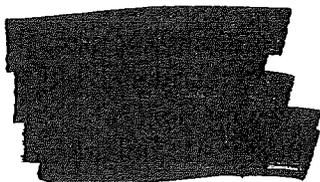


STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICE HEALTH AND HUMAN SERVICES

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August 4, 2014

Docket # 13-1043
Hearing Date: 10/23/13



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been found in your favor. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

THE DHS POLICY MANUAL: MEDICAL ASSISTANCE
SECTION: 0318.20 Re-determination of Disability Determination

The facts of your case, the Agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the appellant), and Agency representatives: Jennifer Duhamel (MART), Crystal Dodge, Vincent Guglielmino and Denise Tatro.

Present at the hearing were: Your mother and Agency representative, Jennifer Duhamel.

ISSUE: Does the appellant continue to be disabled for the purposes of the Medical Assistance Program (MA) or is there evidence of medical improvement sufficient to allow substantial gainful activity?

DHS POLICIES:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF THE EVIDENCE:

The Agency representative testified:

- The DHS Policy Manual section 318.20 discusses redetermination of Medical Assistance eligibility.
- In order to be eligible for Medical Assistance (MA) an applicant must be either aged (age 65 years or older), blind, or disabled.
- To be considered disabled for the purposes of the Medical Assistance Program, the appellant must have a medically determinable impairment that is severe enough to render him/her incapable of any type of work, not necessarily his/her past work. In addition, the impairment must last, or be expected to last for a continuous period of not less than twelve (12) months.
- The MART follows the same five-step evaluation as SSI for determining whether someone is disabled.
- Since this is a re-certification the MART evaluates the medical improvement from the previous impairment, as well as the applicant's ability to work at that time.
- The appellant was found eligible for Medicaid on June 14, 2012. She was found capable of less than sedentary work at that time.
- Members of the MART have reviewed the medical records received during the processing of this application and reapplication at different intervals.
- The Medical Assistance Review Team consists of Consultant Public Health Nurses, a Social Worker and doctors specializing in internal medicine, surgery, psychology and vocational rehab.
- During the re-determination process the MART (Medical Review Team) must determine whether or not there is any evidence of an improvement, if there is an impairment or combination of impairments that would meet or equal any of the Social Security Listings.
- The information reviewed includes the entire record from the April 6, 2012 application as well as current records which included a new MA-63, a new AP-70, records received from Dr. Nevola, Hasbro and RI Hospital records and records from Dr. Drew which were received post decision.
- The Mart was unable to request ant consultative exam results as the applicant has not applied for Social Security Disability.
- The applicant suffered a CVA (cerebral vascular accident) and seizure in November 2011.

- At that time diagnostic testing revealed that she had a PFO (Patent foramen ovale) which is a small opening in the atrial septum. This condition increases a person's risk for clots and potentially for strokes.
- She underwent a de-compressive left hemi-craniotomy and remained hospitalized for over two weeks.
- She has undergone subsequent rehab since that time.
- At the time of the June 4, 2012 decision she continued to have spasticity of her right upper and lower extremities. Difficulty with her right hand grasp, and ability to release. Although she was able to ambulate at that time there was difficulty with her heel to toe gait due to limited dorsi- flexion of her right foot and hyper-extension of her right leg.
- The March 21, 2012 notes indicated that she would be returning to her out of state studies in the autumn with housing and course load modifications. There was a tentative plan to close the PFO over the summer.
- Notes from Dr. Drew dated December 21, 2012 indicated that his recommendation was for conservative measures regarding the PFO. She would remain on anti-coagulative therapy rather than surgery.
- People on anti-coagulative therapy need to be monitored for signs and symptoms of excessive bleeding or unusual bruising.
- She has completed occupational therapy at RI Hospital, and released August of 2013, after progressing from lack of functioning of the right upper extremity to some functional limitations in some areas and normal limits in others. Her left upper extremity is totally within normal limits.
- The use of Botox injections were noted and found to be effective.
- The March 8, 2013 exam note from RI Hospital indicated that she had no discomfort in her right leg. She had improved range of motion in the right upper extremity and improvement in grasp and release. There was also improvement in dorsi-flexion in her right foot. There was no mention for the need of any assistive devices to ambulate.
- The records did not discuss any recurrent seizure activity. Someone with a history of seizure disorder should refrain from placing themselves in any position where the sudden loss of consciousness or motor function could pose a danger to themselves or others. The notes indicated that she had resumed driving.
- The MART determined that there are no current impairments which meet or equal the Social Security Listings of 11.02 (convulsive epilepsy) or 11.03(non-convulsive epilepsy) or 11.04(CVA).

