

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS**

In the matter of:

<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1264840	DMA	OVERRULED
No Compliance Required		
Decision Date:	03/28/2006	
Request Date:	12/28/2005	
Hearing Officer:	GLADYS SMITH	

State Hearing Decision

ISSUE SECTION

On 11/07/05, the Disability Determination Unit (DDU) found Appellant was not disabled as alleged on her application filed 07/10/03, with Franklin County Department of Job and Family Services (hereinafter referred to as the Agency). Appellant as a result of the DDU disability determination is not eligible for benefits under the Disability Financial Assistance and Medicaid for the Disabled programs. The DDU determined Appellant's impairment or combination of impairments are not severe and do not significantly limit her physical and/or mental ability to do basic work as there was insufficient medical evidence to determine severity or findings of a medically determinable impairment(s). Appellant disagrees with the DDU determination and continues alleging to be disabled. The issues is, whether the Disability Determination Unit's denial of Appellant's case for alleged disability on 11/07/05, which results in her ineligibility for Disability Financial Assistance and Medicaid for the Disabled assistance, is correct?

The Appellant has had a period of over two and one-half years, as well as to date, and the additional medical documentation needed by DDU to substantiate her allegation for disability has not been provided. The disability determination, therefore, is found to be in adherence to cited regulations. Thus, DDU's denial of Appellant's case for alleged disability on 11/07/05, resulting in ineligibility for Disability Financial Assistance and Medicaid for the Disabled assistance, is correct. APPEAL 1264840 is OVERRULED.

PROCEDURAL MATTERS

1. The hearing request was received by the Bureau of State Hearings on 12/28/05, appeal number 1264840 (DMA) assigned.
2. The state hearing was scheduled for and held on 02/06/06, as a face-to-face hearing at the Bureau of State Hearings attended by Appellant, her son and Agency representative, Sherri Collier (Supervisor) participating by telephone.
3. The participants were sworn in by the Hearing Officer as required.
4. Disability Determination Unit did provide an Appeal Summary Narrative which was received by the Bureau of State Hearing on 01/19/06, along with the supporting case information documentation for inclusion with the hearing record as Agency Exhibits.

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5. Appellant provided additional medical information at the state hearing for review and inclusion with the hearing record as Appellant Exhibits.

FINDINGS OF FACT

Undisputed Facts

1. The household is composed of two persons, Appellant and her adult son.
2. Appellant is a recipient of Disability Medical Assistance, the household receives a monthly \$278.00 Food Stamp allotment amount.
3. Appellant initially applied for Disability Financial Assistance and Medicaid for the Disabled assistance on 07/10/03, at which time she alleged to be disabled.
4. Appellant is not aged (65 years of age or older), disabled (verified by receipt of monthly disability income) or blind and does not meet a limiting physical factor requirement to receive benefits under the Disability Financial Assistance and Medicaid for the Disabled programs.
5. Appellants application was denied based on the Disability Determination Unit not finding her to be disabled followed by a state hearing held on 10/10/04, to appeal the Agency and DDU's decision. The state hearing decision Sustained Appellant's appeal with compliance action for the Agency to obtain a full mental status report, available records from the Social Security Administration and protected her original date of application of 07/10/03.
6. Agency resubmitted the following information to the Disability Determination Unit (DDU) for a disability determination to be made for the Appellant; Social Summary Report, Basic Medical form, Mental Functional Capacity Assessment form, Physician Certification of Medication Dependency form, and Objective Medical Documentation which was received by DDU on 04/21/05.
7. The Disability Determination Unit after review deferred Appellant's case back to the Agency on 06/23/05, for additional information as follows; Test Results or Reports for a CT Scan, MRI, EMG, Gait Grip test results, Pulmonary function studies, for 2005- current studies to include MRI, EMG and current examination of the range of motion of extremities and back.
8. Agency received additional medical information from Appellant's treating physician (Dr Saul) on 07/03/05, followed by their resubmission of Appellant's case to DDU on 07/28/05; all of the requested deferred information was not provided.
9. Appellant's alleged impairments are; (1) Depression/Panic Disorder/Dysthymia (2) Fibromyalgia (3) Menopause (4) Hyperlipidemia (5) GERD (gastroesophageal reflux disease) (6) COPD (coronary obstructive pulmonary disease) (7) Broken neck, back and tail bone occurring in 1996 and arm pain.
10. The Disability Determination Unit (DDU) denied Appellant's disability determination on 11/07/05, for the following alleged impairments; Depression/Panic Disorder/Dysthymia, Fibromyalgia, COPD (coronary obstructive pulmonary disease), Broken neck, back and tail

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bone occurring in 1996 and arm pain at Step Two (2) of the Sequential Evaluation Process due to a lack of the medical documentation needed to show the severity of the conditions.

