

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002927-R
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: September 9, 2014
County: Lapeer

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

RECONSIDERATION DECISION AND ORDER

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, an in-person hearing was held on September 9, 2014, from Lapeer, Michigan. Participants on behalf of Claimant included Claimant, his mother [REDACTED] and his Authorized Hearing Representative (AHR) [REDACTED]. Participants on behalf of the Department of Health and Human Services, (formerly Department of Human Services) (Department) included [REDACTED], Hearing Facilitator.

The request for a rehearing is herein denied and a Reconsideration of the evidence is conducted. Additional Medical documentation was received and considered in making this Reconsideration Decision. This Administrative Law Judge did read and consider the approximately 1,000 pages of medical documentation submitted in this case. This Administrative Law Judge will make an assessment of State Disability Assistance also, as at least one Department witness testified that Claimant filed an application for State Disability Assistance.

ISSUE

Did the Department of Health and Human Services (Department) properly deny Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

1. On March 17, 2014, (ADVOMAS) filed an application on Claimant's behalf for MA, and retroactive MA benefits alleging disability.
2. At hearing, Claimant alleged that he also filed an application for SDA, but no such application was ever produced.

3. On April 28, 2014, the Medical Review Team (MRT) denied Claimant's application stating that Claimant's impairments do not meet duration.
4. On May 23, 2014, the Department caseworker sent Claimant notice that his application was denied.
5. On May 28, 2014, Claimant filed a request for a hearing to contest the Department's negative action.
6. On July 15, 2014, the State Hearing Review Team (SHRT) again denied Claimant's application.
7. The hearing was held on September 9, 2014. At the hearing, Claimant waived the time periods and requested to submit additional medical information.
8. Additional medical information was received on October 6, 2014, and was considered in making this determination. The record closed in this case on October 6, 2014.
9. As of the date of hearing, Claimant is a [REDACTED]-year-old man whose birth date is [REDACTED]. Claimant is 5'6" tall and weighs 225 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
10. Claimant last worked in 2013 as a grill cook. Claimant has worked as a cashier, in the meat department, stocking shelves and performing concrete labor.
11. Claimant alleges as disabling impairments: necrotizing fasciitis, inability to father children, depression, posttraumatic stress disorder, high cholesterol, gastroesophageal reflux disease, right leg weakness, deformed genitals from gangrene, genital pain, anxiety, suicidal ideation, crying spells, migraines and mental deterioration.
12. On October 13, 2015, Administrative Law Judge Landis Y. Lain issued a Decision and Order denying Claimant's application.
13. On November 12, 2014, Claimant (Appellant) filed a Complaint and Motion for the taking of additional information with the Tuscola County 54th Circuit Court.
14. On January 28, 2015, Honorable Amy Grace Gilbert, Tuscola County 54th Circuit Court Judge, signed a remand order for the taking of additional information.
15. On March 31, 2015, Michigan Administrative Hearing System (MAHS) received a Brief in Support of Additional Evidence Submission on Remand from the Circuit Court with attached exhibits.

16. On April 24, 2015, Supervising Administrative Law Judge Jonathan W. Owens issued a Notice or Remand to Accept Additional Evidence and re-assigned the case to Administrative Law Judge Landis Y. Lain for reconsideration of the evidence and submission of additional evidence for consideration.
17. On April 30, 2015, the Department (Appellee) filed a Motion for Rehearing and Brief in Support of Motion for Rehearing.
18. On May 8, 2015, the Department (Appellee) filed a Brief on Remand.
19. On May 9, 2015, MAHS received an Order from the Tuscola County 54th Circuit Court Judge Amy Grace Gilbert, which remanded the case with an order for the taking of additional material evidence.
20. On May 11, 2015, MAHS received a Claimant's (Appellant's) Brief in Response to Appellee's Motion for rehearing plus second additional evidence submission.
21. On May 19, 2015, the record was closed.
22. The Department's (Appellee's) Motion for Rehearing is denied as the taking of additional testimony from Claimant is unnecessary and repetitive, since the record is replete with objective medical findings.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Claimants have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Bridges Administrative Manual (BAM) 600.