- The medical records indicated that there had been medical improvement in her condition as evidenced by a decrease in the severity of her symptoms; specifically she had regained some functional use of her right upper extremity, could ambulate effectively, could perform her own ADLs (activities of daily living), she was returning to college to take three courses and could drive. She was participating in school functions.
- Although the MART found that there had been medical improvement they next evaluated what the increase in residual functional capacity, based upon her impairments when found eligible in June 2012. At the time of the first review the MART found she was capable of less than sedentary work due to the restrictions in her upper right extremity preventing her from even doing sedentary work.
- She does continue to have functional restrictions so the MART completed a residual functional capacity assessment. Based on the current medical records reviewed the MART determined that she should be capable of doing at least light work. Light work involves lifting ten pounds or less frequently, twenty pounds maximum, the ability to sit, stand or walk at least six hour throughout the day.
- Since the MART found there had been medical improvement to improve the ability to function in a work place they continued on the five step sequential evaluation.
- The MART found the condition was severe, did not meet Social Security Listings and that she could do light work. Based upon her age of twenty, college education and using vocational rule 2.02.20(light work with no past history) as a guide, along with consideration of any non-exertional limitations to determine a finding of not disabled.

The appellant' mother testified:

- She agrees with most of the Mart testimony.
- Her daughter is still in school because she had a full scholarship, which the school still honored even after her illness, but she needs accommodations.
- She has many family members that live five minutes from the school and assist her all the time.
- She had to readjust how she learns because she is permanently impaired.
- The school has accommodated her by giving her longer test times and allowing her to take tests in a secluded room at disability services so that she can concentrate. She is able to record her classes so that it is easier to study and take notes. She is allowed a longer time to produce papers.
- She cannot use her right hand.

- She cannot pick anything up, she can only grasp when object is placed in her hand.
- She can only hold something for a few moments and often it falls to the ground.
- The doctors have asked her not to lift anything greater than five to ten pounds.
- She has right sided weakness and a slight limp. She hasn't used a cane for a year.
- She has a mild case of aphasia. She becomes panicked. She sometimes uses the wrong word. She expresses herself better in writing.
- She is working with writing tutors and grammar check.
- She talks in a sing song pattern.
- As the day progresses and she becomes tired her speech slurs and she has more trouble.
- She is twenty one now.
- She is no longer in physical therapy because they felt she could maintain her current level of ability.
- She does get therapy for her arm and hand.
- She gets Botox every three to four months and that allows her to have a little more flexibility.
- Her arm had gotten worse from before.
- When the Botox wears off her arm and hand curl inward. She is now going to wear a splint to keep hand in natural alignment. The brace will be worn for twelve hours a day.
- She is involved in a show choir, which sings and dances, her daughter only stands in the middle and moves one arm.
- She was studying musical theater, but since she is unable to do this now what she can do gives her a little sense of normalcy.
- She had a double major of musical theater and media and communications, now her major is media and communications.
- Her parents drive down frequently.
- She cannot really cook for herself so she eats in the cafeteria.

