

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

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Docket # 14-641
Hearing Date: June 12, 2014

Date: August 14, 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, Erica Tavaréz, and Edward Morgan.

Present at the hearing were: You (the appellant), and Jennifer Duhamel, 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) completed during hospitalization, an Agency AP-70 form (Information for the Determination of Disability), and records of Rhode Island Hospital.
- Records from Vanderbilt Rehabilitation Center, and Dr Guttmacher of East Bay Center were received post decision, and reviewed for the hearing.
- A review of the available evidence revealed diagnoses including left ischemic stroke occurring in December 2013, hypertension, left atrium thrombus, and deep vein thrombosis (DVT).
- She had a history of chronic obstructive pulmonary disease (COPD), DVT, pulmonary emboli (2007), PFO (patient foramen ovale, or a hole in the heart) which has been repaired.
- The MA-63 form was completed during hospitalization at Rhode Island Hospital, and noted minimal limitations.

- Rhode Island Hospital records included one follow up visit completed at about two months following the stroke.
- She was transferred from Newport Hospital and admitted to Rhode Island Hospital with symptoms of aphasia, and right side weakness.
- Several cardiac diagnostic studies were completed.
- An atrial thrombus at the site of the previous PFO repair appeared to be the cause of the cerebral vascular accident (CVA).
- She was evaluated for physical, occupational, and speech therapy, and was advised to attend acute rehabilitation, and was counseled on diet and smoking cessation.
- Anyone with COPD should avoid exposure to excessive dust, respiratory irritants, extreme heat, or cold.
- Anyone maintained on Coumadin should be monitored for signs of excessive bleeding or excessive bruising.
- At the time of the Rhode Island Hospital release, right lower extremity weakness had improved dramatically.
- She had 5/5 strength in all extremities except the right upper extremity (RUE), which remained at 0/5.
- She had mild to moderate dysarthria aphasia which was more pronounced when attempting uncommon words.
- A Rhode Island Hospital neurology clinic appointment took place two months after the CVA.
- She had been discharged from the Kent rehabilitation facility one week earlier.
- She was receiving out-patient PT from Vanderbilt.
- The exam noted indicated that her speech capabilities were almost back to normal.
- She was exercising daily, was living alone, and had been able to resume driving.
- She was walking without an assistive device, and had a normal gait.

- The RUE which had been flacid at discharge was markedly improved.
- She had full range of motion with the RUE, and strength had increased to between 3/5 and 4/5.
- She is left side dominant.
- The physician anticipated continued improvement, and that she would be able to return to work for administrative duties by the spring.
- The case had to be decided with the two month records due to time constraints, although there were no PT records.
- She was expected to return to work in less than twelve months.
- Vanderbilt Rehabilitation Center records received post decision affirmed continued improve in right side strength, and in her speech.
- Dr Guttmacher's records were primarily duplicates of the records submitted prior to the decision.
- Speech records indicated that she had succeeded in achieving functional speech, and speech required to meet basic needs.
- Visits for speech therapy had been decreased to weekly.
- It was indicated that speech therapy would address needs specific to her profession after she returned to work.
- She had reached many of her occupational therapy goals required to function independently and to perform activities of daily living.
- She remained limited in ability to perform overhead reaching with the RUE.
- She had regained ability to reach (below shoulder level) and to grasp.
- She had severe conditions including history of CVA, COPD, and recurrent DVT.
- Her impairments did not meet or equal any of the Social Security listings.
- A residual functional capacity (RFC) assessment was completed resulting in a finding that the appelliant could perform light work activity.

- She was not able to perform her past relevant work as a group home manager which she described as medium activity.
- Based on her age, education, past relevant work skills, current RFC and ability to be retrained, she was not disabled in accordance with the medical-vocational rules considered along with non-exertional restrictions.
- She was not disabled for the purpose of the Medical Assistance program.

The appellant testified:

- She is currently unemployed.
- She had a physical therapy evaluation at Vanderbilt a few days earlier, as she had primarily participated in occupational therapy and speech therapy up to that point.
- A therapist said that her right leg was very weak, and that she is unstable.
- She could not raise the right leg against resistance that was applied.
- She also learned that the left leg is shorter than the right, and that she could benefit from a lift in her shoe to equalize the lower extremities.
- Strength of the lower extremities has declined since the two month examination that reported strength at 5/5 bilaterally.
- She cannot sleep on her right side, as it is painful, especially at the hip.
- She is going to begin PT two days weekly, while continuing OT to work on the numbness in her fingers.
- She cannot lift her (right) arm (above shoulder level-demonstrated).
- Strength in the right arm has also decreased.
- She has difficulty reaching to washing her body.
- She tries to keep up exercising and walking.
- Her current therapy program is designed to increased strength, especially in the legs.
- She is left side dominant.

