STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
EXECUTIVE OFFICES OF HEALTH AND HUMAN SERVICES
APPEALS OFFICE
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Docket # 13-1925
Hearing Date: February 4, 2014
Reconvened: March 13, 2014

Date: June 16, 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, Hilaria Valentin, and Cruz Gomez.

Present at the hearing were: You (the appellant), Sandra Brohen, SCW (DHS Agency representative on February 4, 2014), and Jennifer Duhamel (DHS representative on March 13, 2014).

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 on February 4, 2014:

- 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 two Agency MA-63 forms (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability), and records of East Bay Center, and Crossroads.
- No consultative examination reports were received from Social Security, as she had been denied in November 2013.
- A review of the available records revealed diagnoses of mood disorder, post-traumatic stress disorder (PTSD), and polysubstance dependence.
- Crossroads records noted that she had not been treated there since 2012.
- In 2012 she had been examined for complaints, of back pain.
- X-ray reports (lumbar spine) were unremarkable.

- October (2012) office notes documented reports of daily marijuana use, and recent cocaine use.
- Psychiatric medications were prescribed by East Bay Center (EBC) staff.
- An initial psychiatric examination was completed at EBC in August 2013.
- She had returned to Rhode Island in June after spending time in Florida.
- She had not taken any medication for six months.
- Her affect was described as irritable, demanding, and entitled.
- She was encouraged to join AA, and avoid illegal substance use as well as alcohol.
- She was started on medication for depression and anxiety symptoms.
- There was one follow up appointment in September 2013.
- Mood was stable, but anxiety had worsened.
- She refused to provide a urine sample for toxicology screen.
- She denied use of alcohol, but the clinician was doubtful that the claim was true.
- The medical records reviewed did not provide a clear picture of her mental status during a sustained period of sobriety.
- The medical evidence did not support that a medically determinable impairment exists that would limit functioning, meet the durational requirements, or have residual effects when following prescribed treatment.
- She was not disabled for the purpose of the Medical Assistance program.

The appellant testified on February 4, 2014:

- She is currently unemployed.
- She had a letter from her caseworker, Rebecca, at EBC stating that she has been receiving services there since August 2013.

- She had records of appointments, but not actual medical evidence.
- She has been completing regular toxicology screens there.
- She does not recall having any evaluations of cognitive functioning.
- She sees a psychiatrist, a drug counselor, and a therapist regularly.
- Psychiatry appointments were scheduled monthly, and counseling was semi-monthly.
- She believed that recent counseling notes would provide helpful information regarding her current condition.
- She requested to submit a written medication plan as evidence.
- She submitted a reference letter from Harbor House, and another letter from the pastor of her church.
- Dr Ryvkin also wrote a letter explaining her treatment plan which she submitted as evidence.
- She submitted progress notes of Medical Association of Rhode Island (MARI) documenting her evaluation of low back pain.
- Psychiatrist, Dr Stein, completed a disability questionnaire.
- She also requested to submit patient discharge information from St Joseph Hospital where she was treated after a transfer from Kent Hospital and Kent's emergency facility for a total of nine days.
- She was treated within the past six months at Bristol Medical Center for head and back pain completed in November 2013.
- She has worked with a therapy dog, which was a very calming experience for her.
- She requested a continuance to consult with her attorney about whether or not she should gather additional evidence.
- She requested to hold the record of hearing open for the submission of additional evidence.

The agency representative testified on March 13, 2014:

- All additional records submitted by the appellant on February 4, 2014 had been reviewed by the MART.
- No additional records had been received after February 4, 2014.
- Their previous determination that the available records did not support the existence of a medically determinable impairment remained unchanged.

The appellant testified on March 13, 2014:

- She submitted release forms to her treating sources after the first hearing date, and expected them to mail the records.
- She is currently getting food stamps, and has received one check from GPA.
- She has applied for health care under the Affordable Care Act, and believes that she has been approved.
- She realizes that records of EBC, Bristol Medical Center, and Kent Hospital are still missing from the evidence.
- She requested the records from EBC already, and expects that the case work records will affirm that she has abstained from substance dependence since last year.
- She requested an opportunity to follow up with EBC to determine where the records are.
- She is much better now than she was two years ago when she was treated at Kent Hospital and St Joseph Hospital due to the medication she takes.
- Her medical issues from previous years are difficult for her to face, and she would rather not share them.
- She requested to hold the hearing record open for four weeks for the submission of additional evidence.