- In October of 2012 she suffered a mild seizure. She was hospitalized for a few days and had a full workup to make sure it didn't involve the PFO or a TIA, which it did not. On Christmas morning 2012 she had a grand mal seizure. She was put on Kepra.
- Her dosage of Kepra has been increased because she got her license back and was able to drive with an apparatus in the car. Her doctors wanted to make sure she did not have a seizure.
- She is on aspirin therapy.
- She has not had any more seizures. She tires very easily. She needs a several hour nap during the day to function in the evening.
- She does not drink or use drugs.
- She cannot work a register, math is a cognitive difficulty.
- She gets confused easily and stressed when a lot of people are around.
- Her doctors prefer that she does not stain her body or really get stressed or upset.
- She completed speech therapy in summer of 2013.
- She tried an internship in communications. She had a lot of trouble working there. She did not talk; she was nervous, self-conscious and made mistakes.

FINDINGS OF FACT:

- The appellant originally applied for MA on April 6, 2012.
- On June 14, 2012 the MART determined that the appellant could do less than sedentary work.
- Upon review of her disability status one year later the MART determined on June 4, 2013 that medical improvement had occurred to the extent that the appellant was no longer disabled.
- The Agency sent a notice dated June 5, 2013 informing the appellant that she was no longer eligible for MA.
- The appellant filed a timely request for hearing received by the Agency on June 19, 2013.
- The hearing was held on October 23, 2013.

- The record was held open for four weeks and closed on November 20, 2013.
- Due to unforeseen circumstances the Appeals Officer that heard the case was unable to render a decision in a timely manner.
- The appellant's mother requested that it be reassigned.
- The appellant was given four more weeks to allow for updated records and the record closed on August 21, 2014.
- New records were received.
- The appellant has a medically determinable impairment, specifically she is post CVA in 2011 that is severe, has lasted 12 months, and results in functional limitations.
- The appellant does not have an impairment or combination of impairments that meets or medically equals any of the listed impairments in the Social Security listings.
- Based on her RFC (residual functional capacity), the appellant has the ability to perform light work.
- The appellant has no significant work history.
- The appellant was born on July 18, 1992 and is 22 years old, which is defined as a younger individual.
- The appellant has a college education and is able to communicate in English.
- The appellant is no longer considered disabled for the purposes of the Medical Assistance Program.

CONCLUSION:

In order to be eligible for Medical Assistance (MA) benefits, an appellant must be either aged (65 years or older), blind, or disabled. When the appellant is clearly not aged or blind and the claim of disability has been made, the Agency reviews the evidence in order to determine the presence of a characteristic of eligibility for the Medical Assistance Program based upon disability. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months. DHS policy stipulates that when an

individual is found to be disabled, it must be determined at that time if medical improvement is expected and at what point a review should be conducted to determine if such improvement has occurred. (0318.20)

In this case, the Agency found the appellant disabled on June 14, 2012 and after doing an RFC the MART determined that the appellant could do less than sedentary work and was therefore disabled.

A review was completed on June 4, 2013 resulting in the MART determining that medical improvement had occurred and that the appellant was no longer disabled.

DHS Policy directs that both disability determinations and disability reviews for the purposes of the MA program are conducted according to regulations set forth in Title XVI of the Social Security Act. The purpose of the disability review is to determine whether or not the individual's disability has improved medically to the point that he/she is able to work. Medical improvement is defined as any decrease in the severity of the individual's impairment, as it existed at the time of the most recent favorable decision of disability and any finding of medical improvement must be based on changes in the symptoms, signs and/or laboratory findings associated with the individual's impairment (20CFR 416.994).

Since pain and fatigue can be a significant exertional and non-exertional impairment they must be taken into consideration; however there must also be other medical evidence or laboratory findings showing the existence of a medical impairment that could reasonably be expected to produce the pain or symptoms alleged. In this case the appellant testified that she is very easily fatigued. Her physician provided clinical evidence that supports a reason for the fatigue to the extent that the appellant testified to. It is clear that the appellant is post CVA; the medical records did indicate a medically determinable condition that would be expected to cause fatigue that could restrict her physically. Symptoms, including fatigue, are evaluated in accordance with the standards set forth at (20 CFR 416.929).

The Social Security Administration has established specific steps (20 CFR 416.994(b) (5)) to be followed when determining whether an individual's disability continues.