11. The Disability Determination Unit (DDU) denied Appellant's disability determination on 11/07/05, for the following alleged impairments; Menopause, Hyperlipidemia and GERD (gastroesophageal reflux disease) at Step Two (2) of the Sequential Evaluation Process because each separate allegation was found to be not severe.

12. Appellant disagrees with the Disability Determination Unit's denial for disability and requested a state hearing on 12/28/05.

13. Appellant has applied for Supplemental Security Income on two occasions, both applications were denied and she is presently undergoing the appeal process for the last denial.

14. Appellant provided medical information at the state hearing which includes Basis Medical Reports, Physician Certification Medication Dependency form, Mental Function Incapacity form, for examinations on 09/10/03, 01/05/04, 05/12/04, 08/24/05, verifying her diagnosis and stating she is unemployable. The medical information provided does not contain any of the deferred requested information needed by DDU.

15. Appellant does not have any additional medical information to provide that has not been reviewed by CMS.

Disputed Facts

{None presented}

CONCLUSIONS OF POLICY

Policy

Ohio Administrative Code (OAC) § 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.

(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

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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) § 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 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 Ohio Admin. Code § 5101:1-5-20 when an individual 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 Disability Determination Unit (DDU) for a

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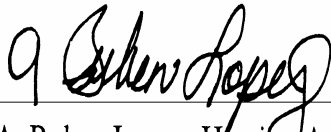
determination of disability. According to Ohio Admin. Code § 5101: 1-39-03 limiting physical factor is a basic eligibility requirement for the Medicaid program and in order to meet the limiting physical factor requirement by disability the individual must: have an SSI claim pending and be determined eligible by DDU. Here, the DDU denied Appellant's alleged disability claim for her application originally filed 07/10/03, for Disability Financial Assistance and Medicaid for the Disabled assistance. DDU determined Appellant's impairment or combination of impairments are not severe and do not significantly limit her physical and/or mental ability to do basic work as there was insufficient medical evidence to determine severity or findings of a medically determinable impairment(s). Appellant continues to allege she is disabled and, therefore, disagrees with the DDU disability determination. Given it has been a period of over two and one-half years as well as to date, the Appellant has not provided additional medical documentation needed by DDU which substantiates her allegation for disability, the Hearing Officer finds the disability determination is in adherence to regulations cited. In the absence of an eligible SSI determination, the Hearing Officer further finds the DDU's denial of Appellant's case for alleged disability on 11/07/05, resulting in her ineligibility for Disability Financial Assistance and Medicaid for the Disabled assistance, is correct.

HEARING OFFICER'S RECOMMENDATIONS

Based on the record and Agency policy before me, I recommend that appeals 1264840 be 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 1264840 is, hereby, OVERRULED.



A. Ruben Lopez, Hearing Authority

March 28, 2006

Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. 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, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 or FAX (614) 728-9574. Your request should state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form must be received by the Bureau of State Hearings 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 or your representative may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu). 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.

Aviso a la Apelante

STATE HEARING DECISION CONTINUATION

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

Appendix

APPENDIX

Agency Exhibits

Exhibit A. DDU Appeal Summary Narrative, 5 pages

Exhibit B. Sequential Evaluation Process, 2 pages

Exhibit C. ODJFS Referral To CMS, JFS 3605, 4 pages

Exhibit D. Social Summary Report, ODHS 7004, 3 pages

Exhibit E. Basic Medical Report Forms, ODHS 7302, 7 pages

Exhibit F. Mental Functional Capacity Assessment Forms, 4 pages

Exhibit G. Physician Certification of Medication Dependency Forms, 4 pages

Exhibit H. CMS Disability Determination Forms, DHS 3600, 4 pages

Exhibit I. Physician Case Referral forms, 2 pages

Exhibit J. Objective Medical Documentation, 50 pages

Appellant Exhibits

Exhibit 1. Basis Medical Reports, Physician Certification Medication Dependency Form, Mental Function Incapacity Form, for examinations on 09/10/03, 01/05/04, 05/12/04, 08/24/05, 8 pages