FINDINGS OF FACT:

- The appellant filed an application for Medical Assistance (MA) on August 27, 2013.
- The Agency issued a written notice of denial of MA dated November 18, 2013.
- The appellant filed a timely request for hearing received by the Agency on November 18, 2013.
- Per the appellant's request for continuance, the hearing convened on February 4, 2014 was reconvened on March 13, 2014.
- Per the appellant's request, the record of hearing was held open through the close of business on April 10, 2014 for the submission of additional evidence.
- Additional evidence from East Bay Center that was received by the MART during the held open period was forwarded to the Appeals Office on April 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 appellant had severe, medically determinable impairments including mood disorder, anxiety-related disorder, and polysubstance dependence.
- 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 simple, routine tasks that are not highly time-pressured and do not require her to work closely with others.
- 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 August 27, 2013 and signed by psychiatrist, Catherine Chase, DO.
- ✓ An Agency MA-63 dated December 10, 2012 and signed by psychiatrist Achina Stein, DO
- ✓ An Agency AP-70 dated August 18, 2012 and signed by the appellant.
- ✓ Records of East Bay Center for August 27, 2013 to January 29, 2014.
- ✓ Records of Providence Community Health Centers (PCHC) for October 16, 2012.
- ✓ Records of East Bay Community Action Program (EBCAP) for November 6, 2013 to November 19, 2013.
- ✓ A disability questionnaire dated October 15, 2012 and signed by Achina Stein, DO.
- ✓ St Joseph Hospital discharge information for August 16, 2012 to August 21, 2012.
- ✓ A note dated November 4, 2013 from Ralph Lord, Executive Director of Harbor House.
- ✓ A letter dated November 15, 2013 from Rev Cleo Graham.
- ✓ A note dated December 5, 2012 and signed by Shirley Lawson, Church Secretary.
- ✓ Progress notes dated November 6, 2013 from Zsolt Orban, MD of Medical Associates of Rhode Island (MARI).
- ✓ A note dated November 19, 2013 from Inna Ryvkin, MD.
- ✓ Hearing testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913).

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). The available medical evidence included minimal primary care notes from PCHC for one visit in October 2012 and one visit to MARI more than a year later in November 2013. Several of the evidence record entries were reference letters that did not necessarily directly address any medical facts, although they contained some opinions of associates relative to her functioning within the community. Actual documentation of mental health care was provided by East Bay Center for a period of 5 months. As the limited frequency, length, nature, and extent of treatment does not rise to a level that would justify assigning controlling weight of opinion to any individual treating source, all available evidence will be considered in combination for the purpose of this decision.

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. Upon review of all evidence submitted during the application and appeals processes, the MART found that they did not have sufficient evidence to establish the existence of severe medically determinable

impairment. Although they identified that there was no information representing a period of sobriety, it is unclear why the symptoms of active substance dependence were not considered severe. As a result, no opinions regarding functional restrictions had been presented.

The appellant has alleged that symptoms including back pain, headaches, and mental illness impair her. Psychiatrists have diagnosed the mental conditions as mood disorder, post-traumatic stress disorder (PTSD), and polysubstance dependence.

Symptoms, including pain, are evaluated in accordance with the standards set forth at (20 CFR 416.929). Back pain had been alleged during a 2012 primary care visit. References to x-rays indicated that the images failed to reveal any remarkable abnormalities. More than a year later, a physical examination competed by Dr Orban established that the pain as reported by the appellant was localized with no radiation, and that there was mild tenderness to palpation. At the same time, she reported persistent headaches. No tenderness, of the scalp or temporal arteries was found, and no visual disturbance was associated with the described headaches. Her pain symptoms were treated with prescribed anti-inflammatory and analgesic pain medication. Evidence does not establish an etiology of pain at either pain site that would reasonably be expected to be resistant to prescribed treatment. At a visit to EBCAP 2 weeks later, she told Dr Ryvkin that the medications did help to relieve her pain. None of the physicians of record have suggested that restrictions to her physical activities would be recommended.

Beginning with the earliest available medical records, it is evident that substance dependence has been present, and that psychiatrists have advised against use of all substances including alcohol and illegal drugs, especially due to the manner in which they complicate the safety and benefits of prescribed psychiatric medications that could be essential for treatment of her conditions. Dr Stein had identified back in October 2012 that polysubstance dependence, mood disorder, and PTSD were co-occurring. The physician noted that although the disorders collectively have had a significant effect on functioning, she clarified that it was difficult to tell how impactful they would be, as it was very early in the treatment process. In December 2012, Dr Stein found slight to moderate limitations to mental activities. That treatment, however was interrupted, as the appellant had left the state early in 2013, and evidence indicates that she stopped taking medications, and was without that mental health treatment for a period of six months.