In this case listings Sections 11.02 (Convulsive Epilepsy), 11.03 (Non-Convulsive Epilepsy) and 11.04 (CVA) are reviewed and the complete medical record includes the records submitted with the current disability review and the records submitted with the prior medical review.

The records submitted with the recent review are an MA 63 (Physician Examination Report) completed by Dr. Kerman, an AP 70 (Information for the Determination of Disability) completed by the appellant on April 1, 2013 ,R.I. Hospital records, Hasbro records and records from Dr. Drew.

A review of the evidence reveals that the appellant is post CVA in November 2011. The appellant's treatment has improved some symptoms as noted by the MART; however she continues to have severe deficits in gross and fine motor skills regarding her dominate side.

These deficits in gross and fine motor skills erode the occupational base for both light and sedentary work.

The appellant testifies and the record shows that she has completed speech therapy but deficits remain.

The appellant's mother testifies and the records confirm that her daughter had suffered two seizures; one in October of 2012 for which she was hospitalized for a few days and had a full workup to make sure it didn't involve the PFO or a TIA, which it did not. On Christmas morning 2012 she had a grand mal seizure and was put on Kepra. Her dosage of Kepra has been increased because she got her license back and was able to drive with an apparatus in the car. Her doctors wanted to make sure she did not have a seizure. She continues to be seizure free since 2012. The seizure medication causes fatigue and foginess.

The MA-63 filled out by Dr. Kerman, dated April 3, 2013 indicated the appellant has right hemiparesis and is receiving Botox therapy every three to six months to manage spasticity. She indicated that the appellant could stand and walk less than two hours per day. She could sit four out of eight hours, reach and bend occasionally and lift and carry up to five pounds occasionally. She had no limitations to remember and carry out simple instructions, make simple work related decisions, interacting appropriately with co-workers and supervisors or work at a consistent pace without extraordinary supervision. She did indicate that the appellant would be limited in responding to changes in routine work environment and maintaining attention and concentration in order to complete tasks in a timely manner.

She has completed metronome therapy to help the flow of her speech; however still speaks in a sing song tone. She worked as an intern at a radio station; however she did not talk and had significant problems with nervousness and self-consciousness which caused her to make mistakes.

Step 1: It must first be determined whether the appellant currently has an impairment or combination of impairments that meet or equal the Social Security Administration's Listings. If she does, her disability will be found to continue.

Listings 11.02 (convulsive epilepsy), 11.03(non-convulsive epilepsy) and 11.04(CVA) are reviewed and the evidence as discussed above establishes that there is no history of (Grand Mal or Psychomotor seizures which occur more frequently than once a month, no history of Petit Mal or focal seizures that occur once a week or more frequently despite treatment. There is no evidence of sensory or motor aphasia to the extent that it results in ineffective communication; however she continues to have deficits despite treatment. There is significant and persistent disorganization of motor function in one extremity resulting in sustained disturbance in gross and dexterous movements. There are some apparent cognitive deficits. There is severe deficit in fine motor skills of dominant side.

Although management of her symptoms to the extent possible was achieved with treatment compliance they continue to result in interference with work attempts and activities of daily living. In the previous application where the MART found the appellant disabled they found that her condition did not meet a listing, however she could do less than sedentary work and they

therefore found her disabled. There was no clinical evidence provided that the appellant no longer had severe limitations due to partial loss of use of extremity (dominant side) and had severe deficits in fine motor skills and gross and dexterous movement. The Agency failed to meet its burden of proof to support medical improvement.

The appellant's impairments are severe and when symptomology from her impairments and treatments taken as a whole are taken into consideration they equal the criteria of Social Security Listing 11.04(CVA); therefore the evaluation stops at step one with a finding of disabled.

After careful and considerate review of the Agency's policies, as well as, the evidence and testimony submitted, this Appeals Officer concludes that there has been some medical improvement in the appellant's symptoms; however at the time of evaluation the appellant's impairments equaled a social security listing.

ACTION FOR THE AGENCY: The Agency is to reinstate Medicaid back to the date of re-determination application.

Geralyn B. Stanford
Appeals Officer