

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

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Docket # 13-1710
Hearing Date: April 10, 2014

Date: July 31, 2014

ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you upon a de novo (new and independent) review of the full record of hearing. 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: 0352.15 ELIGIBILITY BASED ON DISABILITY**

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.

Copies of this decision have been sent to the following: You (the appellant), and Agency representatives: Julie Hopkins, RN, Michelle Carpenter, and Judith Malpino Anderson.

Present at the hearing were: You (the appellant), your witness, and Julie Hopkins, RN (DHS Agency representative).

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.

ISSUE: Is the appellant disabled for the purposes of the Medical Assistance Program (MA)?

TESTIMONY AT HEARING:

The Agency representative testified:

- In order to be eligible for Medical Assistance (MA) an applicant must be either aged (age 65 years or older), blind, or disabled.
- The Medical Assistance Review Team (MART) determines disability for the MA Program.
- The MART is comprised of public health nurses, a social worker and doctors specializing in internal medicine, surgery, psychology and vocational rehabilitation.
- 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 her incapable of any type of work, not necessarily 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.
- The MART reviewed an Agency MA-63 form (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability) with attachments of appellant's responses, and records of Anchor Medical, University Urological Associates, and West Bay Psychiatric Associates.
- As she had already been denied for Social Security disability benefits, they were unable to access consultative examination reports (if any) from that source.
- She had not applied for health care benefits with Health Source Rhode Island (HSRI), and indicated that she chose to continue with her existing Blue Cross Blue Shield policy.
- The DHS field office worker informed her that in order to be eligible for financial assistance through the GPA program, she would have to be a disabled adult.

- A review of the available medical records revealed a history of renal cancer (status post left nephrectomy), hypothyroidism, benign hypertension (Htn), attention deficit disorder (ADHD), low back pain, and an adhesion-related disorder.
- She was diagnosed with renal cancer in 2000, and underwent a left nephrectomy.
- Urology records noted that follow up screening had been negative for any cancer.
- At the September 24, 2013 visit she denied any back, bone, or muscle pain, and her objective physical examination was entirely normal, and she was to routinely follow up in one year.
- West Bay Psychiatric records noted that in October 2012 she had been taking computer classes.
- She was keeping appointments every three months in order to continue taking Adderall.
- She had been diagnosed with attention deficit disorder at age 32.
- She struggled at times with her mother's drug abuse, and her father's diagnosis of Parkinson's disease.
- She was responding adequately well to the Adderall treatment.
- She indicated on her application that she had a college education and a work history in retail sales, and as a preschool teacher.
- She had been training for a new career since 2002.
- Anchor Medical records documented annual follow-up with hematology at Miriam Hospital for benign neutropenia and leukopenia.
- Blood work would continue to be monitored annually for any change.
- Dr Strenger noted no significant complaints during that appointment although there was a patient report of intermittent back pain due to abdominal adhesions.
- Anchor Medical notes of January 6, 2013 also documented a normal physical exam.

- March 15, 2013 physical examination notes indicated that hypothyroidism was stable with medication management.
- While her particular thyroid condition could be expected to last a lifetime, it can be well managed with thyroid hormone medication and routine screening to establish proper levels of treatment.
- June 23, 2013 office notes discussed complaints of right foot pain occurring after having been on her feet for awhile.
- Ambulation was normal.
- The doctor noted that she was overweight with a body mass index (BMI) of 31.8.
- Her weight and choice of unsupportive footwear were considered elements that could exacerbate foot pain.
- A podiatrist referral was made to rule out plantar fasciitis, and she was instructed to purchase arch supports.
- There were no complaints of low back pain or abdominal pain at either of the last two appointments.
- Although she had a serious medical condition diagnosed in 2000, she successfully underwent surgery and has remained cancer free.
- The medical evidence does not support that a medically determinable impairment exists that would limit functioning, meet the durational requirements, or have residual deficits when following prescribed treatment.
- They stopped at step two finding her not disabled.
- She was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- She is currently unemployed.
- She had submitted copies of documents to the field office which were not included in the evidence file.
- An audiology report demonstrating hearing loss was missing.
- She is able to hear conversation.
- She requested to submit a list of conditions that impair her.
- While she is currently cancer free, the renal surgery resulted in the formation of adhesions.
- She has restless leg syndrome (RLS), and cannot sit for long before her legs begin to jump.
- She discussed RLS with her physician, who did not find a need to treat with medication at this point in time, as it was not interfering with sleep.
- She is following the prescribed treatment for hypothyroidism.
- She follows up with regular testing of thyroid function.
- The medication is controlling the thyroid condition well.
- Conditions of leukopenia and neutropenia make her more susceptible to frequent sinus infections and bronchitis.
- Her most recent infection lasted for 3 ½ weeks, which brings her to a total of 9 weeks within the past years that she has experienced set back from infections.
- In March (2014) she experienced a return of low back pain with radiation on the left side, which has occurred intermittently on three separate occasions.
- She has had ultrasounds and MRIs in the past which have not clearly revealed the cause of back pain.
- If the pain is caused by adhesions, she was told that it would not show up in the diagnostic images.

- She has had CT scans of the abdomen which also did not establish a cause for pain.
- She needs to discuss this condition with her PCP at Anchor Medical to initiate further evaluation of the cause of her symptoms.
- At the current time, a back problem has not been diagnosed, but her expectation is that it has some relationship to surgical adhesions.
- She has not worked since 2002.
- She does not believe she can lift ten lbs, although her physician has never recommended that she restrict lifting.
- Lower back pain and discomfort also limit her ability to stand and walk, and she needs to take breaks to sit down.
- She did have physical therapy at some point after her surgery, and the therapist told her that there were no problems associated with muscles.
- Some days she has unusual sensations in the groin area while sitting.
- She has always had difficulty with attention deficit, but was never diagnosed during her school years.
- She was able to complete a college degree with the help of medication for her ADHD condition.
- A physician urged her to leave her work in early childhood education due to her weak immune system.
- When she takes the medication prescribed for ADHD she is able to remain focused on tasks long enough to complete them.
- Medication helps with focus and memory, although lapses still occur.
- Understanding instructions has improved with medication, although she may have to review them several times.
- She has not applied for health insurance under the Affordable Care Act, as she already has a health insurance plan.
- She requested to hold the record of hearing open for the submission of additional evidence.

FINDINGS OF FACT:

- The appellant filed an application for Medical Assistance (MA) on August 1, 2013.
- The Agency issued a written notice of denial of MA dated October 8, 2013.
- The appellant filed a timely request for hearing received by the Agency on October 9, 2013.
- Per the appellant's request, the hearing scheduled for January 14, 2014 was rescheduled to February 18, 2014.
- Per the appellant's request, the hearing scheduled for February 18, 2014 was rescheduled to March 13, 2014.
- Per the appellant's request, the hearing scheduled for March 13, 2014 was rescheduled to April 10, 2014.
- The appellant requested to submit 2 new exhibits (prepared by her) to the evidence record.
- Per the appellant's request, the record of hearing was held open through the close of business on May 8, 2014 for the submission of additional evidence.
- Per the appellant's request for extension of the held open period, the date for submission of evidence was changed to June 5, 2014.
- Per the appellant's request for a second extension of the held open period, the date for submission of evidence was changed to June 26, 2014.
- Per the appellant's request, for a third extension of the held open period, the final date for submission of evidence was changed to July 15, 2014.
- At the close of business on July 15, 2014, no additional evidence from any source had been received.
- The appellant faxed additional records to the Appeals Office on Friday, July 18, 2014 after close of business, which were appropriately stamped as received on Monday morning, July 21, 2014.
- On Saturday July 26, 2014 the appellant sent a letter claiming good cause for the late filing of the records, which was appropriately stamped as received on Monday morning, July 28, 2014.

- Although the appellant's claim of good cause claim was not compelling, the additional documents were accepted and added to the evidence file in the interest of complete development of the evidence record. A copy was forwarded to the MART on July 28, 2014.
- As of the date of this decision, the MART had not withdrawn the notice under appeal.
- The appellant is not engaging in substantial gainful activity.
- The appellant had no severe, medically determinable impairments.
- The appellant had a combination of non-severe impairments including immune system disorder, hypothyroidism, ADHD, and hearing loss.
- The appellant did not have an impairment or combination of impairments that met or medically equaled any of the listed impairments in the Social Security listings.
- Based on the appellant's residual functioning, she retains the ability to perform light physical work with some communicative and environmental restrictions, and mental activities that are not highly time-pressured.
- The appellant was born on February 18, 1965 and is 49 years old, which is defined as a younger individual.
- The appellant has a college education and communicates in English.
- Transferability of job skills is not an issue in this case.
- The appellant is not disabled as defined in the Social Security Act.
- The appellant is not disabled for the purposes of the Medical Assistance Program.