- She tries to cook, but has difficulty lifting and carrying the pans.
- During her last therapy session she learned that both of her legs were weaker than she had realized.
- She also had to start taking nerve medication, and had a pending follow up appointment with her physician.
- She spent a week at Kent Rehab after leaving Rhode Island Hospital and before starting her program at Vanderbilt.
- She has not returned to the neurology clinic at Rhode Island Hospital, and had not seen neurologist, Dr Vecchione since that last visit of record.
- She has had many MRIs and CT scans to obtain updated information.
- She has difficulty completing personal care.
- She has resumed driving, but limits the frequency and distance she will drive using one hand.
- She has an inhaler for COPD symptoms which she uses three times per day.
- She also has a nebulizer for emergencies.
- Dr Guttmacher has prescribed Coumadin which is expected to be required long term.
- She managed a group home for nine months prior to the stroke, she previously worked in group homes as a support person helping with cooking and errands, and she was also an activities director for six years.
- Prior to that she was an associate at T J Maxx (retail clothing store).
- She keeps a brace on her right arm most of the time, and often uses a (compression) glove for the right hand.
- She has been told that it might take up to a year to improve her symptoms.
- She requested to hold the record of hearing open for the submission of additional evidence from Vanderbilt Rehabilitation Center and EBCAP.

FINDINGS OF FACT:

- The appellant filed an application for Medical Assistance (MA) on December 20, 2013.
- The Agency issued a written notice of denial of MA dated March 5, 2014.
- The appellant filed a timely request for hearing received by the Agency on March 31, 2014.
- Per the appellant's request, the record of hearing was held open through the close of business on July 10, 2014 for the submission of additional evidence.
- Additional evidence from Vanderbilt Rehabilitation Center that was received by the MART during the held open period was forwarded to the Appeals Office on July 11, 2014 and was added to the record of hearing.
- 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 medical evidence record has not supported the existence of an impairment that is severe and meets the durational requirements.
- 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 December 13, 2013 and signed by internist, Andrew Gillis-Smith, MD.
- ✓ An Agency AP-70 dated December 18, 2013 and signed by the appellant.
- ✓ Records of Rhode Island Hospital for December 10, 2013 to December 22, 2013.
- ✓ Records of primary care physician (PCP) Thomas Guttmacher, MD for December 20, 2013 to May 24, 2014.
- ✓ Records of Vanderbilt Rehabilitation Center, for January 9, 2014 to June 23, 2014 including a report from Newport Hospital neurologist, Michael Vecchione, MD dated March 25, 2014, and cardiologist Jon Lambrecht, MD dated January 28, 2014, as well as diagnostic imaging reports for December 10, 2013 and December 11, 2013, an echocardiogram dated January 23, 2014, and laboratory results dated December 7, 2013 to March 11, 2014.
- ✓ Hearing testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913). The record of hearing was held open for the submission of updated records from East Bay Community Action Program and from Vanderbilt Rehabilitation Center. At the close of business on July 10, 2014, records from Vanderbilt Rehabilitation Center only had been received. The appellant did not request extension of the deadline to submit evidence, and allowed the record to close.

According to 20 CFR 416.916 (If you fail to submit medical and other evidence): You must co-operate in furnishing us with, or in helping us to obtain or identify, available medical or other evidence about your impairment(s). When you fail to cooperate with us in obtaining evidence, we will have to make a decision based on the information available in your case. We will not excuse you from giving us evidence because you have religious or personal reasons against medical examinations, tests, or treatment.

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). In this case, the appellant has been told that evaluation of the impact of a CVA on functioning is dependent upon evidence explaining any residual effects at 90 days or more after the date of the incident. Most of the information submitted covers progression of treatment within the first 60 days following the stroke which occurred on December 10, 2013. At 60 days, significant improvement had been documented, which the appellant acknowledged. However, she requested the opportunity to establish that although her speech was strong, physically, she had declined. After March 10, 2013 records establishing her condition consist of a primary care visit with Dr Guttmacher in May 2014, Vanderbilt therapy records from March through June 23, 2014, and laboratory test results from March 11, 2014. As the essential

information is so limited, all reports will be considered in combination for the purpose of this decision. No individual source has the characteristics required to assign controlling weight.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of application, the MART reviewed available evidence and found that she had severe impairments, which did not meet or equal a listing, but that could be expected to restrict her physical activity to the exertional level required of light work or less. No deficits to mental functioning were established. Although they were expected to issue a decision prior to the time when they could collect evidence of the 90 day progress, the record of improvement at 60 days was significant, and therefore, did not document deficits that would establish a disability even at the earlier date. Therefore, they found that she could perform other work activity, or consider being retrained for new work.

In addition to suffering a stroke last year, she also had been treated for COPD. She currently is using an inhaler three times per day, and has a nebulizer to be used as needed. To her credit, evidence indicates that she has been successful at smoking cessation. No record of extreme exacerbation of respiratory symptoms requiring emergency treatment has been submitted. Her condition appears to be well managed with medication. She would benefit from common sense measures such as needing to avoid sources of respiratory irritants, but otherwise, the condition has not been demonstrated to have more than minimal environmental limitations.

