

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5047804355	SUMMIT	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1386084	MED	SUSTAINED
Compliance Required		
Decision Date:	03/03/2008	
Request Date:	12/04/2007	
Hearing Officer:	CYNTHIA ASHTON	

State Hearing Decision

ISSUE SECTION:

Appeal #1386084 Eligibility for Medicaid for the Disabled (MAD) is based, in part, on verification of disability. The Summit County Department of Job and Family Services (Agency) denied the Appellant's application for MAD on 11/21/07 because the Disability Determination Area (DDA) determined that the Appellant is able to perform some of her previous job functions. Is the denial of MAD correct?

The DDA representative has referred the case to his supervisor for further review. Therefore, the appeal should be **SUSTAINED**.

PROCEDURAL MATTERS:

Notice of adverse action was issued to Appellant on 01/30/07. The Appellant disagreed with the notice and requested a state hearing on 12/04/07. (See Exhibit 1). A hearing schedule was mailed to all parties on 12/24/07 and a state hearing was scheduled in coordination with the Disability Determination Area (DDA) and heard on 02/12/08. The delay in scheduling was due to the medical determination. An Appeal Summary was also submitted by Summit County Department of Job and Family Services (See Exhibit A). DDA did not submit an appeal summary. The Appellant represented herself at the hearing; DDA was represented by Frank Stoops, Medicaid Health Systems Specialist II; Debra Hull, County Hearing Officer represented Summit CDJFS.

FINDINGS OF FACT:

1. This assistance group (AG) consists of the Appellant, who is a 59-year-old single individual, whose authorized representative (AR) applied for Medicaid for the Disabled (MAD) on her behalf in 05/07 and requested retroactive coverage back to 03/07 (See Exhibit B).
2. Appellant receives widow's benefits from the Veteran's Administration which are not based on disability.
3. Appellant applied for Supplemental Security Income (SSI) on 10/24/06 and was denied.
4. Appellant appealed the SSI denial on 07/09/07 with the Social Security Administration which is still pending (See Exhibit C).
5. Agency submitted a disability determination packet to DDA on 11/16/07; DDA did not defer the case for additional information.

STATE HEARING DECISION CONTINUATION

6. DDA denied the claim on 11/19/07 after determining that Appellant could allegedly perform some of her previous job functions.
7. The DDA representative testified that he feels the Appellant's claim warrants further review and he returned the case to his supervisor on 01/18/08.
8. The DDA representative has not received the case back from his supervisor as of the hearing date.
9. The DDA representative did not complete an appeal summary because the case is still being reviewed as of the hearing date.
10. Appellant alleges disabling conditions due to COPD, osteoporosis, fibromyalgia, and a herniated disc in her back.
11. Appellant is taking prescription medications for pain which "knock her out."
12. Appellant cannot drive while on these medications.
13. The exact date of the 05/07 application for MAD was not established.

CONCLUSIONS OF POLICY:

Medicaid Policy:

The Disability Determination Area (DDA) is the state agency that is charged with the responsibility for determining disability for Ohio's Medicaid applicants and recipients. DDA is also responsible for re-evaluating Appellant's impairments based on the Social Security Administration continuing disability review process and to determine whether the impairment or impairments are still disabling. Ohio Admin. Code § 5101:1-39-03 (B) (6) (2005)

A person aged 18 or over is considered disabled if he has a physical or mental impairment which prevents him from doing any substantial gainful work. To meet the limiting physical factor requirement, the impairment must have lasted or be expected to last for at least 12 months or must be expected to result in death. Limiting physical factor is a basic eligibility requirement for Medicaid eligibility and means the applicant/recipient must be sixty-five years of age or older, blind, or disabled. These physical factors are considered limiting to the extent that they usually preclude employment. In order for the limiting physical factor to be met by disability, the individual must be in receipt of SSI or RSDI (based on his own disability); or be determined presumptively disabled by the CDJFS... (E.g. have a condition such as total deafness, cerebral palsy; or have an SSI claim pending and be determined eligible by DDU) Ohio Admin. Code § 5101:1-39-03 (B) (10) (c) (2005)

The administrative agency shall obtain all available current medical information as well as any other information requested by the Disability Determination Area and submit it in the disability determination packet. The administrative agency shall include in the disability determination packet all available current medical information for all alleged impairment(s) or combination of impairments; this medical information should include but not be limited to, a Basic Medical Form, a Mental Functional Capacity Assessment Form, and a Medication Dependency Form. Ohio Admin. Code § 5101:1-39-03 (C) (8) (2005).

The hearing officer's findings of fact shall be based exclusively on the evidence introduced at the hearing, or after the hearing and subject to examination and rebuttal by both parties. It shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with ODHS rules. Ohio Admin. Code § 5101:6-7-01 (C) (1) (2006)

Analysis:

STATE HEARING DECISION CONTINUATION

In this specific case, the Appellant's AR applied for Medicaid for the Disabled (MAD) on her behalf in 05/07 also requesting retroactive coverage to 03/07 due to a hospitalization. Agency submitted a disability determination packet to the Disability Determination Area (DDA) on 11/16/07. On 11/19/07 DDA denied the claim after determining that Appellant could allegedly perform some of her previous job functions. Appellant is presently in the appeals process with the Social Security Administration due to being denied SSI.

The representative from DDA testified that he had returned Appellant's case to his supervisor on 01/18/08 for further review because he did not disagree with the initial determination. As of the hearing, the case had not been returned to him. Therefore, since DDA feels that the Appellant's claim of disability warrants further review, the denial of MAD is not supported at this time.

HEARING OFFICER'S RECOMMENDATIONS:

Appeal #1386084 should be **SUSTAINED**. The denial of Medicaid for the Disabled (MAD) is not supported. The Agency should be directed to determine the exact date of the MAD application filed in 05/07 including the request for retroactive Medicaid back to 03/07 and return that application to pending status. The Disability Determination Area should be directed to review the Appellant's case again as requested by the DDA representative on 01/18/08. The resulting eligibility determination shall be in writing affording appeal rights.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Finding the Hearing Officer's decision to be supported by the evidence, the recommendations above are adopted and the appeal is sustained.

COMPLIANCE IS REQUIRED:

Ohio Administrative Code § 5101:6-7-03 (2002) requires prompt compliance with state hearing decisions. For decisions involving public assistance, social services or child support, compliance shall be achieved within 15 calendar days from the date the decision is issued, but in no event later than 90 calendar days from the date of the hearing request. Compliance shall be promptly reported to the Bureau of State Hearings, ODHS, via "State Hearing Compliance," ODHS 4068, accompanied by appropriate documentation.

Hearing Authority

March 3, 2008

Notice to Appellant

STATE HEARING DECISION CONTINUATION

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 hearing supervisor at the CLEVELAND District hearing section at 1-866-635-3748.

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, OH 43218-2825 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 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 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.

Aviso a la Apelante

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

APPELLANT EXHIBITS:

1 – Hearing Request (1 page)

AGENCY EXHIBITS:

A – Appeal Summary and attachments submitted by Summit CDJFS (12 pages)

B – Case running record comments dated 11/05/07 (1 page)

C – Data Exchange Inquiry screen print DESX regarding SSI (1 page)

D – County Medical Services Tracking System computer screen AEICM (1 page)