DISCUSSION OF THE MEDICAL EVIDENCE RECORD:

The record of hearing consists of:

- ✓ An Agency MA-63 dated July 18, 2013 and signed by Anchor Medical Associates Physician's Assistant, John Kochanski, PA.
- ✓ An Agency AP-70 with attachments dated July 16, 2013 and signed by the appellant.
- ✓ Records of primary care provider (PCP) Anchor Medical Associates for October 15, 2012 to June 12, 2013.
- ✓ Records of University Urological Associates physician, Gyan Pareek, MD for September 24, 2013.
- ✓ Office notes of West Bay Psychiatric Associates (unidentified care provider) for October 9, 2012 to July 9, 2013.
- ✓ A cover letter summarizing additional documents included in a submission received on July 21, 2014.
- ✓ A note dated May 14, 2002 and signed by John Kochanski, PA.
- ✓ An audiological evaluation dated July 17, 2012, and completed by audiologist, Susan Enzar, AU.D.CCC/A.
- ✓ A generic list of symptoms of hyperthyroidism from and unidentified source.
- ✓ A list of appellant allegations relative to symptoms impacting her ability to work, (timeframe unidentified).
- ✓ Hearing testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913). The medical evidence record of hearing was held open, and extended three times at the appellant's request. At the close of business (4:00 PM) on July 15, 2014, no new evidence had been submitted, and the record was scheduled to close. Whenever documents are received after the close of business on any day, they are date stamped as received on the next actual business day. Subsequently, the appellant had submitted additional documents for consideration which were stamped on July 21, 2014. She cited a sinus infection as her good cause reason for the late submission.

An Appeal was filed in this case on October 9, 2013. Once scheduled for hearing, she contacted the Appeals Office on three separate occasions to reschedule her hearing appointments, which allowed her a total of 183 days prior to hearing to prepare her case. She submitted two exhibits at hearing and requested additional time for the submission of other evidence. Subsequently, she contacted the Appeals Office on three separate occasions to request extension of the held open period. All requests were granted, adding 96 days to the time she was allowed to gather and submit information. Clearly, throughout the 279 days that she had to prepare her appeal, either she or a trusted representative could have mailed or faxed new information on time. As she is prone to infections, and the accuracy of her claim that she became ill on July 10 is not in question, the excuse that illness present during the last 5 of the 279 days during which submission of evidence would have been appropriate is

completely unconvincing as a good cause argument. Nevertheless, based on this Appeals Officer's responsibility to develop the record, the documents that she wishes to include will be added to the existing evidence file. The general reference to them as documents is due to the fact that among the 15 pages to be considered, there is 1 summary page, 1 work activity note from 2002, 6 pages of a generic symptom list for a condition she has not been diagnosed with, 6 pages of allegations reiterating and embellishing statements from her application and testimony, and only 1 page of actual medical evidence documenting an audiology examination. It was the audiology examination report that was discussed at hearing as a significant factor for record development. All new information has been added to the evidence record file and will be considered along with previously submitted records discussed at hearing.

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). The appellant has submitted primary care notes covering visits for a period of eight months, records of one urological evaluation, an audiological evaluation, and some very brief office notes from a nine-month period of psychiatric visits documented by an unidentified writer. In addition to medical records, the appellant has submitted several personal statements describing symptoms, a generic list of symptoms from an unknown source, and a work excuse note from twelve years ago. Treating sources included in the evidence record have not documented patient care of a frequency, length, nature, or extent that would justify controlling weight of opinion. There are no substantive assessments from a specialist in any medical field. No consultative examination reports prepared for her Social Security case have been obtained by the agency, or submitted by the appellant. All available medical records will be considered in combination for the purpose of this evaluation.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of application, the MART found that the available evidence documented a medical history of diagnoses and treatments that successfully reduced or eliminated conditions including renal cancer, hypertension, hypothyroidism, and ADHD. Other conditions such as weak immune system, and low back pain, resulted in intermittent bouts of adverse symptoms either not supported by medical evidence or not demonstrated to meet the durational requirements. As a result, the agency found that medical records did not provide the required support for either severity or duration, and concluded, therefore, that she was not disabled.

