

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-52214
Issue No. 2009
Case No. [REDACTED]
Hearing Date: January 3, 2012
Roscommon County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on January 3, 2012.

ISSUE

Was disability, as defined below, medically established?

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 February 24, 2011, claimant applied for Medicaid (and January retro), was denied on July 12, 2011 (BEM 260, and requested a hearing on September 8, 2011).
2. Claimant's vocational factors on date of application are: age 52, 12th grade education, and last 15 years of work experience as a semi-skilled assistant manager in a retail sales operation, bartender, and cashier.
3. In April 2007, claimant's last employment ended due to throat cancer.
4. In April 2007, claimant alleges disability due to disabled complaints of subglottic cancer (throat cancer).

5. Medical exam on April 7, 2010 states the claimant's condition is stable; that she can lift/carry frequently less than ten pounds and occasionally 50 pounds or more; that she can stand and/or walk at least two hours in an eight-hour workday, and sit about six hours; that she needs no assistive device for ambulation; that she should be able to use her extremities on a repetitive basis; and that she has no mental limitations (Medical Packet, pages 321 and 322).
6. Medical exam on March 2, 2011 states the claimant's condition is stable (Medical Packet, page 387).
7. Medical exam on April 11, 2011 states that it is our impression of claimant's history of T3 and 2ccs MO squamous cell carcinoma of the supraglottis status post contra chemoradiation completed in August 2007, who was lost to follow up and has not been seen in two years (Medical Packet, page 423).
8. Medical exam on May 5, 2011 states the claimant's speech is fluent without dysarthria while word-finding difficulty (Medical Packet, page 410).
9. Medical exam on July 19, 2011 states the claimant was treated for squamous cell carcinoma of the throat; that she had radiation and chemotherapy; and that she did develop some neuropathy from cisplatin (Medical Packet, page 450).

CONCLUSIONS OF LAW

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 Human Services (DHS 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 Bridges Reference Manual (BRM).

Facts above are undisputed.

"Disability" is:

...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.

The claimant has the burden of proof to establish disability in accordance with the five-step guideline below.

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 client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client 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 client'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 client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client 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 client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, disability is not denied due to the claimant's current unemployment and on the date of application.

At Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the claimant's significant inability to perform basic physical work activities, for the required one-year **continuous** duration, as defined below.

Severe/Nonsevere Impairment

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

Basic work activities. When we talk about basic work activities, we mean 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).

The question is whether the claimant's disabling complaints and diagnosed disorders, on date of application, significantly limit her ability to perform basic work activities, as defined above.

The question in this case is whether the claimant's medically diagnosed disorder significantly limits her ability, on date of application, to perform basic work activities. Said in another way, do the diagnosed disorders, impair the claimant slightly, mildly, moderately (nonsevere as defined above) or severely?

The medical reports of record are mostly examination, diagnostic, or treatment reports, and do not provide medical assessments of claimant's basic work limitations/restrictions.

Based on the medical evidence of record this ALJ finds a nonsevere impairment has been established instead of a severe impairment.

Duration of impairment

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

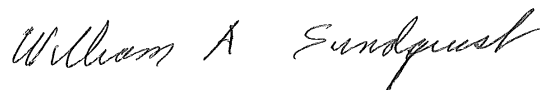
The medical evidence of record, on date of application, does not establish a severe impairment that has lasted or was expected to last for a one-year **continuous** duration.

Therefore, disability has not been established, as defined above, by the competent, material and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that disability was not medically established.

Accordingly, Medicaid denial is UPHELD.



William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 6, 2012

Date Mailed: January 9, 2012

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 90 days of the filing of the original request.

2011-52214/WAS

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

WAS/tg

cc:

