

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County GUERNSEY	District Hearings Section COLUMBUS	Assistance Group Name		Assistance Group Number
Place of Hearing GUERNSEY CDJFS	Initial Hearing Date 12/30/2003	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Melanie Valentine, Case Manager

Date Notice Mailed 10/09/2003	Date Received by Local Agency	Date Received by ODHS 10/23/2003	Date Appeal Summary Received	Date Scheduling Notice Mailed 12/22/2003
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Appeal Number(s)/Program(s) 1144408/DFA, 1144412/MED
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Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the Bureau of State Hearings at 1-866-ODJFS-4-U (1-866-635-3748); and choose option number 1 from the main menu.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414 or FAX (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)* During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

ISSUE SECTION

On 10/09/03, Guernsey County Department of Job and Family Services (hereinafter referred to as the Agency) mailed Appellant notice of denial for Disability Financial Assistance (DFA) and Medicaid for the Disabled assistance. The denial was due to a lack of medical documentation needed to show severity of the conditions even after deferral of the case. County Medical Services Section's (CMS), therefore, based on the insufficient medical documentation determined Appellant's impairment or combination of impairments are not severe and do not significantly limit Appellant's physical and/or mental ability to do basic work activities. Appellant disagrees with the Agency's denial. Appellant argues she has arthritis in her back and experiences a lot of pain in her feet requiring she wear special shoes. Appellant further argues she does not feel she would be able to work a job and presently has an anxiety/depressive disorder accompanied by thoughts of suicide for which she is presently undergoing counseling therapy every two weeks. The issues are whether the Agency's denial action for Disability Financial Assistance and Medicaid for the Disabled assistance on

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Appeal(s) OVERRULED 1144408, 1144412	Date Issued 01/21/2004	Compliance
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Distribution: Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. *(Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)*

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10/09/03, based on a County Medical Services disability determination that Appellant's impairments do not meet the program disability criteria are correct?

Appellant's claim of eligibility for Disability Financial Assistance and Medicaid assistance is based on her having constant pain resulting in an inability to work. To date the Appellant does not have any additional medical documentation to provide which would further substantiate her claim for disability, nor an eligible SSI determination. Thus, the Agency's denial actions for Disability Financial Assistance and Medicaid for the Disabled assistance on 10/09/03, based on the County Medical Services disability determination are found to be correct. APPEALS 1144408 and 1144412 are OVERRULED.

PROCEDURAL MATTERS

1. The hearing request was received by the local Agency and the Bureau of State Hearings on 10/23/03, appeal numbers 1144408 (DFA) and 1144412 (MED) assigned.
2. The state hearing was scheduled for and held on 12/30/03, as a telephone conference hearing at Guernsey County Department of Job and Family Services (Agency) attended by Appellant and Agency representative.
3. The participants were sworn in by the Hearing Officer as required.
4. A County Medical Services representative was not requested by the Appellant to attend the scheduled state hearing.
5. County Medical Services did complete an Appeal Summary Narrative on which was received by the Columbus Hearings Unit Section on 10/02/03, along with the supporting case information documentation for inclusion with the hearing record as Agency Exhibits.

FINDINGS OF FACT

Undisputed Facts

1. The assistance group is composed of the Appellant only.
2. Appellant filed an application with the Agency on 01/07/03, for Disability Financial Assistance, Medicaid for the Disabled assistance and Food Stamps.
3. Appellant is not age 65 or over, blind or disabled (verified by receipt of disability income) and does not meet a limiting physical factor requirement to receive Medicaid assistance.

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4. Appellant's last employment ended two years ago.
5. Appellant on 04/10/03, with the filing of her application alleged a disability followed by the Agency's submission of the appropriate forms to County Medical Services Section (to include Basic Medical Form, Social Summary Report, Mental Functional Capacity Assessment form, Physician Certification of Medication Dependency form, Objective Medical Documentation and Social Security documents on 05/9/03, for a disability determination to be made.
6. Agency sent additional medical information for Appellant's disability package to CMS on 05/15/03.
7. County Medical Services received Appellant's disability determination package on 05/20/03. Appellant's case was reviewed by a medical reviewer and deferred on 06/02/03, for the following additional medical information; Test results or reports for repeated emergency room visits and/or hospitalizations, cardiac or similar reports test results or reports, file data to show a severe neurological problem with her bladder, specific data regarding her arthritis allegation and full current mental status examination.
8. Appellant's case was returned to CMS on 07/01/03, without the deferred requested information except for counseling notes and reviewed in its entirety using the Five-Step Sequential Evaluation Process.
9. Agency sent more of the deferred requested information to CMS on 09/10/03.
10. Appellant's alleged impairments are: (1) Hypertension, (2) Obesity, (3) Neurogenic bladder (bladder nerves malfunctioning) (4) Arthritis in knees and back, (5) Gastroesophageal reflux disease (GERD), (6) Anxiety/depression.
11. County Medical Services (CMS) Section denied Appellant's disability determination package for the following alleged impairments: (1) Hypertension, (3) Neurogenic bladder (4) Arthritis in knees and back, (5) Gastroesophageal reflux disease (GERD), (6) Anxiety/depression at Step Two (2) of the Sequential Evaluation Process on 10/08/03, due to a lack of medical documentation needed to show severity of the conditions even after the case was deferred.
12. County Medical Services (CMS) Section denied Appellant's disability determination package for the following alleged impairments; (2) Obesity and (5) Gastroesophageal reflux disease (GERD) at Step Two (2) of the Sequential Evaluation Process on 10/08/03, due to the conditions were not found to be severe.
13. Agency, based on the CMS determination made on 10/08/03, denied Appellant's application for Disability Financial Assistance and Medicaid for the Disabled assistance the same day, followed by the

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mailing of the denial notice to the Appellant on 10/09/03.

14. Appellant disagrees with the denial and requested a state hearing on 10/23/03..

15. Appellant's filed application for Supplemental Security Income (SSI) was denied in 07/03 or 08/03, followed by her request for an Administrative Appeal hearing which to date has not been scheduled.

16. Appellant currently receives monthly Food Stamp benefits and a medication dependency health card (GAM).

17. Appellant to date does not have additional medical information to provide to substantiate her claim of disability that has not been reviewed by CMS.

18. Appellant's allegation of obesity, is no longer a SSA disability listing and would not prevent her from seeking employment; allegation of GERD can be treated with diet and medication and also would not prevent someone from seeking employment.

19. Appellant's primary physician has indicated she is employable, but has some limitations.

Disputed Facts

{None presented}

CONCLUSIONS OF POLICY

Policy

Ohio Administrative Code (OAC) Rule 5101:1-5-20 DFA: Determinations of Disability Financial Assistance (DFA)

(A) If an individual has, appears to have, or alleges to have a physical or mental condition which may limit their ability to work, the CDHS shall begin developing the medical information necessary for submission to the County Medical Services Section (CMS) for a determination of disability.

(B) Disability for purposes of the DA program other than disability due to medication dependency, is defined as the inability to do any substantial or gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for not less than nine months. The determination of disability by the CMS is based on SSI disability criteria except for the twelve-month disability criteria.

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(E) The Disability Determination Process

(1) The determination of disability by the CMS is based upon the SSI requirements. The determination of disability by the CMS for potential Medicaid may be used to meet the disability determination requirement for the DA program. The CDHS should begin the disability determination process by issuing an ODHS 7302 "Basic Medical Form" to the individual, the individual's legal representative, or to the individual's treating physician for completion by the treating physician. When there may be several treating physicians, an ODHS 7302 must be issued to each physician for completion. When an alleged disability or limiting physical factor is a mental impairment, the ODHS 7308 "Mental Functional Capacity Assessment" must also be completed, along with the ODHS 7302. If an ODHS 7302 is sent to a provider for completion, the CDHS is obligated to pursue and attempt to obtain all available medical evidence and submit the case to CMS for a determination.

Ohio Administrative Code (OAC) Rule 5101:1-39-03 (1991), a limiting physical factor is a basic eligibility requirement for the Medicaid program. A limiting physical factor can be established by age (sixty-five or older), blindness, or disability. In order to meet the limiting physical factor requirement by disability the individual must: be in receipt of SSI or RSDI; or be determined presumptively disabled by the Agency as stated in OAC §5101:1-39-031 (1993); or have an SSI claim pending and be determined eligible by CMS.

OAC 5101:1-39-032 (1995) states that the determination of disability by CMS must be based on the SSI requirements specified in the Code of Federal Regulations (CFR) at §20CFR416.901 to 416.998. Title 20 of the CFR at sections 404.1520 et. al. further states how evaluations for SSI determinations are to be made. The determination under the social security regulations requires that there be a determination of whether an individual has a severe impairment or combination of impairments that are substantiated by objective medical documentation which shows the impairment will last at least 12 continuous months (9 months for Disability Assistance) or result in death.

The CMS determination under the SSI regulations at 20CFR416.920 involves a multi-step sequential process. First, CMS must determine if the individual is employed. If the individual is employed, then regardless of his physical or mental condition, disability cannot be found. Second, if the individual is not employed, CMS must determine if he has a severe impairment or combination of impairments that significantly limits physical or mental ability to do basic work activities. Third, CMS must determine if the impairments or combination of impairments meets or equals any impairment criteria listed in the regulations at Appendix A (i.e. specific parts of the body wherein the impairment must meet the specific objective medical criteria outlined). If the individual does have an impairment or combination of impairments that meets or equals one of the impairment criteria listed in the regulations, CMS must find that the person is disabled for Medicaid eligibility purposes. However, if the individual does not meet this standard, CMS must determine under the fourth step of the evaluation process whether the individual can perform any past relevant work. If the

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individual can perform any past relevant work, the individual is not considered disabled. However, if the individual cannot perform any past relevant work, the case is moved to the fifth step for a determination of whether the individual can perform any other work in the national economy. If the individual is found to be able to perform any other work in the national economy, the individual cannot receive Medicaid coverage. 20CFR416.927(a) defines severe to mean "an impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities.

Analysis

According to the cited regulation, in order to meet the limiting physical factor requirement by disability for receipt of Medicaid assistance the individual must be in receipt of SSI or RSDI or have an SSI claim pending and be determined eligible by CMS and the determination of disability by CMS for potential Medicaid may be used to meet the disability determination requirement for the DFA program.. Here, in this case the Agency denied Appellant's 01/07/03, application for DFA and Medicaid for the Disabled program on 10/09/03. This determination was based on a CMS finding that Appellant's impairments are not severe and do not significantly limit her physical and/or mental ability to do basic work activities. The determination, however, essentially attributed to a lack of medical documentation needed to show the severity of the conditions even after deferral. The Agency did on 05/15/03, and again on 09/08/03, did provide CMS with some of the requested deferred information needed upon receipt from the providers. Given to date the Appellant does not have any additional medical documentation to provide to further substantiate her claim for disability, combined with her claim of the inability to work due to pain, the Hearing Officer finds the Agency's actions are in accordance with the cited regulations. Therefore, in the absence of an eligible SSI determination, the Hearing Officer further finds the Agency's denial actions for Disability Financial Assistance and Medicaid for the Disabled assistance for the Appellant on 10/09/03, based on the County Medical Services disability determination are correct.

HEARING OFFICER'S RECOMMENDATIONS

Based on the record and Agency policy before me, I recommend that appeals 1144408 and 1144412 are OVERRULED.

FINAL ADMINISTRATIVE DECISION AND ORDER

Since I find that the Hearing Officer's recommendation is supported by policy and the evidence, I hereby adopt the recommendation. Thus, appeals 1144408 and 1144412 are, hereby, OVERRULED.

APPENDIX

Agency Exhibits

Appeal Number(s) 1144408, 1144412

- Exhibit A. Agency's Appeal Summary, ODHS 4067, Dated 12/04/03
- Exhibit B. Agency's Appeal Summary Narrative
- Exhibit C. CMS Appeal Summary Narrative, pages 1 through 3
- Exhibit D Five-Step Sequential Evaluation process, 6 pages
- Exhibit E. CMS Disability Determination, ODHS 3600, Dated 10/08/03

Appellant Exhibits

None

Date Issued: 01/21/2004