A **rehearing** is a full hearing which is granted when either of the following occurs:

- The original hearing record is inadequate for purposes of judicial review.
- There is newly discovered evidence **that existed** at the time of the original hearing that could affect the outcome of the original hearing decision.

A **reconsideration** is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues **raised in the hearing request**. BAM 600, page 43.

The Department, Office of the Attorney General, MDE, client or AHR may file a written request for rehearing/reconsideration. Request a rehearing/reconsideration 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, the Office of the Attorney General, the client or AHR must specify all reasons for the request. BAM 600, pages 43-44.

MAHS will either grant or deny a rehearing/reconsideration request and will send written notice of the decision to all parties to the original hearing.

Exception: MAHS will **not** grant a rehearing involving FAP-IPV.

If MAHS grants a reconsideration, a reconsideration decision will be issued.

If a rehearing is granted, MAHS will schedule and conduct the hearing in the same manner as the original. Pending a rehearing or reconsideration request, implement the original decision and order unless a circuit court or other court with jurisdiction issues an order which requires a delay or stay. BAM 400, page 46

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Health and Human Services (DHHS or Department) administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance program differs from the federal Medical Assistance regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Health and Human Services (DHHS or Department) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are

found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Health and Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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
- (6) Dealing with changes in a routine work setting.
20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the Claimant perform Substantial Gainful Activity (SGA)? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the Claimant have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the Claimant is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the Claimant's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the Claimant do the former work that he/she performed within the last 15 years? If yes, the Claimant is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the Claimant have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the Claimant are ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, Claimant is not engaged in substantial gainful activity and has not worked since **2013**. Claimant is not disqualified from receiving disability at Step 1.

The subjective testimony and objective medical evidence on the record indicates that Claimant testified that he developed a pimple on his right groin, which became progressively larger and more painful. He went to the hospital.

On [REDACTED], Claimant was airlifted to [REDACTED] for Fournier's Gangrene in his right testicle. Emergency surgery was required to remove the gangrenous/necrotic tissue. Claimant was intubated and underwent sharp debridement of the scrotum and anterior abdominal wall. Pathology reports indicated acute panniculitis and acute inflammation/abscess in multiple lymph nodes.

Claimant testified on the record that he lives with his parents in a house. He is single with no children under 18 and no income. He receives the Healthy Michigan Plan. He has no driver's license, and his parents take him where he needs to go. Claimant does not cook, or grocery shop. He does pick up his bedroom. He watches television four to five hours per day and uses the computer less than two hours per day. Claimant testified he can stand for 15 minutes at a time and can sit for 30 minutes at a time. He can walk a half mile. He's able to shower and dress himself. He cannot squat, tie his

shoes or touch toes. His back and knees are fine. His hands and arms are fine. His legs and feet have numbness. Heaviest weight he can carry is five pounds. He does smoke four cigarettes per day. His doctors told him to quit, and he is not in a smoking cessation program. His level of pain on a scale from 1 to 10 without medication equals a 10 and with medication equals an 8.

Claimant filed an application for disability with the Social Security Administration on March 10, 2014, with a disability onset date of February 11, 2014. Conditions alleged were Vancomycin Resistant Enterococcus, Fournier's gangrene and growth of scar tissue in the throat.

On [REDACTED], Claimant was seen in the emergency room (ER) for a clogged suprapubic catheter, which was replaced, Claimant's Exhibit 3.

An [REDACTED] Progress note indicates that Claimant had normal examination. He had a suprapubic catheter present. Graft noticed in the scrotal region with erythema. No sign of infection. Nice healed surgical scars present. Claimant Exhibit A51.

On [REDACTED], Claimant had a PICC line inserted for antibiotic therapy. There were no complications. Claimant's Exhibit A55.