The appellant did not refute any of the agency findings, but did add information to what was known at the time of agency review throughout her hearing testimony. She was especially concerned about the absence of a hearing test that she believed to be part of the record. Although additional time was allowed after the hearing for her to submit that test and other relevant medical records to the MART for reconsideration, no records were received by the July 15, 2014 deadline. Subsequently, the appellant faxed documents to the Appeals Office.

Copies of the new information were forwarded to the MART. As of the date of this decision, the MART has not found that the new information compels them to reverse their original decision. The final rationale for their determination has not been communicated to this Appeals Officer.

The appellant alleged that symptoms of adhesion related disorder, ADHD, renal carcinoma, hearing loss; restless leg syndrome, hypothyroidism, leukopenia, neutropenia, foot pain, and low back pain impair her. It was explained that in order to establish disability, that her conditions must be medically determinable (supported by acceptable clinical and diagnostic medical evidence), and must have lasted or could be expected to last for a continuous period of not less than twelve months or to result in death.

She explained that ADHD had been present since childhood. Due to lack of access to diagnostic evaluation, the condition was not actually identified and diagnosed until she was an adult. She started on medication which she admits was beneficial. She credits that prescribed treatment with improvement that made completion of her college degree possible, although she required extra time. She went to work in skilled positions in early-childhood education. Physician Assistant, John Kochanski, PA noted that she should leave that type of work due to the risk for recurrent infections, not because of any mental limitation. She was able to participate in the hearing process, represent herself, and prepared lengthy and detailed documents explaining her medical history. Focus and ability to complete tasks were improved. Apparently, she was correct when she testified that the prescribed treatment medication managed her ADHD symptoms well. Although she has included some office notes from West Bay Psychiatric, they do not contain any substantive information about her functional capabilities, and no identification of the writer is available. No psychological testing with cognitive assessment has been recommended or ordered. There is no evidence demonstrating that more than a slight impairment of ability to complete basic mental activities exists.

The appellant was diagnosed with malignant neoplasm of the kidney in January, 2000. Later that year, a left nephrectomy was performed. Fortunately, fourteen years later, her treating sources find that she remains cancer free. Follow-up examinations including an MRI of the abdomen completed in June 2013 have not revealed any indication of recurrence, lymphadenopathy, or other complication of the disease.

Hearing loss was discussed, although none of her treating sources had mentioned a hearing deficit. An audiological evaluation completed in 2012 was submitted. There was no interpretation, or opinion of the audiologist included. This Appeals Officer's calculation of the hearing threshold levels results in an average of 48dB (moderate hearing loss) on the right, and 40dB (mild hearing loss) on the left. The appellant's written description of her hearing loss contained in appellant exhibit #1 is completely consistent with findings that the hearing

reduction was mild to moderate. The appellant had no difficulty participating in conversation which usually meets a level of about 60dB. The appellant affirmed that conversation was manageable at her current level of hearing. Speech discrimination was not a barrier at any point during the administrative hearing. She did not require repetition of questions, or any other special accommodations. No impact on functioning was evident. Furthermore, there is absolutely no indication that any abnormality exists that could not be corrected. It could be expected that her hearing would be restored to near optimal level with prescribed hearing aids. There is no information regarding whether or not hearing aids had been prescribed or used by the appellant.

Restless leg syndrome was not substantively addressed within the medical records, but was introduced at hearing by the appellant. She stated that after sitting for awhile, her legs would start to jump. She indicated that she had discussed the symptomology with a physician, but that he opined that she did not require treatment at this point, because it was not interfering with her activities or sleep quality.

Hypothyroidism has been diagnosed and treated with prescribed thyroid hormone. The appellant indicated that follow-up testing of the thyroid function revealed good control with the current dose of medication. She testified that she has complied by keeping appointments for regular monitoring and testing, and by routinely taking medication as prescribed. Medical evidence records do not support the existence of any residual damage secondary to poor thyroid function. The appellant erroneously submitted a six-page document from an unidentified source entitled "300 Symptoms of Hyperthyroidism". That document clearly cannot be considered to be acceptable evidence. Firstly, the source and its' reliability are unknown. Secondly, the list includes symptoms that are not necessarily *the appellant's* symptoms or effects that could ever be expected to occur. It would be extraordinary to believe that anyone has all or many of the 300 symptoms listed, yet has no accompanying documentation from the treating physician. Thirdly, she has been diagnosed with *hypothyroidism*, not *hyperthyroidism*, which could have different symptomology. Disability determination is not based on hypothetical issues. Only those that can be medically proven are relevant to this determination.

Laboratory tests have revealed that she has benign leukopenia and neutropenia. These abnormalities of blood cells are indicative of a weakened immune system. She has reported recurrent sinus and bronchial infections. Her PCP, John Kochanski, PA is prescribing vitamins to support her immune system. He had recommended years ago that she would benefit from a career change that would not place her at risk for recurrent infections as contact with preschool children had in the past. She explained that she had returned to school to take computer courses in preparation for a change to a new occupation.

The appellant also mentioned episodes of foot pain. That complaint had been discussed with a physician assistant in June 2013. There are no diagnostic images to support any abnormality affecting the feet. Gait was normal, sensation was grossly intact, and no edema was found. She experienced some pain to palpation at the arch and heel plantar surface. The PA attributed the discomfort to obesity and choice of unsupportive footwear. Treatment recommended was use of Advil and ice applications. He also recommended a podiatry evaluation to rule out additional problems. No podiatry records have been submitted. There is no evidence which supports interference to functioning from a proven abnormality of the feet since that date.

The appellant mentioned lower back pain with radiation to the left buttock, which she attributes to an adhesion-related disorder secondary to renal surgery of many years ago. Although she has mentioned the adhesion-related disorder repeatedly, none of her physicians have clearly established that as the etiology for her complaints of back pain. She noted three episodes of a week of more of interference from back pain. Primary care records do document intermittent back aches and pain. The PCP has listed past treatment for lumbago, as well as thoracic or lumbosacral neuritis or radiculitis, seemingly still trying to pinpoint the cause. She indicated that diagnostic images have been taken which have ruled out abnormalities of the spine, but further explained that adhesions could not necessarily be viewed by imaging. Past physical examination notes indicated normal muscle tone and motor strength. There are no recent evaluations of range of motion, back and lower extremity strength, sensation, reflexes, or results of straight leg raising. No current treatment with medications, physical therapy, chiropractic manipulation, injections, or other pain remedies have been indicated. The appellant noted only that she required bed rest until the discomfort resolved.

Restrictions noted on the MA-63 form are greater than the available evidence would support. The form was completed by the PCP in July 2013. There was no corresponding office visit at that time, and the previous visit in June 2013 was essentially normal, as she was in no apparent distress, ambulated normally, was neurologically grossly intact, and complained only of some foot pain which required conservative treatment. Memory and mental status were grossly normal, and the depression scale was negative

Pain is evaluated in accordance with the standards set forth at (20 CFR 416.929). The appellant must show a medically determinable impairment which could reasonably be expected to cause not just pain, or some pain, or pain of some kind of severity, but the pain the claimant alleges she suffers. In this matter, complaints of pain in the lower back and feet have not been medically evaluated or treated according to the available medical records. Pain has been reported intermittently, and apparently has been treated very conservatively mostly with rest. The source of pain has not been established by a physician within the available evidence. The appellant's claim that she has an adhesion

related disorder was mentioned once by Dr Strenger per patient report, not diagnostic information. There is no significant information regarding prescribed treatment, response to treatment, or possible side effects. Although the appellant's claim might be possible, she has not supported with acceptable clinical evidence the existence of a medically determinable impairment which could reasonably be expected to result in the pain of the level she describes. Occurrence of significant functional restrictions and impact on activities of daily living has not been demonstrated by the available evidence.

The appellant provided some credible information, as she has honestly admitted that her conditions such as ADHD, and hypothyroidism were well controlled with medication, and that she is able to engage in normal conversation despite some reduction of hearing. She also affirmed that despite the diagnosis and treatment of renal cancer many years ago, that she is presently cancer free. The appellant also admitted that the cause of back pain had not actually been diagnosed by a physician, and that no physical exertional limitations had been recommended during her treatment. However, she was rather persistent about building a case on allegations and medical history, and seemed to have difficulty accepting the burden of proof as required by the federal regulations.

CONCLUSION:

In order to be eligible for Medical Assistance (MA) benefits, an individual must be either aged (65 years or older), blind, or disabled. When the individual 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.

Under the authority of the Social Security Act, the Social Security Administration has established a **five-step** sequential evaluation process for determining whether or not an individual is disabled (20 CFR 416.920). DHS policy directs that disability determination for the purposes of the MA program shall be determined according to the Social Security sequential evaluation process. The individual claimant bears the burden of meeting steps one through four, while the burden shifts to DHS to meet step five. The steps must be followed in sequence. If it is determined that the individual is disabled or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step. If it cannot be determined that the individual is disabled or not disabled at a step, the evaluation continues to the next step.

Step one: A determination is made if the individual is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. Substantial work activity is work that involves doing significant physical or mental activities (20 CFR 416.972(a)). Gainful work activity is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA (20 CFR 416.974 and 416.975). If an individual is actually engaging in SGA, he/she will not be found disabled, regardless of how severe his/her physical or mental impairments are, and regardless of his/her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The appellant has testified that she is not currently working. As there is no evidence that the appellant is engaging in SGA, the evaluation continues to step two.

Step two: A determination is made whether the individual has a medically determinable impairment that is severe, or a combination of impairments that is severe (20 CFR 416.920(c)) and whether the impairment has lasted or is expected to last for a continuous period of at least twelve months (20 CFR 416.909). If the durational standard is not met, he/she is not disabled. An impairment or combination of impairments is not severe within the meaning of the regulations if it does not significantly limit an individual's physical or mental ability to perform basic work activities. Examples of basic work activities are listed at (20 CFR 416.921(b)). A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by the individual's statement of symptoms. Symptoms, signs and laboratory findings are defined as set forth in (20 CFR 416.928). In determining severity, consideration is given to the combined effect of all of the individual's impairments without regard to whether any single impairment, if considered separately, would be of sufficient severity (20 CFR 416.923). If a medically severe combination of impairments is found, the combined impact of the impairments will be considered throughout the disability determination process. If the individual does not have a severe medically determinable impairment or combination of impairments, he/she will not be found disabled. Factors including age, education and work experience are not considered at step two. Step two is a *de minimis* standard. Thus, in any case where an impairment (or multiple impairments considered in combination) has more than a minimal effect on an individual's ability to perform one or more basic work activities, adjudication must continue beyond step two in the sequential evaluation process.

The appellant has made allegations that she has been impaired by a variety of conditions past and present. This sequential evaluation is devoted to conditions that would have been medically determinable and have been supported by acceptable clinical and diagnostic evidence within the time when she had applied for MA benefits and subsequently appealed the disability decision.

Renal cancer was surgically eliminated in 2000, and recent follow-up tests support findings that she is still cancer free. That condition, although a relevant part of her medical history, is not an active diagnosis at this time.

Hearing loss has been documented by acceptable audiological testing. Her ability to function despite the measured reduction has not been proven to have more than a minimal effect on her ability to perform work activities. ADHD and hypothyroidism are medication managed with good results, with no evidence of more than a slight impact on activities resulting. Restless leg syndrome had such a minimal effect that no treatment was prescribed.

Foot pain was never diagnosed, and based on the limited information available from a single examination, it is not expected that it would meet the durational requirements. Although low back pain has been reported periodically, etiology of the pain has never been established, and records do not address specific treatment prescribed to alleviate symptoms, thus making it impossible to evaluate treatment effectiveness.

Neutropenia and leukopenia have been supported by laboratory testing. Records categorize the blood cell deficiencies as "benign". Existence of the blood cell deficiencies does not present a direct problem to her physical functioning capabilities. Her PCP is primarily concerned about her increased risk for infection, and has recommended some common sense precautions. While she is very anxious about when or how often she might acquire infections, the duration and frequency of recent exacerbations do not meet the durational requirements of a disabling impairment.

In summary, renal cancer has been cured. Aside from appellant complaints, there is a lack of clinical evidence to support diagnoses of restless leg syndrome or to demonstrate a disorder resulting in continuing foot pain. Intermittent lower back pain has been noted, but not substantively evaluated and explained. Evidence has not established that requirements to support duration and continued severity with respect to renal cancer, restless leg syndrome, back pain and foot pain have been achieved, and therefore, these conditions are not applicable to the current evaluation.

