

5. Claimant last worked in 2012 as a self-employed transportation service provider. Claimant also performed relevant work as a charter school office manager. Claimant's relevant work history consists exclusively of unskilled, light-exertional work activities.
6. Claimant has a history of a malignant brain tumor which was removed. Her onset date is December, 2011, when she began experiencing daily headaches.
7. Claimant was hospitalized April 21-30, 2012 for craniotomy surgery. The discharge diagnosis was for six weeks radiation therapy and regular follow-up and MRI testing with an oncologist.
8. Claimant currently suffers from short-term memory deficits, changes in sustained concentration, and occasional eye blurring.
9. Claimant is severely limited in basic living skills of standing, walking, sitting, lifting and carrying. Claimant's limitations have lasted or are expected to last twelve months or more.
10. Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the whole record, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers MA pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables (RFT).

X The Administrative Law Judge concludes that Claimant **IS DISABLED** for purposes of the MA program, for the following reason:

- X** 1. Claimant's physical and/or mental impairment(s) meet a Federal SSI Listing of Impairment(s) or its equivalent.

State the Listing of Impairment(s):

13.02E 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.

The following is a five-step examination of Claimant's eligibility for Medicaid. The State of Michigan Department of Human Services is required by the U.S. Code of Federal Regulations (CFR) to use the U.S. Social Security Act Title XVI Supplemental Security Income five-step test, for evaluating applicants for the Michigan Medicaid disability program. 20 CFR 416.905, 404.1505; 416.920; 42 CFR 435.540.

First, the Claimant must not be engaged in substantial gainful activity. In this case, Claimant has not worked fulltime since April, 2012. Accordingly, it is found and determined that the first requirement of eligibility is fulfilled, and the Claimant is not engaged in substantial gainful activity. 20 CFR 404.1520(b), 416.920(b).

Second, in order to be eligible for MA, Claimant's impairment must be sufficiently serious and be at least one year in duration. In this case, Claimant's onset date is December, 2011. In December, 2011 Claimant experienced daily headaches. In April, 2012 she was diagnosed with meningioma and underwent craniotomy surgery. In June-August, 2012, she had six weeks of radiation therapy. On February 21, 2013, Reem Alsabti, M.D., Internal Medicine, Claimant's primary care physician, stated that Claimant was unable to work, she needed help with housework, and she cannot drive long distances. 20 CFR 404.1520(c), 404.1521; Dept. Exh. 1; Clmt. Exhs. 1, 3, 4.

Based on this information of record, and all of the evidence in this case taken as a whole, it is found and determined that Claimant's impairments are of sufficient severity and duration to fulfill the second eligibility requirement. 20 CFR 404.1520(c), 404.1521, 416.920(c).

Turning now to the third requirement for MA eligibility approval, the factfinder must determine if Claimant's impairment is the same as, or equivalent in severity to, an impairment in the federal Listing of Impairments, found at 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments. In this case it is found and determined that Claimant's impairment meets or is the equivalent of Listing 13.02E, Soft tissue tumors of the head and neck, etc. This Listing is set forth above in full. 20 CFR Chap. III, Appendix 1 to Subpart P of Part 404-Listing of Impairments; see *also*, 20 CFR 404.1520(d).

The following is an analysis as to whether Claimant's impairment meets the severity requirements of Listing 13.02E. First, the hospital records in this case reflect that Claimant had a soft tissue tumor. Second, the oncology records reflect that Claimant had radiation therapy. Third, Eyad Abu-Isa, M.D., Oncologist, wrote on February 25, 2013, that Claimant is under his medical care and will be seen on a six-month basis. Fourth, Dr. Alsabti on February 21, 2013, indicated her limitations will last more than ninety days, and prescribed Norvasc, Atavan, Levothyroid, Cymbalta and Aleve. Dept. Exh. 1; Clmt. Exhs. 1, 3, 4.

Considering Claimant's entire medical history, and all of the evidence in this case taken as a whole, it is found and determined that Claimant did have a soft tissue head tumor and has received multimodal antineoplastic therapy, as required by Listing 13.02E. It is

therefore found and determined that Claimant's medical impairment meets, or is equivalent to, the requirements of Listing of Impairment 13.02E, Soft tissue head tumor. Claimant therefore has established eligibility for Medicaid based solely on her impairment. Listing of Impairment 13.02E.

Next, Listing 13.02E requires a determination of the date of diagnosis of Claimant's impairment. Hospital records in this case show that Claimant's diagnosis date is April 21, 2012. Dept. Exh. 1, p. 17. Listing 13.02E requires that the Claimant shall be considered disabled for at least eighteen months from the date of diagnosis. As the diagnosis date is April 21, 2012, it is found and determined that pursuant to Listing 13.02E, Claimant is entitled to Medicaid benefits until at least October 21, 2013. Listing 13.02E.

Based on all of the evidence and testimony in this case considered as a whole, it is found and determined that Claimant is still experiencing headaches, blurry vision, short-term memory difficulties, and, her primary care physician reports she is unable to work, needs help with housework and cannot drive long distances. Claimant is currently on medication and is under an oncologist's care. As a result of the difficulties imposed by her impairment, it is found and determined that Claimant's benefits should be extended for one year from the date of this opinion.

Because Claimant is found by the undersigned to be eligible for MA based solely on a physical impairment, it is not necessary to proceed further to the last two eligibility requirements of the five-step Medicare eligibility sequence. *Id.*

In conclusion, based on the Findings of Fact and Conclusions of Law above, the Claimant is found to be

NOT DISABLED **DISABLED**

for purposes of the MA program.

The Department's denial of MA benefits to Claimant is

AFFIRMED **REVERSED**

Considering next whether Claimant is disabled for purposes of SDA, the individual must have a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of MA benefits based upon disability or blindness (or receipt of SSI or RSDI benefits based upon disability or blindness) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Claimant has been found disabled for purposes of MA, Claimant must also be found disabled for purposes of SDA benefits, should she choose to apply for them.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, and for the reasons stated on the record finds that Claimant

DOES NOT MEET MEETS

the definition of medically disabled under the Medical Assistance program as of the onset date of December, 2011.

The Department's decision is

AFFIRMED REVERSED

X THE DEPARTMENT SHALL BEGIN TO INITIATE THE FOLLOWING STEPS WITHIN TEN DAYS OF THE MAILING OF THIS ORDER:

1. Initiate processing of Claimant's MA application, to determine if all nonmedical eligibility criteria for MA benefits have been met.
2. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate processing of MA benefits to Claimant, including any supplements for lost benefits to which Claimant is entitled in accordance with policy.
3. If all nonmedical eligibility criteria for benefits have been met and Claimant is otherwise eligible for benefits, initiate procedures to schedule a redetermination date for review of Claimant's continued eligibility for program benefits in June, 2014.
4. All steps shall be taken in accordance with Department policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 4, 2013

Date Mailed: June 4, 2013

NOTICE: 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)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

JL/tm

cc: [REDACTED]
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