A Disability Determination Explanation indicates at page 5 that Claimant had scrotal infection and underwent debridement. Pathology reports note acute inflammation and acute panniculitis but was negative for bacteria, fungi, or mycobacteria. He had a bronchoscopy for aspiration pneumonitis (April 1, 2014) and subsequent endoscopy for debulking of excess granulation tissue at tracheostomy site (April 14, 2014). Second bronchoscopy noted no further debridement needed as the tracheal lumen was adequate. His skin grafts have nearly completely healed and infections have resolved; PICC lines removed. Conditions were severe for less than 12 months and currently do not impose significant work restrictions; thus not severely currently. He was determined to have mild restrictions of activities of daily living; mild difficulties of maintaining social functioning; moderate difficulties in maintaining concentration, persistence or pace; and no repeated episodes of decompensation.

A [REDACTED], Physical Therapy Note indicates that Claimant has mild adhesions of the scar tissue noted with respect to the scrotum to the right groin. Minimal to no restriction noted through the scar tissue outside of the skin graft site area. No signs of infection are noted. No drainage is noted. No odor is noted. The patient ambulated independently on a level surface with a slow cadence, decreased step and stride with a forward flexed motion. Decreased arm swing noted. The patient displayed some active range of motion with respect to the hip, however, limited secondary to pain secondary to the pulling on the skin graft and donor site areas. Claimant's Exhibit 7 page 2.

A mental progress report dated [REDACTED] indicates that Claimant was diagnosed with posttraumatic stress disorder and axis V GAF of 45 with serious symptoms, Exhibit F page 6.

On [REDACTED], Claimant suffered acute appendicitis and had his appendix removed without complications.

Claimant had a history of Substance Abuse – Marijuana. He was smoking three to five times per week until May 2014. His physical and mental examinations were normal, except for pain in the right inguinal area upon deep palpation. Claimant's Exhibit A page 27.

A SOLQ report from the Social Security Administration indicates that it denied Claimant's application for disability with the payment status code N34, which indicates **"Impairment no longer severe at time of adjudication and did not last 12 months, no visual impairment"**. Claimant appealed the decision on July 22, 2014.

Claimant was admitted [REDACTED], with suicidal thoughts of wanting to hang himself because he was depressed after surgery. Claimant's prognosis was fair if he was compliant with treatment post discharge. Claimant Exhibit A1.

An [REDACTED], discharge summary indicates that Claimant was diagnosed with posttraumatic stress disorder secondary to surgery and partial amputation of his penis. Axis V GAF of 45 – 50.

An [REDACTED], Emergency documentation indicates that Claimant was highly suspicious for narcotic abuse/dependency. He was given Vancomycin due to history of Fournier's gangrene, however, no clinical evidence for re-occurrence of patient's condition. Scar tissue appears well healed without any evidence of cellulitis or an abscess. He was diagnosed with chronic pain but had no clinical evidence of discomfort to warrant any use of Dilaudid. His physical examination was normal. He had some tenderness in the groin, right inguinal. He had erythema, and surgical skin graft with no obvious cellulitis. No palpable fluctuant masses noted, Claimant's Exhibit 5 pages 11- 12.

An [REDACTED], admission indicates the Claimant was normal in all areas of examination except for his external genitalia revealed partial application of the penis, Exhibit E 52. The impression was major depressive disorder with suicidal ideation and chronic right inguinal pain following multiple surgeries with partial amputation of penis. His drug abuse screen was positive for benzodiazepine, opiates and oxycodone, Exhibit E 53.

An [REDACTED], discharge summary indicates that Claimant's coping skills improved. He denied suicidal ideation or plans. No suicidal behavior. He was discharged to the custody of his family who advised to provide 24-hour supervision, Exhibit E 14.

In [REDACTED], psychiatric evaluation indicates that Claimant was an inpatient in the psychiatric unit from [REDACTED] due to worsening mood and suicidal ideation exacerbated by environmental stressors and pain that is poorly controlled. He was eating and sleeping well at that time. He was discharged with medication. He denied any depression or suicidal ideation at that time. He tolerated his medication well with no side effects, Exhibit B1.

A medical examination report dated [REDACTED], indicates that Claimant's blood pressure was 117/86. His temperature was 98.1°F. Pulse was 92 bpm and regular and respiration was 20 bpm. Pain scale is 8/10. He had a normal physical examination. The right groin showed all skin grafts were intact, minimal bruising/ecchymosis right anterior thigh insight of prior steroid injection, no open wounds. Cranial nerves 2 through 12 are grossly intact. Sensory was normal. He was oriented to time, place, person and situation. He appropriate mood and affect. He had normal insight normal judgment. The assessment was a history of Fournier's gangrene, Exhibit E3.

An [REDACTED], office visit note indicates that Claimant had an enlarged lymph node in his groin area, Exhibit E 10.

An [REDACTED], Radiology report indicates that Claimant had extensive bilateral inguinal adenopathy. There is no abscess, fluid collection, or solid mass, Claimant's Exhibit 2.

A [REDACTED], office visit report indicates that Claimant presented for postoperative penile reconstruction, Exhibit E6. He was 5'6" tall and weighed 225 pounds. His blood pressure was 102/80. Temperature was 98.5°F. Pulse was 60 bpm. Respiration was 12 bpm. His BMI was 36.32. The comments indicate that in the perineum/scrotal/penis that skin grafts were healed with no open wounds. There was expected edema along the lower edge of prior skin grafts along right growing. No palpable lymph nodes. No sign of infection, Exhibit E7. Claimant was assessed with genital femoral neuralgia. No evidence of abscess. No evidence of DVT was found, Exhibit E8.

An [REDACTED], psychological progress note indicates that Claimant reported that he had an injury due to his underwear rubbing his wound when he was doing yard work, so he changed his underwear type to avoid this. He had depression and suicidal ideation. Claimant's Exhibit 4 page 19.

An [REDACTED], plastic and reconstructive surgery office visit report indicates that Claimant was well developed and had a normal general examination. Skin grafts on the right groin, scrotum and penis were well healed. No open wounds. There was noted area of discoloration along the superior edge consistent with degradation of underlying suture material vs regenerating hair follicles. No obvious signs of infection. The doctor recommended a nerve block for continued pain, and suggested a follow-up with the pain clinic for a peripheral nerve block, Claimant's Exhibit 2 page 5.

A [REDACTED], psychological progress report indicates that Claimant reported that he was helping with yard work and dishes, and discussing sports with his dad. He gets anxious in crowds. He had fair treatment plan progress, Claimant's Exhibit 4 page 16.

On [REDACTED], Claimant underwent a hemorrhoid-ectomy, Claimant's Exhibit 6 page 7.

A [REDACTED], Psychological progress note indicates that Claimant was appropriate in appearance. He was oriented x3. He was lucid, calm with a blunted

affect. He was depressed and anxious. His thinking was organized and sensorium was normal. He reported that he had hemorrhoids that need to be removed, Claimant's Exhibit 4 page 10.

A [REDACTED], letter from Claimant's medical doctor indicates that Claimant had recently undergone a hemorrhoid-ectomy. He was asymptomatic except for a tiny amount of blood on the stool. The wound was healing extremely well and he had no signs of infection. He was advised to keep his bowels soft with laxatives and Metamucil, Claimant's Exhibit 5 page 1.

A [REDACTED], psychiatry progress note indicates that Claimant expressed that he was planning an overdose because he was having problems with his family. He got into a physical altercation with his father and was charged with domestic violence, so he was staying with an uncle. He denied depression, anxiety or suicidal or homicidal ideation or plans. Claimant's Exhibit 10a, page 3.

A [REDACTED], psychiatric progress noted indicates that Claimant revealed no serious mental status abnormalities. His appearance, dress, and grooming were unremarkable and age appropriate. His mood was depressed and affect was sad. He denied suicidal or self-injurious ideas or intentions. There were no signs of cognitive difficulty. Hallucinations and delusions were not present. He was looking forward to his surgery for penis reconstruction. Judgment and insight were fair. There were no signs of anxiety. He had a normal attention span and no signs of hyperactivity. Claimant's Exhibit 10a, page 2.

On [REDACTED], Claimant had a skin graft done on his penis.