Recurrent infection believed to be associated with a compromised immune system has been documented for many years. Although her increased risk for infection resulting from blood cell deficiencies may not have a continuous impact on functioning, the unique characteristics of the disorder have precluded her from

performing her past relevant work, thus requiring further evaluation. While there is very little information about ADHD, her PCP has knowledge of the diagnosis, and continues to prescribe medication to reduce the effects. The appellant has achieved the successes of completing her education, and finding employment in a skilled occupation which she left for reasons unrelated to ADHD symptoms. She has testified that her ADHD symptoms are well managed with the prescribed remedy. Similarly, hypothyroidism is controlled with medication maintenance as she has affirmed, and evidence does not establish that any residual effects of that condition significantly impact her functional abilities. The appellant has proven that she has experienced some hearing loss which does not impact normal conversation, and is correctable. Her conditions including immune system disorder, ADHD, hypothyroidism, and reduced hearing are non-severe impairments for the purpose of this decision based on the limited impact they have been proven to impose on functioning.

According to POMS DI 22001.015 Severe/Non-Severe Impairment(s)—Where the medical evidence establishes even a slight abnormality which has no more than a minimal impact on the claimant's ability to perform basic work activity, but the evidence shows that the claimant cannot perform her past relevant work because of the unique features of that work, a denial at the "not-severe" step is inappropriate. The inability to perform past relevant work in such instances warrants further evaluation of the individual's ability to do other work considering age, education and work experience.

Although the appellant has not met her burden of proof to establish that she has any severe impairment at this time, she has established the existence of a combination of non-severe conditions, including comprised immune system secondary to blood cell disorders of leukopenia and neutropenia which has clearly precluded her from performing her past relevant work as a preschool teacher. As a result, the sequential evaluation continues for the combination of non-serve impairments including immune system disorder, ADHD, hypothyroidism, and hearing loss.

Step three: A determination is made whether the individual's impairment or combination of impairments meet or medically equal the criteria of an impairment listed in the Social Security Administration's Listings of Impairments (20 CFR Part 404, Subpart P, Appendix 1). If the individual's impairment or combination of impairments meets or medically equals the criteria of a listing and also meets the duration requirement (20 CFR 416.909), the individual is disabled. If it does not, the analysis proceeds to the next step.

In this matter, the appellant does not have any severe impairments, or a combination of non-severe conditions that have more than a minimal impact on functional capabilities. As a result, the combined restrictions are so limited that they could not rise to a level of severity that would meet or equal the

characteristics of impairments included in the listings for hemic system disorder, endocrine disorders, special senses, or mental disorders. Therefore, the evaluation continues to step four.

Step four: A determination is made as to the individual's residual functional capacity (RFC) and whether, given the RFC, he/she can perform his/her past relevant work. (20 CFR 416.920(e)). An individual's functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the individual's impairments, including impairments that are not severe must be considered. The individual's RFC will be assessed in accordance with (20 CFR 416.945) and based on all relevant medical and other evidence including evidence regarding his/her symptoms (such as pain) as outlined in (20 CFR 416.929). Next, it must be established whether the individual has the RFC to perform the requirements of his/her past relevant work either as he/she had actually performed it or as it is generally performed in the national economy. Using the guidelines in (20 CFR 416.960 (a)-(b)(3)), the RFC assessment is considered together with the information about the individual's vocational background to make a disability decision. If the individual has the RFC to do his/her past relevant work, the individual is not disabled. If the individual is unable to do any past relevant work, the analysis proceeds to the fifth and final step in the process.

Physical RFC

Exertional: Evidence has not ruled out the appellant's ability to perform at any specific level of exertion for lifting and carrying. Likewise, no facts have been presented which would preclude her from standing, walking, or sitting for two-hour blocks of time throughout a workday with allowances for customary breaks. No restrictions to pushing or pulling have been established.

Postural: No limitations to climbing, balancing, stooping, kneeling, crouching, or crawling have been demonstrated.

Manipulative: Reaching, handling, fingering, and feeling are without limitations.

Visual: Near acuity, far acuity, depth perception, accommodation, color vision, and field of vision are not impaired.

