self. Department Exhibit 13.

At Step 2, this Administrative Law Judge correctly found that the objective medical evidence in the record indicated that the claimant had established that he had a severe impairment. The claimant had numerous hospital and emergency room visits. There was no objective medical evidence of the record to support a finding of liver cancer.

The claimant's treating physician medical examination report from October 7, 2008 was given the appropriate weight. He had only been the claimant's treating physician for 10 months. The medical findings that supported his physical limitations were diffuse abdominal tenderness, an esophageal rupture, local infection from feeding tube sites, weight loss of 14 pounds, a history of low back trauma. The claimant ruptured his esophagus on July 31, 2008, which occurred just 3 months before the treating physician's report. The level of physical impairment cited by the treating physician was not supported by the objective medical evidence on the record.

The claimant underwent an independent psychiatric evaluation where he was given a GAF of 53 that shows moderate symptoms or moderate difficulty in social, occupational, or school functioning. The claimant would not be able to manage his benefit funds because he had not been completely drug free for one full year. His prognosis had been guarded based on his evaluation on November 12, 2008. However, there was no evidence of a thought disorder. The claimant's treating physician on October 7, 2008 noted that he was depressed, but did not find the claimant to have any mental limitations.

The claimant was capable of performing at least simple, unskilled light work. Therefore, the claimant was not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

At Step 3...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

1.0 Musculoskeletal Impairments

A. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases.

1.01 Category of Impairments, Musculoskeletal

1.02 ***Major dysfunction of a joint(s) (due to any cause)***: Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

1.03 ***Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint***, with inability to ambulate effectively, as defined in 1.00B2b, and return to effective ambulation did not occur, or is not expected to occur, within 12 months of onset.

1.04 ***Disorders of the spine*** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

The Administrative Law Judge correctly determined that the claimant did not meet any of these listings.

3.00 Respiratory System

A. Introduction. The listings in this section describe impairments resulting from respiratory disorders based on symptoms, physical signs, laboratory test abnormalities, and response to a regimen of treatment prescribed by a treating source. Respiratory disorders along with any associated impairment(s) must be established by medical evidence. Evidence must be provided in sufficient detail to permit an independent reviewer to evaluate the severity of the impairment.

Many individuals, especially those who have listing-level impairments, will have received the benefit of medically prescribed treatment. Whenever there is evidence of such treatment, the longitudinal clinical record must include a description of the treatment prescribed by the treating source and response in addition to information about the nature and severity of the impairment.

3.01 Category of Impairments, Respiratory System

3.02 Chronic pulmonary insufficiency

A. Chronic obstructive pulmonary disease due to any cause, with the FEV_1 equal to or less than the values specified in table I corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 3.00E.);

Table I

Height without Shoes (centimeters)	Height without Shoes (inches)	FEV_1 Equal to or less than (L,BTPS)
154 or less	60 or less	1.05
155-160	61-63	1.15
161-165	64-65	1.25
166-170	66-67	1.35
171-175	68-69	1.45
176-180	70-71	1.55
181 or more	72 or more	1.65

or

B. Chronic restrictive ventilatory disease, due to any cause, with the FVC equal to or less than the values specified in Table II corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 3.00E.);

Table II

Height without Shoes (centimeters)	Height without Shoes (inches)	FVC Equal to or less than (L,BTPS)
154 or less	60 or less	1.25
155-160	61-63	1.35
161-165	64-65	1.45
166-170	66-67	1.55

171-175	68-69	1.65
176-180	70-71	1.75
181 or more	72 or more	1.85

or

C. Chronic impairment of gas exchange due to clinically documented pulmonary disease. With:

1. Single breath DLCO (see 3.00Fl) less than 10.5 ml/min/mm Hg or less than 40 percent of the predicted normal value. (Predicted values must either be based on data obtained at the test site or published values from a laboratory using the same technique as the test site. The source of the predicted values should be reported. If they are not published, they should be submitted in the form of a table or nomogram); or

2. Arterial blood gas values of PO_2 and simultaneously determined PCO_2 measured while at rest (breathing room air, awake and sitting or standing) in a clinically stable condition on at least two occasions, three or more weeks apart within a 6-month period, equal to or, less then the values specified in the applicable table III-A or III-B or III-C:

Table III-A

(Applicable at test sites less than 3,000 feet above sea level)

Arterial PCO_2 (mm Hg) and	**Arterial PO_2 Equal to or Less than (mm Hg)**
30 or below	65
31	64
32	63
33	62
34	61