A [REDACTED], CT of the abdomen and pelvis indicates an area of cellulitis in the right groin extending into the superior scrotum but without evidence of discrete abscess. Several small lymph nodes in the right inguinal region are likely reactive. No free fluid or free air in the abdomen proper. No obstructive uropathy. Claimant's Exhibit 6 page 20. Claimant was treated with Bactrim DS and released. Claimant's Exhibit 6 page 21.

A [REDACTED], medical report indicates that Claimant was 5'6" tall and weighed 252 lbs. His BMI was 40.67. His temperature was 98.70. Claimant's Exhibit 2a page 2. Claimant's skin grafts were well healed with no open wounds along the glans and no signs of fluid collection or infection along the glans. Base of penis had few areas still epithelializing. No obvious signs of infection. The left thigh skin graft was almost completely epithelialized. Claimant's Exhibit 2a page 3.

On [REDACTED], the medical reports indicate that Claimant was still smoking and had recreational drug use. His vital signs were normal. His physical examination was normal. He was oriented x3. He had normal speech and cognition. Cranial nerves were normal. He had normal motor, mood and affect. Claimant's Exhibit 6 pages 26-27. He was diagnosed with acute scrotal, penile cellulitis and had multiple resistances to antibiotics, especially the enterococcus VRE and was started on Vancomycin. Claimant's Exhibit 6 page 30. Claimant was told that his infection may have been because a suture failed to dissolve. Skin graft wounds were packed with Xeroform, but

no purulent drainage, erythema or induration. Inguinal lymphadenopathy was noted. His physical examination was otherwise normal. Claimant's Exhibit 6, page 34.

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 limitations in light of the objective medical evidence presented. 20 CFR 416.929(c)(94).

At Step 2, Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months. Claimant's impairments do not meet duration. There is insufficient objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment. Claimant has credible reports of pain in multiple areas of his body; however, there are insufficient corresponding clinical findings that support the reports of symptoms and limitations made by the Claimant. There are insufficient laboratory or x-ray findings listed in the file which establish disability. The clinical impression is that Claimant is **stable**. There is insufficient medical finding that Claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, Claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that Claimant has met the evidentiary burden of proof can be made. While the evidence indicates that Claimant has had several **acute** medical conditions, they were separate onset conditions which were resolved well before the durational requirement of twelve months. Claimant did not suffer one/several continuous medical condition(s) which met both severity and duration. Also, Claimant chose to have reconstructive surgery, which was elective in nature and not an "impairment", as such is defined.

Social Security Rule SSR 82-52 clearly states that severe impairments lasting less than 12 months cannot be combined with successive, unrelated impairments to meet the duration requirement. In this case, within 12 months of onset, there was or is sufficient restoration of function so there is or will be no significant limitation of ability to perform basic work-related functions

Claimant has not established that he has a severe impairment which has lasted the durational requirement of 12 months or more. Claimant is disqualified from receiving disability at Step 2. However, since Step 2 is a *de minimus* standard and Claimant has testified that he has severe pain and has had skin grafts, anxiety and depression, this Administrative Law Judge will proceed through the sequential evaluation for the sake of argument.

Upon Reconsideration of the evidence and consideration of additional medical documentation, this Administrative Law Judge finds that the medical record is insufficient to establish that Claimant has a severely restrictive physical impairment.

Though Claimant's condition was severe, because he did contract Fournier's Gangrene, which is a very grave illness, his condition improved considerably before [REDACTED], which would meet the relevant 12-month durational time period. Claimant's condition did not meet the 12-month durational requirement with any physical or mental medical condition. His condition is required to remain severe for a 12-month period in order to meet the disability standard. Claimant's condition improved and continues to do so. He is not prevented from working at any job because of his physical medical condition.

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).