She has a history of cardiovascular conditions including past treatment of hypertension, DVT, and a stent placement in 2007. She experienced a cerebral vascular accident (CVA), or stroke on December 10, 2013. An appeal was filed in order to challenge the Agency finding that residual effects of the December 2013 CVA had significantly improved. At hearing, she alleged that soon after the MART had reviewed her medical records indicating improvements of adverse symptoms, she experienced a decline in strength on the affected non-dominant right side of the body, as well as manipulative changes to the right upper extremity. Her claim is that the limitations continue to limit her ability to perform activities of daily living as well as basic work activities. She indicated that treatment providers told her to expect to require rehabilitative services for up to one year to correct or substantially reduce the adverse effects.

Following the CVA, a schedule of occupational therapy (OT) and speech therapy (ST) was initiated. On June 19, 2014 she completed speech therapy and was given a final discharge report indicating that her goals had been met. The program included conversational and written language skills. She was able to speak functionally, and was reading for pleasure. During the administrative hearing she spoke without difficulty, explaining her conditions, treatments, and

continuing symptoms in detail. She agreed that she had made substantial progress in regaining her speech and language capabilities.

On June 18, 2014 the most recent OT treatment note was recorded. She had achieved goals relative to cutting food, using the RUE as a stabilizer to perform self-care activities, and folding clothes with both hands. She was actively working on additional involvement of the RUE to complete daily tasks including actions required for personal care and household chores. Additional activities to increase right side finger flexion and extension were ongoing, as were activities designed to improve overhead and level reaching, grasping, and handling, and exercises designed to increase strength.

At the time of hearing, she had just completed an initial evaluation for targeted physical therapy (PT). Evidently, according to her testimony, the occupational therapist had recognized some deficits in strength, and limits to range of motion requiring more rigorous PT exercises. Available evidence included the initial assessment and the first three visits. While the right side weakness could understandably be a result of the CVA, the appellant has also made complaints of pain in the right lumbosacral region with radiation into the buttock, as well as pain in the right hip. The initial assessment indicated that she had fallen twice when her weak knee buckled. It is unclear as to whether or not additional injuries were incurred during the falls. The appellant stated that several diagnostic tests had been completed, but there are no diagnostic images within the medical evidence record which establish an explanation for low back or hip pain. Pain level noted at the time of that evaluation was 4/10. Pain symptoms are evaluated in accordance with the standards set forth at (20 CFR 416.929). However, in this case, the appellant has not proven with acceptable evidence, that a medically determinable impairment exists which supports musculoskeletal conditions that could reasonably be expected to cause the specific pain that she describes.

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 suffered a CVA in December 2013 resulting in right side weakness, most significant in the right upper extremity, and aphasia. Her speech was improved steadily after the incident, and she was discharged from ST in June 2014 with a good report, and only minimal disturbance of speech and language capabilities. Her physical symptoms, however, seemed to be resolving in February, but then declined soon after. The reason for the set back is not identified. At this point in time she has an established PT program to target the specific deficits, and an ongoing OT plan continuing to improve useful skills for daily living. Treatment providers have indicated that a good prognosis is possible due to her commitment to the therapy plans, and diligent work at the specified exercises. She appeared to be highly motivated. She is also following preventative treatment with blood thinners and anti-hypertensive medications, and has achieved smoking cessation. Despite the setback that has occurred, she has made good progress throughout the six months documented since CVA occurred. She testified that her treatment providers had estimated up to one year of therapy to achieve the goals they have set, and to establish the maximum results possible. She has full use of her dominant left side. At this time, the residual right side effects of the CVA are continuing to improve. Her treating physician had indicated that although she would need a significant amount of time for rehabilitation, he anticipated that she would eventually be able to return to some type of work activity. Evidence has not established that the known

residual effects would be expected to meet the durational requirements with good compliance to prescribed treatment.

Her respiratory conditions are currently well managed with maintenance medications, and are sure to benefit from recent smoking cessation. COPD is not presently expected to result in more than minimal limitations to work activity with respect to environmental restrictions, and therefore, is not severe for the purpose of the evaluation.

At step two of the sequential evaluation, the appellant bears the burden of proof. In this case, the appellant clearly has experienced significant disruption to her ability to perform both work and daily activities. Residual effects of her current conditions are well managed with prescribed treatment or expected to improve within the twelve month durational period considered for the establishment of a disability. The record, as it exists, reveals that the appellant has not met her burden of proof relative to the requirement to support allegations of disability with acceptable clinical and diagnostic medical evidence. Although the evidence documented a history of conditions requiring medical attention, the records do not establish the existence of a medically determinable impairment with a measurable impact on functional ability and which could be expected to meet the durational requirements. Therefore, the sequential evaluation of disability ends at Step two.

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