35	60
36	59
37	58
38	57
39	56
40 or above	55

Table III-B

(Applicable at test sites 3,000 through 6,000 feet above sea level)

Arterial PCO_2 (mm Hg) and	**Arterial PO_2 Equal to or Less than (mm Hg)**
30 or below	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51

40 or above	50

Table III-C

(Applicable at test sites over 6,000 feet above sea level)

Arterial PCO_2 (mm Hg) and	**Arterial PO_2 equal to or less than (mm Hg)**
30 or below .	55
31	54
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

or

3. Arterial blood gas values of PO_2 and simultaneously determined PCO_2 during steady state exercise breathing room air (level of exercise equivalent to or less than 17.5 ml O_2 consumption/kg/min or 5 METs) equal to or less than the values specified in the applicable table III-A or III-B or III-C in 3.02 C2.

There was no objective medical evidence on the file that the claimant met this listing. As a result, the Administrative Law Judge correctly determined that the claimant did not meet this listing.

Section 13.00 Malignant Neoplastic Diseases

A. ***What impairments do these listings cover?*** We use these listings to evaluate all malignant neoplasms except certain neoplasms associated with human immunodeficiency virus (HIV) infection. We use the criteria in 14.08E to evaluate carcinoma of the cervix, Kaposi's sarcoma, lymphoma, and squamous cell carcinoma of the anal canal and anal margin if you also have HIV infection.

13.01 Category of Impairments, Malignant Neoplastic Diseases

13.02 Soft tissue tumors of the head and neck (except salivary glands—13.08—and thyroid gland – 13.09).

A. Inoperable or unresectable.

OR

B. Persistent disease following initial multimodal antineoplastic therapy.

OR

C. Recurrent disease following initial antineoplastic therapy, except recurrence in the true vocal cord.

OR

D. With metastases beyond the regional lymph nodes.

OR

E. Soft tissue tumors of the head and neck not addressed in A-D, with multimodal antineoplastic therapy. Consider under a disability until at least 18 months from the date of diagnosis. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

There was no objective evidence on the record to support the claimant's allegation of liver cancer. Therefore, this Administrative Law Judge correctly determined that the claimant did not meet this listing.

12.00 Mental Disorders

. *Introduction*: The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s), consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work, and consideration of whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. The listings for mental disorders are arranged in nine diagnostic categories: Organic mental disorders (12.02); schizophrenic, paranoid and other psychotic disorders (12.03); affective disorders (12.04); mental retardation (12.05); anxiety-related disorders (12.06); somatoform disorders (12.07); personality disorders (12.08); substance addiction disorders (12.09); and autistic disorder and other pervasive developmental disorders (12.10). Each listing, except 12.05 and 12.09, consists of a statement describing the disorder(s) addressed by the listing, paragraph A criteria (a set of medical findings), and paragraph B criteria (a set of impairment-related functional limitations). There are additional functional criteria (paragraph C criteria) in 12.02, 12.03, 12.04, and 12.06, discussed herein. We will assess the paragraph B criteria before we apply the paragraph C criteria. We will assess the paragraph C criteria only if we find that the paragraph B criteria are not satisfied. We will find that you have a listed impairment if the diagnostic description in the introductory paragraph and the criteria of both paragraphs A and B (or A and C, when appropriate) of the listed impairment are satisfied.

The criteria in paragraph A substantiate medically the presence of a particular mental disorder. Specific symptoms, signs, and laboratory findings in the paragraph A criteria of any of the listings in this section cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the medical findings. However, we may also consider mental impairments under physical body system listings, using the concept of medical equivalence, when the mental disorder results in physical dysfunction. (See, for instance, 12.00D12 regarding the evaluation of anorexia nervosa and other eating disorders.)

The criteria in paragraphs B and C describe impairment-related functional limitations that are incompatible with the ability to do any gainful activity. The functional limitations in paragraphs B and C must be the result of the mental disorder described in the diagnostic description, that is manifested by the medical findings in Paragraph A.

The structure of the listing for mental retardation (12.05) is different from that of the other mental disorders listings. Listing 12.05 contains an introductory paragraph with the diagnostic description for mental retardation. It also contains four sets of criteria (paragraphs A through D). If your impairment satisfies the diagnostic description in the introductory paragraph and any one of the four sets of criteria, we will find that your impairment meets the listing. Paragraphs A and B contain criteria that describe disorders we consider severe enough to prevent your doing any gainful activity without any additional assessment of functional limitations. For paragraph C, we will assess the degree of functional limitation the additional impairment(s) imposes to determine if it significantly limits your physical or mental ability to do basic work activities, i.e., is a "severe" impairment(s), as defined in §§ 404.1520(c) and 416.920(c). If the additional impairment(s) does not cause limitations that are "severe" as defined in §§ 404.1520(c) and 416.920(c), we will not find that the additional impairment(s) imposes "an additional and significant work-related limitation of function," even if you are unable to do your past work because of the unique features of that work. Paragraph D contains the same functional criteria that are required under paragraph B of the other mental disorders listings.