Communicative: Hearing is reduced, but remains above the level required for conversation, and could be corrected with hearing aids. This limitation does not significantly erode the occupational base for any level of work.

Environmental: Due to her increased risk for infections, particularly of the respiratory system, she should avoid concentrated exposure to large groups of people (in this case, especially children), extreme temperatures, wet environments, fumes, odors, dusts, gases, and poor ventilation.

Mental RFC

Understanding and Memory: There is no information of record that would rule out her ability to remember locations and procedures or to understand and remember most instructions, including complex information such as would have been required during her computer studies.

Sustained Concentration and Persistence: She could be expected to carry out instructions, maintain attention and concentration for two-hour blocks of time throughout a workday with allowances for customary breaks, sustain a routine without special supervision, make simple work-related decisions, and complete a normal workweek without interruption from psychologically-based symptoms. She would be best suited for jobs that are not highly time pressured based on her need to manage attention deficit by allowing herself additional time to complete tasks, as she indicated had occurred with regard to her computer studies education.

Social Interaction: She is capable of recognizing and maintaining socially appropriate behavior, knowing when to request assistance, accepting instructions from supervisors, coordinating with coworkers, and adhering to basic standards of grooming.

Adaptation: Evidence does not rule out her ability to respond appropriately to basic work-related change, be aware of normal hazards and take precautions, arrange transportation, and set realistic goals.

The appellant has presented proof that her conditions would limit her physical activities primarily due to recommended environmental precautions. She may need to choose settings that are comfortable for communicative functioning. Additionally, she retains adequate mental functioning to complete tasks, provided they are not highly time pressured as exhibited by her extended college education schedule, and delays that she found necessary to complete the hearing process. As a result of her current functional capabilities, and as recommended by her PCP, she would be precluded from performing her past relevant work activity primarily due to environmental risk of increased exposure to infection. As a result, the evaluation proceeds to step five.

Step five: At the last step of the sequential evaluation process, consideration is given to the assessment of the individual's RFC together with his/her age, education and work experience to determine if he/she can make an adjustment to other work in the national economy (20 CFR 416.920(g)). If the individual is able to make an adjustment to other work, he/she is not disabled. If the individual is not able to do other work and meets the duration requirement, he/she is disabled. At step five, it may be determined if the individual is disabled by applying certain medical-vocational guidelines (20 CFR Part 404, Subpart P, Appendix 2). The medical-vocational tables determine disability based on the individual's maximum level of exertion, age, education, and prior work

experience. In some cases, the vocational tables cannot be used, because the individual's situation does not fit squarely into the particular categories or because his/her RFC includes significant nonexertional limitations, such as postural, manipulative, visual, or communicative; or environmental restrictions on his/her work capacity. If the individual can perform all or substantially all of the exertional demands at a given level, the medical-vocational rules direct a conclusion that the individual is either disabled or not disabled depending upon the individual's specific vocational profile (SVP). When the individual cannot perform substantially all of the exertional demands or work at a given level of exertion and/or has non-exertional limitations, the medical-vocational rules are used as a framework for decision-making unless that directs a conclusion that the individual is disabled without considering the additional exertional and/or non-exertional limitations. If the individual has solely non-exertional limitations, section 204.00 in the medical-vocational guidelines provides a framework for decision-making (SSR 85-15).

The appellant is a 49-year old female with a college education, and a skilled work history. She has established that she is presently unable to do her past work due to a benign blood disorder which lowers her resistance to infection. None of her conditions have been demonstrated to result in severe and durational limitations to physical or mental functioning.

Based on the appellant's age of 49 (younger individual) college education (high school or more), work history (light, skilled, not transferable), RFC (some communicative and environmental considerations only), MRFC (skilled tasks, that are not highly time pressured), the combined factors direct a finding of "not disabled" according to the Social Security regulations. She retains the capability to transition to other types of work as consistent with treating source recommendation.

After careful and considerate review of the Agency's policies as well as the evidence and testimony submitted, this Appeals Officer concludes that the appellant is not disabled as defined in the Social Security Act, and for the purpose of the Medical Assistance Program.

Pursuant to DHS Policy General Provisions section 0110.60.05, action required by this decision, if any, completed by the Agency representative must be confirmed in writing to this Hearing Officer.



Carol J. Ouellette
Appeals Officer