She eventually returned to Rhode Island in a state of decline with respect to her mood, anxiety and substance abuse habits. A treatment relationship was started with EBC. After the initial evaluation completed in August 2013, Dr Chase, observed marked limitations in several categories of functioning. As a result, the appellant was immediately referred to substance addiction programs, and

restarted on medication maintenance. As of the date of hearing, the appellant testified that she had achieved sobriety, and was complying with all recommendations, and schedules for prescribed medications. She also testified that due to her sobriety, and the effectiveness of treatment medication that she was "much better" than she was 2 years ago.

Updated records were received from Dr Chase after the hearing. At the most recent office visit, progress notes affirmed that substance abuse had improved. Urine toxicology reports revealed several consecutive negative screens. Her sleep was improved, she was less depressed, she was not anxious, and was functioning adequately to complete daily activities. A mental status exam indicated that she was punctual, and well groomed. She was alert and oriented in all spheres. She had adequate fund of knowledge, no psychomotor abnormality, normal speech and language, and no perceptual abnormalities or delusions. Her thought process was linear and organized, while thought content was without harmful ideation. Insight and judgment were adequate. Mood and affect were improved. Her treatment plan was to continue medication management, and she was encouraged to rely on support of recovery programs to abstain from alcohol and illicit substances. The very positive results of the last office visit are consistent with the appellant's report of her progress.

Despite significant improvement, it is considered that her conditions are not without some impact on mental functions required to perform basic work activities. Sobriety is very recent, and psychiatrists have noted some distractibility affecting attention and concentration, as well as some concerns regarding her ability to sustain a steady work pace, adapt to basic demands such as routine change, to achieve restorative sleep, and to be capable of responding appropriately to others in the workplace.

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 he 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 a significant history of mental impairment relative to mood disorder, PTSD, and polysubstance addiction. Her conditions are severe as they result in some restrictions to functional capabilities. Additional complaints of low back pain and headaches have been documented based primarily on patient complaint. Records lack clinical and diagnostic findings that support abnormalities of the spine, or conditions that could be expected to result in head pain. Nevertheless, her PCP had prescribed pain remedies which are noted to have been effective within the limited time period documented. Pain symptoms appear to be intermittent, and not anticipated to interfere with her activity for a continuous period of twelve months.

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 listings 12.04 (Affective disorders), 12.06 (Anxiety-related disorders), and 12.09 (Substance addiction disorders) are examined. Evidence indicates that the appellant has experienced persistence of depressive symptoms, although there is very little information regarding the specific nature of her anxiety disorder, which she elected not to discuss. She did experience characteristics such as sleep disturbance, and agitation which have been notably reduced by a good response to medication management and sobriety. Evidence has not established that her symptoms currently result in marked level restrictions to activities of daily living, maintaining concentration, and persistence. There is no record of repeated episodes of decompensation of extended duration. The medical evidence record does not support the existence of an impairment that rises to the level of the listings.

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.

Mental RFC

Understanding and Memory: Dr Chase notes that she has an adequate fund of knowledge, good cognition, and an organized thought process. The available records do not rule out the expectation that she could remember short, simple instructions, or recall locations and routine procedures.

Sustained Concentration and Persistence: Although she is somewhat distractible, evidence does not preclude her from being capable of carrying out short, simple instructions for 2-hour blocks of time with allowances for customary breaks, to be punctual, or to sustain a routine without extraordinary supervision. She would be best suited for tasks that are not highly time pressured.

Social Interaction: Interpersonal skills seem adequate for one on one interaction. Although both psychiatrists have found some limitations to her social skills in the past when symptoms were more pronounced. She would be best suited for jobs not requiring her to work closely with others. Insight and judgment were adequate to expect she would recognize and maintain socially appropriate behavior, and know when to request assistance. Evidence does not rule out her ability to accept instructions from supervisors, or to adhere to basic standards of grooming.
Adaptation: Cognition was sufficient to expect that she could be aware of normal hazards and take precautions. Evidence does not rule out ability to arrange transportation, or to set realistic goals.

Medical evidence records have not established the existence any physical impairment that would have more than a minimal impact on functioning, as the conditions reported have been treated and reduced or eliminated. Mental functioning is limited to simple tasks that are not highly time pressured and do not require working closely with others. She reports work activities as a fry cook, cake decorator, and housekeeper which were not long lasting enough to be considered SGA. Her 8-year work history as a dishwasher, however, was full time work that qualifies as SGA. She retains the ability to perform simple routine work as a dishwasher which is considered SVP (specific vocational profile) level 2 (unskilled) work, and does not require coordination with deadlines or interpersonal interaction with the public or teams of workers. As her current MRFC does not preclude her from performing past relevant work, the sequential evaluation ends at step four with a finding of "not disabled".

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