The structure of the listing for substance addiction disorders, 12.09, is also different from that for the other mental disorder listings. Listing 12.09 is structured as a reference listing; that is, it will only serve to indicate which of the other listed mental or physical impairments must be used to evaluate the behavioral or physical changes resulting from regular use of addictive substances.

The listings are so constructed that an individual with an impairment(s) that meets or is equivalent in severity to the criteria of a listing could not reasonably be expected to do any gainful activity. These listings are only examples of common mental disorders that are considered severe enough to prevent an individual from doing any gainful activity. When you have a medically determinable severe mental impairment that does not satisfy the diagnostic description or the requirements of the paragraph A criteria of the relevant listing, the assessment of the paragraph B and C criteria is critical to a determination of equivalence.

If your impairment(s) does not meet or is not equivalent in severity to the criteria of any listing, you may or may not have the residual functional capacity (RFC) to do substantial gainful activity (SGA). The determination of mental RFC is crucial to the evaluation of your capacity to do SGA when your impairment(s) does not meet or equal the criteria of the listings, but is nevertheless severe.

RFC is a multidimensional description of the work-related abilities you retain in spite of your medical impairments. An assessment of your RFC complements the functional evaluation necessary for paragraphs B and C of the listings by requiring consideration of an expanded list of work-related capacities that may be affected by mental disorders when your impairment(s) is severe but neither meets nor is equivalent in severity to a listed mental disorder.

The objective medical evidence on the record reflected that the claimant had depression with moderate symptoms with no evidence of a thought disorder according to an independent medical examiner. His treating physician cited that he was depressed, but had no mental impairments. As a result, this Administrative Law Judge correctly determined that the claimant did not meet a listing.

In the third step of the sequential consideration 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 impairments were chronic back pain from a previous injury and an esophageal tear that required feeding tubes that subsequently got infected at the local site. He had depression where he was taking medications, but not in therapy. This Administrative Law Judge correctly determined that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). In conclusion, this Administrative Law Judge correctly found that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant was disqualified from receiving disability at Step 3.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

> (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
>
> (2) age, education, and work experience, 20 CFR 416.963-.965; and
>
> (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

> ...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.
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> **Sedentary work**. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).
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> **Light work**. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).
>
> ...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).
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> **Unskilled work**. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The objective medical evidence on the record was insufficient that the claimant lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitations indicates his limitations are exertional and non-exertional.

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

In the instant case, the claimant stated that he has depression where he was currently taking medication, but not in therapy. The claimant underwent an independent psychiatric evaluation where he was given a GAF of 53 that shows moderate symptoms or moderate difficulty in social, occupational, or school functioning. However, there was no evidence of a thought disorder. The claimant would not be able to manage his benefit funds because he had not been completely drug free for one full year. His prognosis had been guarded based on his evaluation on November 12, 2008. The claimant's treating physician on October 7, 2008 noted that he was depressed, but did not find the claimant to have any mental limitations. As a result, the Administrative Law Judge correctly determined that there was sufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from performing detailed, skilled work, but the claimant should be able to perform simple, unskilled work.

At Step 5, the claimant should be able to meet the physical requirements of light work, based upon the claimant's physical abilities. The claimant treating physician only cited abdominal tenderness, esophageal rupture, local infection at feeding tube cites, and low back trauma, a 14 pound weight loss from his hospital stay. Under the Medical-Vocational guidelines, a younger individual with a high school education, and an unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.20. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge correctly determined that the claimant can still perform a wide range of simple, unskilled, light activities and that the claimant does not meet the definition of disabled under the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that this Administrative Law Judge properly and correctly found that the claimant was not disabled and properly and correctly found that the claimant was not eligible for MA-P, retroactive MA-P, and SDA.

It is therefore ordered that this Administrative Law Judge's decision dated August 12, 2010, is **AFFIRMED.**

/s/
Carmen G. Fahie
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 2/2/12

Date Mailed: 2/3/12

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

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 was made, within 30 days of the receipt date of the rehearing decision.

CGF/tg