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 a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

There is insufficient objective medical/psychiatric evidence in the record indicating Claimant suffers severe mental limitations. There is a mental residual functional capacity assessment in the record. There is insufficient evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Claimant from working at any job. Claimant was oriented to time, person and place during the hearing. Claimant was able to answer all of the questions at the hearing and was responsive to the questions. The evidentiary record is insufficient to find that Claimant suffers a severely restrictive mental impairment. The Claimant has seen for suicidal ideation, but his axis V GAF has improved considerably. He has not made suicidal gestures or attempts. He is stable, oriented x3 with normal sensorium in a majority of his psychiatric reports. Claimant is not prevented from working at any job based upon a severe mental condition. For these reasons, this Administrative Law Judge finds that Claimant has failed to meet his burden of proof at Step 2. Claimant must be denied benefits at this step based upon his failure to meet the evidentiary burden.

If Claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of Claimant's condition does not give rise to a finding that he would meet a statutory listing in the code of federal regulations. Claimant's condition does not meet any Social Security Administration (SSA) listing. Claimant's impairments do no rise to the level necessary to be considered disabling as a matter of law. In fact the SSA has currently determined that Claimant's condition had improved from onset and is no longer severe. An appeal has not reversed this determination. His condition

does not meet Listing 12.04 or 12.06 Affective or Anxiety Disorders. Claimant's condition does not meet Listing 8.04 Chronic Infections of Skin or mucous membranes. Claimant's condition does not meet any other Social Security Listing.

If Claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. Claimant testified on the record that he can walk a half mile. He can sit for 30 minutes at a time before he has to get up. He is able to shower and dress himself. He watches television four to five hours per day and uses the computer for less than two hours per day. There is insufficient evidence upon which this Administrative Law Judge could base a finding that Claimant is unable to any perform work in which he has engaged in, in the past. Therefore, if Claimant had not already been denied at Step 2, he would be denied again at Step 4.

For the sake of argument, the Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

At Step 5, the burden of proof shifts to the Department to establish that Claimant does not have residual functional capacity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and 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.

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).

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).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do light or sedentary tasks if demanded of him. Claimant's activities of daily living do not appear to be very limited and he should

be able to perform light or sedentary work even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The Claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to Claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that Claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments. **Under the Medical-Vocational guidelines, an individual (age 36 at the time of application), with a high school education and an unskilled work history who is limited to light or sedentary work is not considered disabled pursuant to Medical Vocational Rules 202.20 or 201.27.**

Claimant retains bi-lateral manual hand dexterity. He is able to ambulate without assistance. Claimant could perform duties with a stand/sit option.

Claimant's statements with regards to the severity and limitations involved with his condition are only partially credible and are not wholly consistent with the medical examination reports. He states that he has limited mobility, constant pain, tiredness, and needs help for personal care. However, the pathology reports were negative for bacteria, fungi, mycobacteria and the skin grafts had healed at the time of the original Decision and Order. He complained of severe depression and anxiety but the psychological evaluations do not indicate that he is materially or severely limited in his mental or functional abilities. His ability to understand, attend to, remember, and carry out instructions of a work related behaviors are not overtly impaired. His depression and anxiety may cause mild to moderate impairment in the workplace. Claimant can adjust to other work. His ability to adapt to change and stress in the workplace are moderately impaired by his depression and anxiety. Disability Determination Examination, page 9, ().

It should be noted that Claimant continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program.

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the SDA program: to receive SDA, a person must

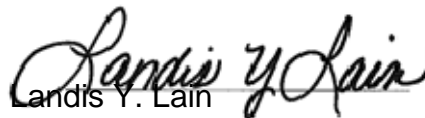
be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the Claimant does not meet the definition of disabled under the MA program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for SDA benefits either.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Claimant was not eligible to receive MA and/or SDA. The Department's Decision must be upheld.

RECONSIDERATION DECISION AND ORDER

Upon Reconsideration, the Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied Claimant's application for MA, retroactive MA. State Disability Assistance benefits are also denied in accordance with Department policy and because there is no evidence that Claimant actually filed an application for State Disability Assistance. The claimant's impairments do not meet severity or duration. The Claimant should be able to perform a wide range of light or sedentary work even with his impairments. The Claimant is denied at Steps 2, 3, 4 and 5. The Department as established its case by a preponderance of the evidence.

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



Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **5/21/2015**

LYL/jaf

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 Claimant;
- 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

cc:

